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CONSOLIDATED
Digest of Decisions

Under the Interstate Commerce Act.
(1887 to 1924)

IN TWO VOLUMES

VOLUME I

By
HERBERT C. LUST
Of the
Chicago Bar

Author: Digest, Supplemental and Quarterly Digests of Decisions under the Interstate Commerce Act; the Workmen's Compensation Law of Illinois, Annotated; The Law of Loss and Damage Claims, Etc.

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By
HERBERT C. LUST.

To the Interstate Commerce Commission this work is dedicated. The extraordinary quality of its work, the unquestioned integrity of its purpose, the self sacrifice of each commissioner in being a member of the hardest working tribunal on earth, must always be an inspiration to everyone in the traffic world.

PREFACE

In this publication there is classified every decision of the Interstate Commerce Commission from Volume One through 85 I. C. C. The period covered by this Digest is from 1887 to 1924.

It has always been the desire of the author to prepare a digest of the decisions of the Interstate Commerce Commission from its inception.

Mr. E. B. Peirce, commerce counsel of the Rock Island lines, prepared a digest at one time that covered the period from 1887 to 1908. That work was of undoubted excellence, but Mr. Peirce did not continue its publication. This was in a sense unfortunate, because after the passage of the Hepburn Act in 1906 a tremendous impetus was given to the work of the Commission, so that shortly thereafter it was deciding as many principles in one year as it had done in any previous five. The need of traffic men for a reference work to this immense volume of traffic law was so pronounced, that in 1913 the author published a digest of the recent decisions, which was really a reprint of material he had prepared for use in his own practice, and that publication has been kept down to date. Unfortunately the distribution of the Peirce Digest was much more restricted than that of the Lust Digests, and owing to Mr. Peirce's untimely demise a short time after he published his work, no copies were available other than the first printing. The subscribers to the Lust Digest, therefore, had to remain in ignorance of the body of traffic law that had been decided prior to 1908.

As shippers, and one might also say carriers, became more familiar with the additional powers granted the Commission by the Hepburn Act, and its numerous supplements, appeals to the Commission became very much more frequent. The work, therefore, of keeping the traffic interests advised of the current decisions of the Commission has become increasingly arduous. The Lust Digests to date comprise eight volumes of over ten thousand pages and containing something like seventy thousand principles governing traffic.

Traffic men as a usual proposition are extremely busy; they hold responsible positions with a tremendous amount of detail to be looked after, and proper attention paid to detail takes time. It has been the idea of the author, therefore, to save time. Perhaps some day, proper

recognition will be given the new profession of traffic manager, and thus encourage these men to study and do research concerning the matters connected with their profession, as do lawyers and doctors. Unfortunately at the present time this does not seem to be the general rule. Traffic men either through necessity or otherwise have largely gotten into the habit of deciding very important problems in a very brief period, and do little intensive research. Time is what they seem to need the most.

It has been the desire of the author to devise some means by which this need of the profession could be met. It has been recognized that the Lust Digests have now reached a size where they can no longer be used for instantaneous reference, as formerly. To add separately to them (covering as they do the period from 1908 to 1925), the large volume of traffic law decided from 1887 to 1908, seems impracticable. This body of law, however, is too important to be overlooked. For instance, at the present time there is a great deal of agitation over the Hoch-Smith Resolution. A reference to the prior decisions shows the same kind of a resolution was passed by the Senate in 1890. The author himself would not have known of this except for the preparation of the book presented here. Enquiry among commerce counsel representing the carriers, traffic experts, and even employes of the Interstate Commerce Commission, fail to find one person who had heard of the resolution of 1890. This is a striking illustration of the value of having a complete record of the decisions. So a mere consolidation of the Lust Digests, plus a digest of the decisions prior to 1908, did not appear to the author to meet the vital question, which was the giving of a quick reference work to the busy traffic manager.

Such a scheme also would have meant reprinting at a colossal expense the past Digests. It was also believed that whatever scheme was adopted should be complete.

In any analysis of the problems of traffic law it is the principles which are important. The logical scheme is to show the earliest application of the law, together with its later variations, in chronological order. After a great deal of consideration the author evolved the present method of preparing this Digest.

There is presented here an absolutely complete digest of every point of law decided by the courts or Commission in construing the Interstate Commerce Act, from volume one to twelve, inclusive, of the Commission's reports. This covers the period from 1887 to 1908. These points, as well as the entire Digest, are placed under the classi-

fication which is in practically universal use today, and which was created by the author in 1913. The early cases have in front of them a heading showing they were decided prior to 1908. There has also been classified, following them, a digest of all points which seemed to the author to be of special importance and to be most useful for quick reference. These are placed under a subheading, "Important Cases Since 1908."

In order to make this Digest absolutely complete there is then a third subheading, "All Other Citations," and under this is listed the reference to the name of the case, volume and page of the decision to which the principle referred to is discussed, in every other case ever decided by the Interstate Commerce Commission and courts construing the Interstate Commerce Act. Thus we have here absolutely complete, under each classification, a complete list of every case governing the particular subject ever decided by the Interstate Commerce Commission in its thirty-seven years of operation from 1887 to 1924.

For the busy traffic man who desires a quick reference on any particular subject, it is the opinion of the author that this publication will give him almost instantaneous reference. If he desires to pursue his subject further by analyzing it down to the last detail, or in writing a brief, he has the opportunity to do so by referring to the other cases. If he wishes to simply ascertain the holdings of the Commission, during the period prior to 1908, those cases are available to him in full.

The author has personally examined every case, and every point in every case ever decided by the Interstate Commerce Commission or courts, to which reference is made here. The selection of principles represents his best judgment as to practical value and necessity. It is not pretended that the points which are reprinted will give a complete analysis of the law governing the particular principle. To do that all the cases bearing on the subject must be examined, but they do represent the author's judgment, that they will give the reader a practically instantaneous idea of what his rights are, and what principles govern the more common traffic problems presented.

The opportunity is taken of expressing the thanks of the author to the Lawyers' Co-operative Publishing Company of Rochester, New York, publishers of the first twelve volumes of the Interstate Commerce Commission reports, for courtesies extended.

HERBERT C. LUST.

Chicago, Ill., 1925.

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See Common Carrier; Switch Tracks and Switching II.

I. APPLICATION OF ABSORBED RATE.

§1. In General.

IMPORTANT CASES SINCE 1908

(a) The absorption of switching charges is not in contravention of law. Columbia Gold Min. Co. v. O. W. R. R. & Nav. Co., 35 I. C. C. 42, 43.

(b) In so far as the shipping public is concerned the effect of switching absorption is to establish a joint rate, but this does not imply that by tariff provision a switching line may arbitrarily demand for its portion of the service any amount satisfactory to it. Joint rates and divisions thereof result from agreements among carriers or from appropriate action by the Commission when carriers fail or are unable to agree. When joint rates and divisions are established voluntarily one carrier can exact no more than its connections will allow. Manifestly if the amount of a switching charge differs from that which the line-haul carrier offers to absorb, and there is no provision for collecting the difference from the shipper, the switching line must accept less or the line-haul carrier must absorb more than is authorized by the tariffs. Switching Absorptions, 47 I. C. C. 583, 586.

(c) Where carriers earn specific amounts out of through rates or fares, such amounts authorized to be increased in the same percentages as the through rates or fares, and where divisions of carriers participating in through rates or fares are in fixed amounts per unit and are absorbed by other carriers, such absorptions should be increased in the same percentage as the through rates or fares. Increased Rates, 1920, 58 I. C. C. 220, 254.

(d) Wherever a charge is to be absorbed by connecting carriers, they should so indicate by appropriate tariff provision. Intermediate Switching at Appleton, Wis., I. & S. Docket No. 1180, 58 I. C. C. 691, 694.

ALL OTHER CITATIONS

Milwaukee Falls Chair Co. v. C., M. & St. P. Ry. Co., 16 I. C. C. 217, 218; Utica Traffic Bureau v. N. Y., O. & W. Ry. Co., 18 I. C. C. 168; Coal Rates on the Stony Fork Branch, 26 I. C. C. 168, 173; Mfrs. Ry. Co. v. St. L., I. M. & S. Ry. Co., 28 I. C. C. 93, 109; Kansas City & Memphis Ry. Co. Rate Cancellation, 28 I. C. C. 640, 643; Burford v. L. & M. R. R. Co., 31 I. C. C. 182, 184; Transcontinental Commodity Rates, 32 I. C. C. 449, 456; Louisville Board of Trade v. L. & N. R. R., 40 I. C. C. 679, 687; Oliver Chilled Plow Works v. N. Y. C. R. R., 45 I. C. C. 356, 358; C., M. & St. P. Ry. Co. v. G. N. Ry., 49 I. C. C. 302, 305, 307; Pacific Mail S. S. Co. v. Western Pac. R. Co., 251 Fed. 218; Portsmouth Assn. of Commerce v. S. A. L. Ry., 55 I. C. C. 377, 383; National Tube Co. v. Lake Terminal Ry., 55 I. C. C. 469, 480; Butterfield Co. v. N. E. R. R., 55 I. C. C. 741, 743; Miller Paper Co. v. P. R. R. Co., 62 I. C. C. 705; Commodity Rates on Brick from Danville to Bronson, Ill., 63 I. C. C. 277, 278; Cambria Steel Co. v. Director General, 64 I. C. C. 737, 742; Le Prestre, Miller & Co. v. E. R. R. Co., 73 I. C. C. 621.

II. DISCRIMINATION.

See Discrimination.

§1½. In General.

IMPORTANT CASES SINCE 1908

(a) The burden of proof rests upon carriers to justify proposed increased through charges resulting from a reduction in the amount of switching charges they will absorb even though they need not have increased the amount of such absorption by more than a certain per cent under Increased Rates, 1920, 58 I. C. C. 220. Absorption of Switching Charges at Toledo, 62 I. C. C. 30, 31.

ALL OTHER CITATIONS

Absorption of Switching charges at

Toledo, 62 I. C. C. 30, 31; Tidewater Oil Co. v. Director General, as Agent, 62 I. C. C. 226; Miller Paper Co. v. P. R. R. Co., 62 I. C. C. 705, 708; Lafayette Gravel Co. v. C. & E. I. R. R. Co., 62 I. C. C. 729, 732; Tide Water Oil Co. v. Director General, as Agent, 73 I. C. C. 528. Hunt, Helm, Ferris & Co. v. C. & N. W. Ry. Co., 68 I. C. C. 283, 284; Detroit Board of Trade v. W. Ry. Co., 80 I. C. C. 717.

§2. Absorption Subsequent to Shipment.

IMPORTANT CASES SINCE 1908

(a) But the Commission has no authority in the absence of a showing of discrimination, to require a carrier to absorb the switching charge of another. DuPont de Nemours Powder Co. v. P. R. R., 50 I. C. C. 203, 204.

(b) Under present conditions and the elimination of carrier competition, when there is absorption of switching charges within a switching district, the provisions therefore should be uniform where similar circumstances and conditions prevail. Kaw River S. & M. Co. v. A. F. & S. F. Ry., 51 I. C. C. 350, 355.

(c) It is well settled that if the carriers absorb switching charges for one shipper, they must do the like for all others similarly situated and entitled to like treatment. Ridge Coal Mining Co. v. M. P., 62 I. C. C. 259, 262.

ALL OTHER CITATIONS

Great Western Portland Cement Co. v. A., T. & S. F. Ry. Co., Unrep. Op. 454; Fort Smith Wholesale Grocery Co. v. Ft. S. & W. R. R. Co., Unrep. Op. 509; Wellington v. St. L. & C. F. R. R. Co., 13 I. C. C. 534, 535; Acme Cement Plaster Co. v. St. L. & S. F. R. R. Co., 18 I. C. C. 376, 377; Deeves Lumber Co. v. C. & N. W. Ry. Co., 19 I. C. C. 482, 483; Swift & Co. v. M. P. Ry. Co., 22 I. C. C. 385; Laclede-Christy Clay Products Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A105; Ennis, Brown Co. v. S. P. Co., Unrep. Op. 2078; Consumers Co. v. C. & N. W. Ry., 36 I. C. C. 259, 261; Garden City Sand Co. v. N. Y. C. & St. L. R. R. Co., 38 I. C. C. 723, 724; Bath & Co. v. Ft. Worth & R. G. Ry., 51 I. C. C. 129.

§3. Refusal to Absorb.

CASES 1887-1908

(a) A railroad company is not prevented from absorbing a terminal charge on livestock in one city, and exacting such a charge for terminal services in another city reached by a different line, by the Act to Regulate Commerce, § 2, prohibiting the rendering of a given service to one person for a less compensation than is exacted from some other person for the same service under substantially similar circumstances and conditions. Cattle Raisers' Asso. v. Fort Worth & D. C. R. Co., 7 I. C. C. 513.

(b) A carrier may, under stress of competition, absorb a terminal charge upon one kind of merchandise or in favor of one locality and not in favor of another, unless in so doing he is guilty of an undue preference. Cattle Raisers Asso. of Texas v. Ft. W. & D. C. R. Co., 7 I. C. C. 513, 545.

IMPORTANT CASES SINCE 1908

(c) Unjust discrimination cannot be predicated merely on the refusal of a line entering a terminal to meet the competition of other carriers by the absorption of the total switching charges. Consumers Co. v. M., St. P. & S. Ste. M Ry., 43 I. C. C. 561, 566.

(d) A reciprocal switching arrangement between certain carriers does not justify their refusal to absorb the switching charges of another carrier, notwithstanding the smaller volume of traffic of the latter, if in fact unjust discrimination or undue prejudice is shown to result. National Spring and Wire Co v. Director General, as Agent, 60 I. C. C. 564, 565.

(e) Upon further hearing, former report, 62 I. C. C., 705, finding failure of defendants to provide for absorption of charges for interchanging in-bound traffic at Downington, Pa., and provide charges for interchanging outbound traffic, not unreasonable, discriminatory, or unduly prejudicial, affirmed. Failure to provide for interchange of outbound traffic is not shown to prejudice Downingtown, in comparison with Coatesville, Pa., and other points where such arrangements are maintained, and to require such interchange would compel carriers to short haul themselves. Miller Paper Co. v. P. R. R. Co., 80 I. C. C. 314.

ALL OTHER CITATIONS

Curtis Bros. & Co. v. S. P. Co., 23 I. C. C. 372, 373; Mfrs. & Merchants' Asso. v. A. & A. R. R. Co., 24 I. C. C. 331, 336, 339; adhered to on rehearing, 25 I. C. C. 116;Chicago Switching Charges, 28 I. C. C. 677, 679; Board of Trade of Chicago v. A., T. & S. F. Ry. Co., 29 I. C. C. 438; Norman Lumber Co. v. L. & N. Ry.

Co., 29 I. C. C. 565, 570; Swift Beef Co., Ltd., v. C. P. Ry. Co., Unrep. Op. A284; Hedden Clark Lumber Co. v. B. & O. R. R. Co., Unrep. Op. A301; Cavers Elector Co. v. M. P. Ry. Co., Unrep. Op. A349; Richmond Chamber of Commerce v. S. R. L. Ry., 30 I. C. C. 552, 556, 559; Dikes & Co. v. B. & O. R. R. Co., Unrep. Op. A430; Switching at Baltimore, Md., 30 I. C. C. 581, 584; Gravel and Sand Switching Charges at Chicago, 32 I. C. C. 291, 296; Great Western Oil Refining Co v. A., T. & S. F. Ry. Co., Unrep. Op. A937; Phoenix Iron & Steel Co. v. G., H. & H. R. R. Co., 36 I. C. C. 175, 176; Consumers Co. v. C. & N. W. Ry. Co., 36 I. C. C. 259, 261; City Ice & Supply Co. v. C. & N. W. Ry. Co., 36 I. C. C. 514, 517; National Dock & Storage Warehouse Co. v. B. & M. R. R., 38 I. C. C. 643; Platts v. N. Y., N. H. & H. R. R., 39 I. C. C. 690; Good v. G. N. Ry. Co., 42 I. C. C. 347; Brick from Michigan City, Ind., 42 I. C. C. 509, 512; Brick from Michigan City, Ind., 42 I. C. C. 509; Drayage Absorption, 43 I. C. C. 472; Platts v. N. Y., N. H. & H. R. R., 43 I. C. C. 504; Grain Product Rates via Great Lakes, 43 I. C. C. 550; Johnstown, Pa., Switching, 43 I. C. C. 654, 660; Chamber of Commerce of Milwaukee v. C., M. & St. P. Ry., 43 I. C. C. 725; Richmond Chamber of Commerce v. S. A. L. Ry., 44 I. C. C. 455, 460; Sunderland Bros. Co. v. G. W. R. R. Co., 45 I. C. C. 113, 114; Oliver Chilled Plow Works v. N. Y. C. R. R., 45 I. C. C. 356, 358; Lexington Flouring Mills v. M. P. Ry., 49 I. C. C. 379; Ball Bros. G. Mfg. Co. v. C., C., C. & St. L. Ry., 51 I. C. C. 418, 422; California Canneries Co. v. S. P. Co., 51 I. C. C. 500, 503; Portsmouth Assn. of Commerce v. S. A. L. Ry., 55 I. C. C. 387; Cuyahoga Valley Ry. Co. v. Director General, 57 I. C. C. 660; Tide Water Oil Co. v. Director General, 58 I. C. C. 92; Portsmouth Asso. of Commerce (Inc.) v. S. A. L. Ry., 55 I. C. C. 377, 380, 391; Globe Elevator Co. v. Director General, 55 I. C. C. 587; United States v. B. L. R. R., 56 I. C. C. 121; Seaboard Air Line Ry. Co. et al. v. United States et al., 40 Sup. Ct. 24; Forest Products from Points in North Carolina and Virginia to Norfolk and Other Virginia Cities, 59 I. C. C. 579; Birmingham Packing Co. v. Director General, as Agent. 59 I. C. C. 27; Absorption of Handling Charges at New Orleans, La., 59 I. C. C. 597; Consolidation Coal Co. v. C. & O. Ry. Co., 60 I. C. C. 763; Miller Paper Co. v. P. R. R. Co., 62 I. C. C. 705; Terminal Charges on Grain at Texas Ports, 64 I. C. C. 629; Hunt, Helm, Ferris & Co. v. C. & N. W. Ry. Co., 68 I. C. C. 283. Nonabsorption of Switching Charges of the Kansas City Rys. Co., 73 I. C. C. 376.

III. CONTROL AND REGULATIONS.

See Control and Regulation.

§4. In General.

IMPORTANT CASES SINCE 1908

(a) But the Commission's jurisdiction over switching charges attaches only by reason of the fact that they are applicable in connection with interstate shipments, and in determining whether or not a fourth section departure exists, the aggregate charges for the transportation from point of origin must be considered and not merely the switching charges. However, the Commission has the power to fix a separate switching charge. Sheldon Axle & Spring Co. v. L. V. R. R. Co., 53 I. C. C. 43.

(b) In a proceeding to determine the propriety of switching charges absorbed by carriers the Commission must consider them as though they were to be charged for by the railroad rendering the service and paid for by the shippers. Interchange Switching at Wichita, 61 I. C. C. 205, 206.

(c) The general rule is that in the absence of unjust discrimination or undue prejudice a carrier can not be compelled to absorb the switching charges of a connecting line. Barber Asphalt Co. v. L. & N. R. R., 88 I. C. C. 307, 309.

ALL OTHER CITATIONS

Utica Traffic Bureau v. N. Y. C. & W. Ry. Co., 18 I. C. C. 168, 170; Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 93, 101, 103, 109; Detroit Switching Charges, 28 I. C. C. 494, 496; Kansas City & M. Ry. Co. Rate Cancellation, 28 I. C. C. 640, 643; Richmond Chamber of Commerce v. S. A. L. Ry. 30 I. C. C. 552, 559; Seattle Chamber of Commerce v. G. N. Ry. Co., 30 I. C. C. 683, 690; Gravel and Sand Switching Charges at Chicago, 32 I. C. C. 291, 296; Second Industrial Railways Case, 34 I. C. C. 596, 601, 602; New Orleans Terminal Allowances, 42 I. C. C. 748, 755; Wood & Son v. Erie R. R. Co., 45 I. C. C. 587, 589; DuPont de Nemours P. Co. v. P. R. R., 50 I. C. C. 203, 204; Portsmouth Asso. of Commerce U. S. A. L. Ry., 55 I. C. C. 377, 380; Citizens Coal Mining Co. v. Director General, as Agent, 66 I. C. C. 271, 273. Barrett Co. v. Director General, 88 I. C. C. 535.

IV. REASONABLENESS.

See Reasonable of Rates.

§5. In General.

IMPORTANT CASES SINCE 1908

(a) The effect of a switching absorption is to establish a joint rate, but this does not imply that by tariff provision a switching line may arbitrarily demand for its portion of the service any amount of satisfaction to it. Switching Absorptions, 47 I. C. C. 583, 586.

ALL OTHER CITATIONS

Casey-Hedges Mfg. Co. v. C. of Ga. Ry. Co., 26 I. C. C. 63; Waverly Oil Works v. P. R. R. Co., 28 I. C. C. 621, 627; Hammerschmidt & Franzen Co. v. C. & N. W. Ry. Co., 30 I. C. C. 71; Seattle Shingle Co. v. C. M. & St. P. Ry. Co., 30 I. C. C. 364, 365; People's Fuel & Supply Co. v. G. T. W. Ry Co., 30 I. C. C. 657, 662; Richmond Chamber of Commerce v. S. A. L. Ry., 30 I. C. C. 552, 558; Lorillard Co. v. P. R. R. Co., Unrep. Op. A-556; Merchants Exch. of St. Louis v. B. & O. R. R., 34 I. C. C. 341, 353; Phoenix Iron & Steel Co. v. G. H. & H. R. R., 36 I. C. C., 175; Omaha Packing Co. v. C. M. & St. P. Ry., 37 I. C. C. 378; Chestnut Ridge Railway Case, 37 I. C. C. 558, 562; Chelsea Refining Co. v. M. P. Ry. Co., 38 I. C. C. 28; Manure from Jersey City N. J., 40 I. C. C. 465, 469; Nashville Switching, 40 I. C. C. 474, 482; New Orleans Terminal Allowances, 42 I. C. C. 748; Portsmouth Assn. of Commerce v. S. A. L. Ry., 55 I. C. C. 377, 390, 391; National Tube Co. v. L. T. R. R., 55 I. C. C. 469, 481, 482, 484; Globe Elevator Co. v. Director General, 55 I. C. C. 587; Matthiessen and Hegeler Zinc Co. v. C., B. & Q. R. R. Co., 57 I. C. C. 173; St. Louis Chamber of Commerce v. B. & O., 57 I. C. C. 639, 647, 654; Cuyahoga Valley Ry. Co. v. Director General, 57 I. C. C. 660; Increased Rates, 1920, 58 I. C. C. 220, 254; Forest Products from North Carolina and Virginia to Norfolk and other Virginia cities, 59 I. C. C. 579; Consolidation Coal Co. v. C. & O., 60 I. C. C. 763, 767; Absorption of Switching Charges at Fort Worth, Tex., 61 I. C. C. 73; Swift & Co. v. Ft. W. & D. C. Ry. Co., 61 I. C. C. 77; Miller Paper Co. v. P. R. R. Co., 62 I. C. C. 705; Absorption of Switching Charges at Toledo, Ohio, 64 I. C. C. 8; Illinois Brick Co. v. Director General, as Agent, 64 I. C. C. 273; Terminal Charges on Grain at Texas Ports. 64 I. C. C. 629; Memphis Freight Bureau v. Director General, as Agent, 74 I. C. C. 588; Absorption of Charges between Croxton and Jersey City, N. J., 81 I. C. C. 181. Nonabsorption of Switching Charges on Fish, 81 I. C. C. 113.

§5½ Legal Rate.

See Legality of Rates; Legal Rates

IMPORTANT CASES SINCE 1908

(a) While it is proper for the line haul carrier to absorb the terminal or switching charges of a connecting line it may not absorb its local transportation charges for line haul. Atlantic Refining Co. v. Director General, 64 I. C. C. 61, 62.

(b) The absorption by one carrier of the line haul charges of another as a means of establishing through rates is unlawful. Commodity rates from Bronson to Danville, Ill., 63 I. C. C. 277, 278.

V. REPARATION.

See Reparation.

§6. In General.

ALL CITATIONS

Globe Elevator Co. v. Director General, 55 I. C. C. 587, 594; Swift & Co. v. Fort Worth & Denver City Ry. Co., 69 I. C. C. 449.

VI. EVIDENCE.

See Evidence.

§7. In General.

IMPORTANT CASES SINCE 1908

(a) Under the law the Commission can give no weight to the fact that absorption by the line-haul carrier of switching charges of connecting lines are the subject of contract or to the fact that a pier or dock is owned or operated by the state, except in so far as those facts may have evidential bearing upon the characteristics of the rates and practices of the carriers and may assist in defining their status under the act. National Dock & Storage Warehouse Co. v. B. & M. R. R., 38 I. C. C. 643, 647.

(b) That cancellation by the line-haul carrier of provision for absorption of connecting line charges will have a tendency to drive business to other ports, must be regarded in forming an opinion as to the propriety of the proposed cancellation. National Dock & Storage Warehouse Co. v. B. & M. R. R., 38 I. C. C. 643, 656.

(c) Therefore, where it is proposed to add to the line-haul rate a terminal

charge which has been absorbed, it should be affirmatively shown not only that the charge, considered alone, is reasonable, but also that the through charge is reasonable. Manure from Jersey City, N. J., 40 I. C. C. 465, 469.

(d) The reasonableness of charges maintained by one carrier can not be judged by the ability or inability of a connecting competitor to absorb them. Nashville Switching, 40 I. C. C. 474, 482.

(e) Where the absorption of a switching charge subsequent to January 1, 1910, was the voluntary act of the carrier, and its cancellation had the effect of increasing the transportation charges, the burden of proof is upon the carrier to justify such increased charges. Consolidation Coal Co. v. C. & O. Ry. Co., 60 I. C. C. 763, 767.

VII. TARIFFS AND PUBLICATION.
See Tariffs.

§8. In General.

CASES 1887-1908

(a) No switching or other terminal charges should be absorbed except under a plain and specific tariff provision therefor. J. H. Leonard v C., M. & St. P. Ry., 12 I. C. C. 492, 494.

ACCESSORIAL SERVICE

See Additional Services and Charges.

ACCIDENT REPORTS

IMPORTANT CASES SINCE 1908

(a) Filing of reports covering accidents that occur in operation of cars, other than purely city cars, carrying interstate passengers, freight, or express will answer the requirements of the accident-report law. Jurisdiction Over Urban Electric Lines, 33 I. C. C. 536, 540.

ACCOUNTING

I. POWER TO REGULATE.
- §1. Jurisdiction of Commission.
- §2. State Regulation.

II. APPLICATION TO RATES.
- §3. In general.
- §4. Necessity of uniform accounting.
- §5. Construction of Commission's rules.
- §6. Cost accounting.
- §7. Destruction of records.

I. POWER TO REGULATE.
See Control and Regulation.

§1. Jurisdiction of Commission.
See Interstate Commerce Commission I.

CASES 1887-1908

(a) The Interstate Commerce Commission cannot, for the purpose of discovering and preventing unjust discrimination by a party which is both a shipper and carrier of its own products over its own line, compel it to keep separate accounts showing what it charges itself for transportation, or what the cost of transportation to it is. Haddock v. Delaware, L. & W. R. Co., 3 I. C. C. 302.

(b) A railroad whose termini are both within a single state, and which transports freight, whether shipped upon its line for destinations out of the state, or from abroad to stations upon its own line, upon local bills of lading under special contract of carriage limited to its own line, and does not do such business upon through rates which it divides with other carriers, or assume any obligation to or for them with respect of such carriage, but delivers to and receives from them freight in the same manner substantially as to or from any consignee or consignor, is not bound to file an annual report under the Interstate Commerce Act; following Cincinnati, N. O. & T. P. R. R. Co. v. Interstate Commerce Commission, 162 U. S. 184; and Interstate Commerce Commission v. Bellaire, Z. & C. R. Co., 77 Fed. Rep. 942; U. S. ex rel. I. C. C. v. Chicago, K. & S. R. Co., 8 I. C. C. App. XXVI.

IMPORTANT CASES SINCE 1908

(c) The granting by Congress in section 20 of the Act to the Commission of power to prescribe for carriers a system of accounting and reports covering their interstate and intrastate business is not an unlawful delegation of legislative power, since having laid down the general rules under which the Commission should proceed, it may require of the Commission the application of such rules to particular situations and the investigation of facts, with a view to making orders in a particular matter within the rules laid down by Congress. I. C. C. v. Goodrich Co., 224 U. S. 194, 214; 32 Sup. Ct. 436, 56 L. Ed. 729.

(d) Regulations of the Commission promulgated under section 20 of the Act, as amended in 1906, to prescribe a uniform system of bookkeeping and accounting for interstate carriers, do not

constitute an abuse of power because rejecting the theory that the cost of property abandoned in making permanent improvements should remain in the property account, rather than be charged to operating expenses. K. C. S. Ry. Co. v. United States, 34 Sup. Ct. 125, 132; 231 U. S. 423; 58 L. Ed. —.

(e) Under the Interstate Commerce Act authorizing the Interstate Commerce Commission to inquire into the management of the business of carriers and keep itself informed as to the manner and method in which such business is conducted and to obtain full and complete information from the carriers, section 13, as amended (section 8581), authorizing it to institute an inquiry on its own motion in any case and as to any matter or thing concerning which a complaint is authorized to be made to or before it, or concerning which any question may arise under any of the provisions of that act or relating to the enforcement of any of its provisions, and section 20, as amended (section 8592) authorizing the Commission to require detailed accounts of all expenditures and revenues and a complete exhibit of the financial obligations of carriers, and to prescribe forms of accounts, records, and memoranda, the Commission is authorized to make an investigation as to whether amounts subscribed or expended by railroad companies in political activities and efforts to suppress competition have been charged to operating or legal expenses, and where this was the purpose of an inquiry, questions as to the amount so subscribed or expended were not objectionable. Smith v. I. C. C., 28 Sup. Ct. 30, 245 U. S. 33; 62 L. Ed. 135.

(f) Amendment of 1906 conferred upon Commission authority to examine accounts, records and memoranda of common carriers engaged in transportation of oil by pipe lines. Conditions Affecting Crude Petroleum, 36 I. C. C. 429.

ALL OTHER CITATIONS

I. C. C. v. Goodrich Co., 224 U. S. 194, 211, 213, 32 Sup. Ct. 436, 56 L. ed. 729; Goodrich Transit Co. v. Interstate Commerce Commission, 190 Fed. 943, 958, 966; Railroad Commission of Tex. v. T. &. P. Ry. Co. (Tex. 1911), 140 S. W. 829, 833, 834, 835; Kansas City S. Ry. Co. v. U. S., 204 Fed. 641, 644, 645; K. C. S. Ry. Co. v. United States, 34 Sup. Ct. 125, 130, 135, 231 U. S. 423, 58 L. Ed.; St. Paul & Puget Sound accounts 29 I. C. C. 508, 517; United States v. N., C. & St. L. Ry., 217 Fed. 254, 260, 263, 264; Financial Relations, Etc., L. & N. R. R. Co., 33 I. C. C. 168, 236; State v. Atchison, T. & S. F. Ry. Co. (Kans., 1923), 221 Pac. 259.

§2. State Regulation.

See State Regulation.

IMPORTANT CASES SINCE 1908

(a) The Interstate Commerce Act empowering the Interstate Commerce Commission to prescribe for interstate carriers a uniform system of accounts, and forbidding them from keeping any other accounts than those ordered, does not prevent a state railroad commission from prescribing a system of accounts with respect to intrastate business. Texas & P. Ry. Co. v. R. R. Commission of Texas (Tex. 1912), 150 S. W. 878, 880.

II. APPLICATION TO RATES.

§3. In general.

IMPORTANT CASES SINCE 1908

(a) Whether the record indicates profit on the particular division on which rates are sought to be advanced is not controlling as to the reasonableness of such rates, as the incidental benefit to the other portions of the system may much more than offset any loss upon the particular division. It is to be expected that an originating division would apparently not be self-supporting any more than would the average large terminal in a city. To make them self-supporting it is necessary to assign to the originating division and to the terminal a sufficient portion of the revenues to more than offset the expenses. This would have to be an arbitrary sum. It could hardly be accomplished by the ordinary method of prorating the revenue or dividing it under the block-mileage system. L. & N. R. R. Coal & Coke Rates, 26 I. C. C. 20, 29.

(b) Permanent improvement and betterment expenses should not be charged to operating expenses for a year. Louisville & Nashville Railroad Coal and Coke Rates, 26 I. C. C. 20, 26.

(c) Statements of increased cost of transportation by reason of higher price of equipment and greater wages paid employes can have little weight when presented in the abstract, with no attempt to allocate charges or consider corresponding reductions resulting from greater efficiency. Hormel & Co. v. C.,

M. & St. P. Ry. Co., 26 I. C. C. 112, 114.

(d) The equalization of freight costs as a principle of rate making must be condemned as being but one phase of more general equalization of costs of production, which the Commission has frequently condemned. Pittsburgh Steel Co. v. L. S. & M. S. Ry. Co., 27 I. C. C. 73, 178.

(e) A theory rate on coke based on the effort to equalize assembling costs in different competing districts is not proper. Coke Producers' Asso. of Connellsville v. B. & O. R. R. Co., 27 I. C. C. 125, 149.

(f) An attempted distinction between equalizing cost of product and equalizing freight costs for assembling the raw material is not valid as a matter of principle. Equalization of freight costs is simply a partial equalization of the costs of production. Pittsburgh Steel Co. v. L. S. & M. S. Ry. Co., 27 I. C. C. 173, 178.

(g) The Commission has consistently pursued the policy of giving consideration to cost in establishing rates. What weight to be given the factor depends on the particular case. In re Separation of Operating Expenses, 30 I. C. C. 676, 678.

(h) Proper accounting demands that the records of a company should reflect accurately the transactions relating to the matter recorded, and when accounts fail to reveal a true history of the transactions it can be due to but one of two causes—carelessness or design. Financial Investigation of N. Y., N. H. & H. R. R. Co., 31 I. C. C. 32, 57.

(i) The unreliability of the property investment accounts of carriers have frequently been commented on by the Commission. Notwithstanding this, they afford a usable basis for a fairly satisfactory study of the course and tendency of the returns; but, while used for purposes of comparison, they are not accepted by the Commission as evidence either of the actual cost or the present value of these properties. The Five Per Cent Case, 31 I. C. C. 351, 361.

(j) It is not proper to charge the last increment of traffic with the cost of the additional track and also with a part of the cost of the old track. Both tracks being used in common by two classes of traffic, the value thereof should be apportioned according to the use of the double track. Lum v. G. N. Ry., 33 I. C. C., 541, 554.

(k) Change in accounting may alter the operating ratio. 1915 Western Rate Advance Case, 35 I. C. C. 497, 506.

(l) Allocating revenues and expenses of a branch line on a mileage pro rate basis is open to objection, if made use of as the sole test, where it appears that the mileage of the branch constitutes a very small proportion of the total system mileage. Abandonment of Part of Branch Line by N. P. Ry., 71 I. C. C. 169.

(m) The proclamation of the President assuming possession and control of the carriers at noon on December 28, 1917, stated that for accounting purposes such possession and control would date from midnight on December 31, 1917. Terre Haute, Indianapolis & E. T. Co. v. Director General, as Agent, 77 I. C. C. 658, 659.

ALL OTHER CITATIONS

Louisville & Nashville Railroad Coal & Coke Rates, 26 I. C. C. 20, 25, 26, 27, 28, 29, 31; Pittsburgh Steel Co. v. L. S. & M. S. Ry. Co., 27 I. C. C. 173, 177; Financial Relations, Etc., L. & N. R. R. Co., 33 I. C. C. 168, 173, 232; Car Spotting Charges, 34 I. C. C. 609, 620; Smith v. I. C. R. R. Co., 68 I. C. C. 427, 433; Appendix A. Final settlement under Section 209, 70 I. C. C. 717.

§4. Necessity of Uniform Accounting.

IMPORTANT CASES SINCE 1908

(a) It is unnecessary to emphasize the necessity and importance of statistical reports from carriers that will be uniform and truly reflect their condition. Recent years have witnessed the exposure of glaring instances of the financial wrecking of transportation agencies by those in positions of authority. In many instances the application of correct accounting rules and principles, with proper knowledge on the part of stockholders and public of the conditions thus reflected, would have gone far to avoid such consequences. St. Paul and Puget Sound Accounts, 29 I. C. C. 508, 517.

(b) Varying methods of accounting result in a confusion and lack of uniformity, which impair the value of the freight traffic statistics reported to the Commission. Iron Ore Rate Cases, 41 I. C. C. 181, 204.

ALL OTHER CITATIONS

St. Paul & Puget Sound Accounts, 29 I. C. C. 508, 518; Illinois Coal Cases, 32 I. C. C. 659, 673.

§5. Construction of Commission's Rules.

IMPORTANT CASES SINCE 1908

(a) The principal classifications in the Commission's system of accounts for steam railroads were formerly announced on June 3, 1907, and became effective July 1, 1907. It did not involve new and untried principles, but was put into effect by the Commission only as a result of prolonged conferences with the accountants of the carriers. While it does not conform exactly to the accounting practices theretofore observed by any particular railroad, it represents the consensus of opinion among the accounting officers of the country as to what system would best suit the situation. St. Paul and Puget Sound Accounts, 29 I. C. C. 508, 516.

(b) The assignment of the portion of all supervision expenses to the refrigeration service is not an assignment of additional or differential expenses of the refrigeration movement under ventilation. R. R. Comm. of California v. A. G. S. R. R. Co., 32 I. C. C. 17, 25.

(c) Carriers will be required to keep an account of additions to their revenues from increases in rates. Five Per Cent Case, 32 I. C. C. 325, 330.

(d) Accounting rules of the Commission provide that interest and taxes during construction, expenses incident to organization, including fees paid to promoters, and other general expenditures may be included in the cost of the property. City of East Liverpool, Ohio, v. S. E. L. & B. V. T. Co., 51 I. C. C. 563, 567.

ALL OTHER CITATIONS

St. Paul and Puget Sound Accounts, 29 I. C. C. 508, 513, 514; Norman Lumber Co. v. L. & N. R. R. Co., 29 I. C. C. 656, 659; Rates on Bananas from Gulf Ports, 30 I. C. C. 510, 517, 518; The Five Per Cent Case, 31 I. C. C. 325, 351, 361, 362; I. & S. 1172, Local Fares Hudson & Manhattan Railroad Co., 58 I. C. C. 270, 274, 275.

§6. Cost Accounting.

See Evidence §18.

IMPORTANT CASES SINCE 1908

(a) It is not proper to set up as an item of expense mileage on the car both ways without crediting the mileage earned on cars returned under load. Rates on Bananas from Gulf Ports, 30 I. C. C. 510, 518.

(b) Assumption of a full 100 per cent return movement of empty cars, notwithstanding the fact that a certain proportion of these cars returned loaded with company material, unduly swells the cost of this traffic. Coal rates from Virginia Mines, 30 I. C. C., 635, 646.

(c) The Commission considered the matter of requiring carriers to separate their operating expenses between freight and passenger services, as outlined in statistical circular No. 3, containing a proposed order requiring railroads having annual operating revenues of $100,000 to report separately the greater portion of their freight and passenger expenses, certain common expenses being left unapportioned. Approximately one-half the mileage of large carriers in the United States make this division voluntarily; not for rate making, but for efficiency purposes, though it would seem that a division made under circular No. 3 would not conflict with efficiency accounting. Moreover, the Commission is not interested in these statistics merely for rate-making purposes. And it appeared (1) that railway cost accounting can be made sufficiently accurate for useful information in dealing with rates; (2) that the information thus obtained is more reliable than that gained from special studies; (3) and would be useful in ascertaining particular cost units among railroads for different years and for the same railroad from year to year; (4) that the expense of making cost analyses would not be prohibitive. HELD: That sufficient reason exists for requiring the extension of the separation of operating expenses between freight and passenger services beyond that heretofore required in the Commission's report. Circular No. 3 will be revised and if sufficient progress can be made carriers will be asked to file a special report of the year ending June 30, 1915; and as early as practicable all carriers of Class I will be required to assign and apportion all operating expenses between freight and passenger services on a basis to be prescribed. In re Separation of Operating Expenses, 30 I. C. C. 676.

(d) Cost accounting can be made sufficiently accurate for useful consideration in dealing with rates. Approximately two-thirds of the operating ex-

penses may be divided satisfactorily. In re Separation of Operating Expenses, 30 I. C. C. 676, 679.

(e) Although not possible twenty years ago, it would appear that at the present time approximately two-thirds of the operating expenses of a railroad can be separated in a reasonably satisfactory manner. In re Separation of Operating Expenses, 30 I. C. C. 676, 679.

(f) Length of haul and volume of traffic are among the determining factors in arriving at cost. In re Separation of Operating Expenses, 30 I. C. C. 676, 681.

(g) A division between freight and passenger service alone will not involve additional expense which can not be justified. In re Separation of Operating Expenses, 30 I. C. C. 676, 681.

(h) The Commission has considered cost in many freight cases and has never found it necessary to separate the state from the interstate cost. In re Separation of Operating Expenses, 30 I. C. C. 676, 681.

(i) If sufficient progress can be made in the perfection of the circular, carriers will be asked to file a special report for the year ending June 30, 1915, showing the separation between freight and passenger expenses. In re Separation of Operating Expenses, 30 I. C. C. 676, 682.

(j) Recommended that the methods of accounting be improved with a view to the accurate ascertainment of the costs of protective service. Perishable Freight Investigation, 56 I. C. C. 449, 549, 615.

ALL OTHER CITATIONS

In re Separation of Operating Expenses, 30 I. C. C. 676, 680; Hughes' Creek Coal Co. v. K. & M. Ry. Co., 31 I. C. C. 10, 13; Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 275, 276.

§7. Destruction of Records.

IMPORTANT CASES SINCE 1908

(a) A carrier is acting within its rights in destroying records which have been retained for the period prescribed by the Commission. Financial Relations, Etc., L. & N. R. R., 33 I. C. C., 168, 234.

ACROSS-LAKE RATES

IMPORTANT CASES SINCE 1908

(a) Across Lake rates apply on traffic moving across the Great Lakes destined to the important gateways beyond, and are generally lower than the local rates. The Commission has held that a proportional across-lake rate on traffic destined for beyond, which is higher than the across-lake rate for local delivery at Milwaukee, does not discriminate unduly against such city. City of Milwaukee v. C., M. & St. P. Ry., 39 I. C. C. 363, 366.

ACT TO REGULATE COMMERCE

I. CONSTITUTIONALITY.
II. INTERPRETATION IN GENERAL.
III. TIME OF TAKING EFFECT.
IV. ENFORCEMENT.
V. AMENDMENTS.
  §1. War Legislation.
VI. TRANSPORTATION ACT.
  §2. Construction.

CROSS REFERENCES

See Bills of Lading §1a; Carmack Amendment; Commodity Clause; Crimes §2; Cummins Amendment; Discrimination; Elkins Act; Government Control; Interstate Commerce; Long and Short Hauls II; Loss and Damage I; Panama Canal Act; Special Contracts II; State Rates and Regulation; Telephone and Telegraph Companies III; Transportation Act; War Legislation.

I. CONSTITUTIONALITY.

See Constitutional Law; Discrimination §1, §2 (1); Loss and Damage § 1, §2; Pipe Lines §2; State Rates and Regulation.

CASES 1887-1908

(a) The Legislature, in the exercise of its power of regulating fares and freights, may classify the railroads according to the length of their lines. If the same rule is applied to all railroads of the same class, there is no violation of the constitutional provision securing to all the equal protection of the laws. Dow v. Beidelman, 2 I. C. R. 56.

(b) Congress has authority, in the exercise of its power to regulate commerce among the several states, to construct or authorize individuals or corporations to construct railroads across the States and Territories of the United States. California v. Central Pacific R. R. Co., 2 I. C. R. 153.

(c) Possessing sovereign and exclusive power over the subject of commerce among the states, it is difficult to understand why Congress may not legislate, in respect thereto, to the same extent, both as to rates, and all other matters of regulation, as the States may do in respect to purely local, or internal commerce; but the court is not called upon in the present case to say what would or would not come within this regulating power, for the existing law does not undertake to prescribe anything more upon the subject of rates, than they shall be reasonable and just; and it does not undertake to require a common carrier subject to its provisoins to establish through routes and through rates with all connecting lines merely because it may have done so with one of them. Kentucky & Indiana Bridge Co. v. Louisville & Nashville R. Co., 2 I. C. R. 351.

(d) Congress has express power to exercise exclusive legislation over the District of Columbia; but, in creating the District of Columbia a body corporate for municipal purposes, Congress could only authorize it to exercise municipal powers. Stoutenburgh v. Hennick, 2 I. C. R. 409.

(e) The grant to the federal government of the power to regulate interstate commerce is full and complete and cannot be narrowed or encroached upon by state authority, either directly or indirectly. The fact, therefore, that one or more states have adopted a particular regulation is not a reason for applying it to interstate commerce, if in itself it appears to be objectionable. State action will always be treated with the highest deference and respect, but cannot be allowed to control in matters within the federal jurisdiction. Leonard v. Chicago & Alton R. Co., 2 I. C. R. 599.

IMPORTANT CASES SINCE 1908

(f) Congress is not restricted by the clause in the Constitution against the impairment of contracts. Mountain States T. & T. Co. v. City and County of Denver (Colo. 1921), 201 Pac. 1024.

(g) The Act of June 18, 1910, amending the long-and-short-haul clause is not unconstitutional as being a delegation to the Commission of legislative power which Congress was incompetent to make. United States v. A. T. & S. F. Ry. Co., 34 Sup. Ct. 986, 991; 234 U. S. 476; 58 L. Ed. —.

(h) That the long-and-short-haul clause imposes upon the Commission in a proper case the duty of refusing an application for relief from the rule, does not render the statute void on the ground that in such a contingency the statute would amount to an imperative enforcement of the clause; for a general enforcement of the clause would not be repugnant to the Constitution. United States v. A., T. & S. F. Ry. Co., 34 Sup. Ct. 986, 992; 234 U. S. 476; 58 L. Ed. —.

(i) The provision in section 15 of the Interstate Commerce Act that in any actions in the United States courts "the findings and order of the Commission shall be prima facie evidence of the facts therein stated" is not unconstitutional because it infringes upon the right of trial by jury and operates as a denial of due process of law, because it only establishes a rebuttal presumption; cuts off no defense, interposes no obstacles to a full contestation of all the issues, and takes no question of fact from either court or jury, and at most, therefore, is merely a rule of evidence. Meeker v. Lehigh Valley R. Co., 35 Sup. Ct. Rep. 328, 335.

(j) While the commission may not with propriety decide that an act of Congress is unconstitutional, it must as clearly avoid any suggested construction of a statute which would render it ineffectual and adopt a construction, when called upon to construe it, which will sustain it, if such a construction is reasonable and consonant with the language employed. Public-Conveyance Application of D. & N. M. Ry., 71 I. C. C. 795, 799.

(k) The provision of Transportation Act 1920, § 422, requiring railroads to pay to the Interstate Commerce Commission's revolving fund one-half of all net earnings in excess of 6 per cent for the promotion of the public interest in railway transportation, is within the power of Congress as a legitimate tax imposed on all railroads to further interstate commerce. Dayton-Goose Creek Ry. Co. v. United States, 287 Fed. 728.

(l) An act of Congress will not be declared unconstitutional, unless the question is free from any reasonable doubt. Dayton-Goose Creek Ry. Co. v. United States, 287 Fed. 728.

ALL OTHER CITATIONS

L. & N. R. R. v. Mottley, 219 U. S. 467, 482, 484, 31 Sup. Ct. 265, 55 L. Ed.

297; Galveston, H. & S. A. Ry. Co. v. Wood (Tex. 1912), 146 S. W. 538, 541; The Five Per Cent Case, 31 I. C. C. 351, 357; Vulcan Coal & Mining Co. v. I. C. R. R. Co., 33 I. C. C. 52, 67; Lehigh Valley R. Co. v. United States, 234 Fed. 682, 683; Carter Planing Mill Co. v. New Orleans, M. & C. R. Co., 72 S. 884; Paducah Board of Tarde v. I. C. R. R. Co., 43 I. C. C. 537, 540; Standard Time Zone Investigation, 51 I. C. C. 273, 283; Public Service Commission v. New York Cent. R. Co., 183 N. Y. S. 799; Texas & Pacific R. R. Co. v. Abilene Cotton Oil Co., 204 U. S. 426, 27 Sup. Ct. 350, 51 L. Ed. 553, 9 Ann. Cas. 1075; Baltimore & Ohio R. R. Co. v. United States, 215 U. S. 481, 30 Sup. Ct. 164, 54 L. Ed. 292; Morrisdale Coal Co. v. Pennsylvania R. R. Co., 230 U. S. 304, 33 Sup. Ct. 938, 57 L. Ed. 1494; Minnesota Rate Cases, 230 U. S. 352, 33 Sup. Ct. 729, 57 L. Ed. 1511, 48 L. R. A. (N. S.) 1151, Ann. Cas., 1916, A, 18; Texas & Pacific Ry. Co. v. American Tie Co., 234 U. S. 138, 146, 34 Sup. Ct. 855, 58 L. Ed. 1255; Pennsylvania R. R. Co. v. Clark Coal Co., 238 U. S. 456, 469, 35 Sup. Ct. 896, 56 L. Sd. 1406; and Loomis v. Lehigh Valley R. R. Co. 240 U. S. 43, 49, 36 Sup. Ct. 228, 60 L. Ed. 517; Director General of Railroads et al. v. Viscose Co., 41 Sup. Ct. 151; Rates, Fares and Charges of N. Y. C. R. R., 59 I. C. C. 290, 294; Kansas City Board of Trade v. A. T. & S. F. Ry. Co., 69 I. C. C. 185, 191; Public Service Com- 455; Robinson & Reynolds v. Atlantic Coast Line R. Co., (Ga., 1922), 112 S. E. 389; State of New York v. United States Ry. Co. (Tex. 1922), 244 S. W. 980; Calivada Fertilizer Co. v. S. P. Co., 73 I. C. C. 496, 498.

II. INTERPRETATION IN GENERAL.

See Compress Companies I; Crimes §2; Discrimination §1; Elkins Act; Export Rates and Facilities §1½; Long and Short Hauls II, §2½; Loss and Damage §2; Panama Canal Act; Personal Injuries.

CASES 1887-1908

(a) The Interstate Commerce Act only applies to such carriers as use a railway or a railway and water craft under common control or management for a continuous carriage or shipment of property from one state to another. Ex parte Koehler (U. S. C. Ct. Or.), 1 I. C. R. 28.

(b) Interstate Commerce Act. This act does not include or apply to all carriers engaged in interstate commerce, but only such as use a railway, or a railway and water craft "under common control, management or arrangement for a continuous carriage or shipment" of property from one state to another; nor does it apply to the carriage of property by rail wholly within the state, although shipped from or destined to a place without the state, so that such place is not in a foreign country. Ex parte Kochler, Receiver of Ore. & Cal. R. Co., 1 I. C. R. 28.

(c) Incidental injuries under this act must be borne for the public good, until the Legislature provides a remedy. Jurisdiction of the Commission, 1 I. C. R. 73.

(d) Where a subject of interstate commerce is national in character, or admits of only one uniform system of regulation, the power of Congress is exclusive, and its failure to make express regulations indicates its will that the subject shall be free. Philadelphia & Southern Mail S. S. Co. v. Penn., 1 I. C. R. 308.

(e) The word "line" in the Act to Regulate Commerce means a physical line, not a business arrangement. Boston & A. R. Co. v. Boston & L. R. Co., 1 I. C. R. 571.

(f) By the word "line" in the act, a physical line is meant, not a business arrangement, and one piece of road may be part of several lines. Boston & A. R. R. Co. v. Boston & L. R. R. Co., 1 I. C. R. 571.

(g) Whether a special privilege granted by railroad companies to manufacture in a single line of trade, but not to manufacture in general, is consistent with the rule of equality and justice which the law undertakes to establish, is a question upon which an opinion ought to be expressed only after the most careful consideration, and the Commission ought clearly to see that duty requires an answer before it proceeds to give one an ex parte application. Re Iowa Barb Steel Wire Co., 1 I. C. C. 605.

(h) The Interstate Commerce Act does not afford a remedy for transactions occurring before it took effect. Ottinger v. Southern Pac. R. Co., 1 I. C. R., 607.

(i) The spirit and purpose of the Act to Regulate Commerce requires that

when the circumstances and conditions will fairly admit of it the charges to all points for a like service should be made relatively equal. Crews v. R. & D. R. R. Co., 1 I. C. R. 703.

(j) The act provides that the carrier shall be entitled to receive a reasonable compensation for the service performed upon open published rates, against which no competitor can take advantage by allowing shippers' secret rebates and drawbacks in order to get the business. Farrar & Co. v. E. Tennessee, Virginia & Georgia R. Co., 1 I. C. C. 764, 767.

(k) The words "substantially similar circumstances and conditions" as found in the second and fourth sections of the act, in certain important particulars define the rights and duties of carriers and the rights of shippers as well. If the carrier claims to act under the compulsion of circumstances and conditions of his own creation or connivance in the making of an exceptional rate, then these will not avail him; or if the carrier claims to act under a compulsion of circumstances and conditions in the making of an exceptional rate which he could obviate by reasonably fair and just exertion on his part, then they will not avail him. But if the carrier is in good faith, acting under a compulsion of circumstances and conditions beyond his control, not of his own convenience, and which he could not obviate by any reasonably fair and just effort on his part, and to avoid large loss adopts exceptional rates on a portion of his line, not unreasonable in themselves, and forced upon him by the action of an independent state railroad, which is not subject to the act, and which is operating a slightly shorter and competing line with his own, these are circumstances and conditions under the operation of the statute which justify him in adopting exceptional rates thus forced upon him on this portion of the line. Business Men's Asso. of Minnesota v. C., St. P., M. & O. Ry., 2 I. C. C. 41, 46.

(l) To render a preference of one over another unlawful, under the act, it is not necessary that it should be accomplished by any "device"; and it is equally true that the ingenuity of man cannot invent a device for the perpetration of an unlawful preference on the part of a carrier engaged in interstate commerce, without incurring the penalties prescribed by the statute. Scofield v. L. S. & M. S. R. R., 2 I. C. C. 67, 77.

(m) The fact that statutory regulations of internal commerce are such as to preclude the literal enforcement of pre-existing contracts does not affect their validity, or make them, in a constitutional sense, laws impairing the obligation of contracts. Such a consequence is often a necessary result of any considerable change in the general laws, and must be submitted to as such. Kentucky & Indiana Bridge Co. v. Louisville & Nashville R. Co., 2 I. C. R. 102.

(n) The requirement of the Act to Regulate Commerce, that every common carrier shall afford reasonable, proper and equal facilities to connecting lines, imposes upon a carrier no duty either to form new connections or to establish new stations, yards, or depots, or to pay any part of the expense of providing such new facilities, either for the convenience of the public or of other carriers; and a carrier cannot be compelled to receive or deliver traffic at a point where another company has made a new connection with its roads, but has not provided proper facilities. Kentucky & I. Bridge Co. v. Louisville & N. R. Co. (C. C. D. Ky.), 2 I. C. C. 351. Overruling decision of the Interstate Commerce Commission in the same case. 2 I. C. R. 102.

(o) The provisions in the Act to Regulate Commerce, that all rates shall be just and reasonable, was a provision inserted for the protection of the general public, and not for the protection of the carriers against the action of their own officers or against the action of rivals. The carriers were supposed to have means of self-protection against unreasonably low rates in the power they had to make the rates themselves. Re Chicago, St. Paul & Kansas City R. Co., 2 I. C. R. 137.

(p) As a matter of public history, nothing could be so notorious than that the act had for its leading and general purpose, to which other purposes were subordinate, to provide effectual securities that the general public, in making use of railroad transportation provided by law for its service, should have the benefits which the law had undertaken to give, but of which in very many cases it was found the parties entitled to them were deprived by the arbitrary conduct, the favoritism, or the unreasonable exactions of those who managed them. Re Chicago, St. Paul & Kansas City R. R. Co., 2 I. C. C. 137, 146.

(q) Act to Regulate Commerce; rule of construction in contests between common carriers. The law should be as liberally construed, in favor of commerce among the states, as its language will permit; but when complaint is made, or relief is sought, solely or mainly, in the interest of the common carriers engaged in the transportation of such commerce, the act complained of, or the right asserted, should not rest upon any doubtful construction, but should clearly appear to have been forbidden or conferred. And where the complaining carriers are not in a position to commend themselves to the favorable consideration of a court of equity, no strained construction of the law should be made, in order to afford them, or either of them, the relief they seek at the hands of the court. Kentucky & Indiana Bridge Co. v. Louisville & Nashville R. Co., 2 I. C. R. 351.

(r) The Act to Regulate Commerce was probably intended to effect similar results; but in its present form and in the absence of the necessary machinery it is not adequate to afford the relief prayed in the petition. Little Rock & Memphis R. Co. v. East Tennessee, V & G. R. Co., 2 I. C. R. 545.

(s) The provisions of the Act to Regulate Commerce apply to foreign as well as domestic common carriers engaged in the transportation of passengers or property, for a continuous carriage or shipment, from a place in the United States to a place in an adjacent foreign country. Matter of Grand Trunk Railway Co. v. 2 I. C. C. 496.

(t) The provisions of the Act to Regulate Commerce, construed in the light of the principles that apply to interstate commerce as enunciated by the courts of the United States, must be understood as intended to regulate all the commerce subject to the exclusive jurisdiction of Congress, including the agents and instrumentalities employed and the commodities carried, with only the limitations found in the Act itself. Mattingly v. Pennsylvania Co., 2 I. C. R. 806.

(u) The proviso in the first section that the provisions of the Act shall not apply to the transportation of passengers or property, as to the receiving, delivery, storage or handling of property, wholly within one state, and not shipped to or from a foreign country from or to any state or territory as aforesaid, that is, by continuous carriage or shipment, only excludes from regulation the purely internal commerce of a state, that which is confined within its limits, which originates and ends in the same state. Mattingly & Pennsylvania Co., 2 I. C. R. 806.

(v) The national regulations prescribed are not in all respects co-extensive with the power of Congress, and do not provide for ordering through routes and through rates. While it is the duty of a state carrier which engages in interstate commerce to forward traffic offered from a connecting line, there is no authority under the present act to compel the carrier to forward the traffic over a route not operated or selected by itself. Mattingly v. Pennsylvania Co., 2 I. C. R. 806.

(w) Section 7 of the Act may properly be considered in construing the general jurisdictional clause of the first section. Boston Fruit & Produce Exch. v. New York & N. E. R. Co., 3 I. C. R. 493.

(x) The requirement of the statute that all rates shall be reasonable and just involves a consideration of the commercial value of the traffic, and implies that rates should be so adjusted that producers of traffic as well as carriers may carry on their pursuits successfully, if practicable for both and without injustice to the carrier. The public good requires what is plainly the spirit of the law, that the transportation interests are not alone to be considered, but that in the just exercise of regulation care should be taken that the lawful and necessary occupations of citizens are not unjustly burdened. Delaware State Grange v. N. Y., P. & N. R. Co., 3 I. C. C. 554, 560.

(y) The Interstate Commerce Act was not designed to prevent competition between different roads, nor to interfere with the customary arrangement made by railway companies for reduced fares in consideration of increased mileage, where such reduction does not operate as an unjust discrimination against other persons traveling over the road. Interstate Commerce Commission v. Baltimore & O. R. Co., 4 I. C. R. 92.

(z) All charges made for any service in the transportation of any passengers or property, or for receiving, delivering, storing, or handling property, must under the Interstate Commerce Act be reason-

able and just; and no discrimination can be made in rates, charges, or facilities. Cutting v. Florida R. & Nav. Co., 4 I. C. R. 424.

(aa) There is no national common or general law in the sense of a rule of civil conduct prescribed by the nation as sovereign, as distinguished from the body of common law in force in the several states, which will be enforced by the Federal courts, except in those areas not taken into the boundaries of the states. Swift v. Philadelphia & R. R. Co. (C. C. N. D. Ill.), 5 I. C. R. 116.

(bb) The known and settled construction of laws by courts of the state from which they are taken is presumed to be adopted with the adoption of the laws. Brown v. Walker, 5 I. C. R. 369.

(cc) There is no national common law. Gatton v. Chicago, R. I. & P. R. Co. (Iowa), 5 I. C. R. 474.

(dd) Commerce, in its largest sense, must be deemed to be one of the most important subjects of legislation, and an intention to promote and facilitate it, and not to hamper or destroy it, is naturally to be attributed to Congress. Interstate Commerce Commission v. Alabama M. R. Co., 5 I. C. R. 685.

(ee) The purpose of the act is to promote and facilitate commerce, and the adoption of regulations to make charges for transportation just and reasonable, and to forbid undue and unreasonable preferences or discriminations. Interstate Commerce Commission v. Alabama M. R. Co., 5 I. C. R. 685.

(ff) The spirit and letter of the act require that orders made by the Commission should have in view the purpose of promoting, and facilitating commerce, and the welfare of all to be affected, the carriers as well as the traders and consumers of the country. Interstate Commerce Commission v. Alabama M. R. Co., 5 I. C. R. 685.

(gg) The terms "reasonable and just," "unreasonable and unjust," "undue or unreasonable preference or advantage," "undue or unreasonable prejudice or disadvantage in any respect whatsoever," as used in the statute, imply comparison of relative locations, of natural and acquired advantages, of the reasonableness of charges per se and in their relation to other rates on the various lines which serve competing localities, and consideration of all the facts and circumstances which affect rates to different communities. Daniels v. C., R. I. & P. R. Co., 6 I. C. C. 458, 477.

(hh) The law requires regulation of railroad charges according to the ascertained rights of persons and places; it is not an agency for the regulation of trade by enabling shippers and communities to do business or putting them on even terms with rivals more remote from competitive territory. Therefore, the fact that one town is able, under existing rates to and from that point, to compete with another town on practically even charges for the aggregate in and out transportation, cannot be regarded as an excuse for any injustice in the rates to the former town; the rates to the two competing towns should accord with their relative situation. Daniels v. C., R. I. & P. R. Co., 6 I. C. C. 458, 478.

(ii) The terms 'reasonable and just," "unreasonable or unjust," "undue or unreasonable preference or advantage," "undue or unreasonable prejudice or disadvantage in any respect whatsoever," and "unjust discrimination," as used in the statute, imply comparison, and rates to be lawful must bear just relation to each other as well as be reasonable per se. Page v. Delaware, L. & W. R. Co., 6 I. C. C. 548.

(jj) The act does not attempt to fix rates which railway companies shall charge, nor does it in any way provide a tribunal which can establish those rates. The carriers are left entirely to their own discretion in the making of their rates, subject only to certain prohibitions contained in the law. So long as those prohibitions are not infringed every carrier is free to determine for itself what traffic it will engage in and foster, and at what points and in what manner, and to adjust its tariffs and connections accordingly. It can not, in theory at least, impose an unreasonable rate, nor can it discriminate between different shippers in the amount of compensation which it exacts for a like service. It may give to one locality or one commodity a preference over some other locality or some other commodity, provided that preference be not undue or unreasonable. Cattle Raisers Asso. of Texas v. Ft. W. & D. C. R. Co., 7 I. C. C. 513, 541.

(kk) The Act to Regulate Commerce applies to the transportation of export

and import traffic, and the jurisdiction of the Commission over such traffic is not denied, but is distinctly affirmed and rather enlarged by the decision of the United States Supreme Court in Texas & P. R. Co. v. Interstate Commerce Commission, 162 U. S. 197, 40 L. Ed. 940, 5 Inters. Com. Rep. 405. Re Export and Domestic Rates on Grain, 8 I. C. C. 214.

(ll) The Act to Regulate Commerce is intended to and does apply, not only in cases of direct injury to particular individuals or industries, but also in cases involving indirect injury to the community as a whole. Re Export and Domestic Rates on Grain, 8 I. C. C. 214.

(mm) Whether rates upon domestic traffic contravene the provisions of the Act to Regulate Commerce is a question of fact. Re Export and Domestic Rates on Grain, 8 I. C. C. 214.

(nn) One of the underlying principles of the act is equality between great and small. Holdzkum v. M. C. Ry., 9 I. C. C. 42, 52.

(oo) The Act to Regulate Commerce assumes that persons, corporations and localities are interested not only in the rates charged to them, but in the rates which are charged to others, and, while the act does not require all rates to be proportional, it nevertheless makes the element of proportion an important one when the rates for any locality are to be determined; and it follows that no rates can be reasonable in and of themselves within the contemplation of the act, which are made regardless of proportion. Martin v. Louisville & N. R. Co., 9 I. C. C. 581.

(pp) The Act to Regulate Commerce assumes that persons, corporations and localities are interested in the rates charged to others, as well as those charged to them, and, while the act does not require all rates to be proportional, it makes the element of proportion an important one; and it follows that no rates can be reasonable in and of themselves which are made regardless of proportion. Martin v. Louisville & Nashville R. Co., 9 I. C. C. 581.

(qq) The act assumes that persons, corporations and localities are interested not only in the rates charged to them, but in the rates which are charged to others, and, while the act does not require all rates to be proportional, it nevertheless makes the element of proportion an important one when the rates for any locality are to be determined; and it follows that no rates can be reasonable in and of themselves within the contemplation of the act, which are made regardless of proportion. Marten v. L. & N. R. R., 9 I. C. C. 587, 599.

(rr) The intent of the first section was to insure that the carriage of freight and of passengers should be subject to the act from its inception to its conclusion and that the jurisdiction of the government over such transportation should not be divested by the fact that any agency used in the transportation was furnished by some party other than the common carrier itself. Enterprise Transportation Co. v. Pennsylvania R. R., 12 I. C. C. 327, 336.

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(ss) In the case of doubtful or ambiguous provisions, reference may be had to the history of the legislation, the evils sought to be corrected, and the remedy intended to be provided. In Re Jurisdiction Over Water Carriers, 15 I. C. C. 205, 206.

(tt) The act was clearly intended to prescribe the only rule as to the regulation of interstate rates and it should and does supersede different rules in prior statutes. West End Improvement Club v. O. & C. B. R. & B. Co., 17 I. C. C. 239, 247.

(uu) Section 15 is the dominating and controlling expression of the real object and meaning of the act. It makes of the Commission a special expert body to deal with rates and not to supplant the courts. Joynes v. P. R. R. Co., 17 I. C. C. 361, 369.

(vv) A construction abhorrent to the theory of our institutions is not to be presumed as the one which Congress intended. Railroad Commission of Nevada v. S. P. Co., 21 I. C. C. 329, 335.

(ww) Because the words "undue" and "unreasonable" are used in the statute, it does not follow that Congress attempted to lodge arbitrary powers in the hands of the Commission. Railroad Commission of Nevada v. S. P. Co., 21 I. C. C. 329, 336.

(xx) The fundamental principle of the act is one of fair play. A railroad may not control the character of the industries along its line by giving preferential rates as between commodities, nor discriminate as between one shipper and

another, even though by following such procedure it can develop the greatest amount of traffic for itself. Mobile Chamber of Commerce v. M. & O. R. R. Co., 23 I. C. C. 417, 426.

(yy) Equality of opportunity in the use of transportation facilities is one of the purposes of the act. In re Wharfage Charges at Galveston, 23 I. C. C. 535, 544.

(zz) Congressional debates may be considered in construing the act. In re Pipe Lines, 24 I. C. C. 1, 4.

(3a) A narrow construction of the act is not in harmony with its spirit nor in keeping with the principle enunciated by the United States Supreme Court. Santa Rosa Traffic Asso. v. S. P. Co., 24 I. C. C. 46, 48.

(3b) The law contemplates protecting the carrier in its long haul on traffic which it originates. Commercial Club of Superior, Wis., v. G. N. Ry. Co., 24 I. C. C. 96, 113.

(3c) Section 1 provides that charges for the transportation of passengers or property shall be just and reasonable. National Wool Growers' Asso. v. O. S. L. R. R. Co., 25 I. C. C. 675, 676.

(3d) Section 8 makes a common carrier, subject to the act, liable to the person injured for whatever damages accrue by reason of the doing of any act prohibited or declared to be unreasonable by the statute. National Wool Growers' Asso. v. O. S. L. R. R. Co., 25 I. C. C. 675, 676.

(3e) Section 2 of the act leaves to section 3 the prohibition of undue preference to one commodity and undue preference to another, and it should not be made the basis for an order fixing the relationship of rates upon kindred commodities. Board of Trade of the City of Chicago v. C. & A. R. R. C. Co., 27 I. C. C. 530, 534.

(3f) The Commission has frequently held that carriers may not rely upon a technical construction of one portion of the act to justify a violation of another provision, and that in determining questions of this nature, consideration must be given not alone to section 5, but as well to section 1, wherein it is made the duty of carriers to establish through routes and just and reasonable rates and charges applicable thereto, and to section 4, which forbids undue prejudice with respect to the interchange of traffic between connecting carriers. Chicago, Lake Shore & South Bend Ry. Co. v. Director General, 58 I. C. C. 647, 652.

(3g) The Commission can only act under the jurisdiction conferred upon it by the Congress, and must exercise powers which it now has, subject to limitations which now attach to them, as its jurisdiction and powers are drawn from the statute as it is now. P. W. V. Ry. Co. v. P. & L. E. R. R. Co., 61 I. C. C. 272, 276.

(3h) Under the provisions of paragraph 6, section 15, of the Interstate Commerce Act as amended by the Transportation Act, 1920, the Commission can require adjustment of divisions only for the period subsequent to the filing of the petition, even though such petition was filed subsequent to the taking effect of the amended act. Diamond Alkali Co. v. F., P. & E. R. R. Co., 62 I. C. C. 161, 165.

(3i) Carriers may not rely upon a technical construction of one portion of the act to justify a violation of another provision. Gillespie Coal Co. v. I. T. S., 62 I. C. C. 335, 337, 338.

(3j) A reasonable construction of the statute makes clear the intent of Congress that paragraph (4) of section 1 and paragraph (6) of section 15 of the act, taken together, should supersede former provisions of the statute and constructions placed thereon with respect to divisions of joint rates, whether established voluntarily or pursuant to the Commission's finding or order. New England Divisions, 62 I. C. C. 513, 560.

(3k) The Commission must be guided by the intent of Congress as expressed in the provisions of the present statute, and it is fundamental that it can act only under the jurisdiction conferred by Congress, exercising only such powers as it now has subject to any limitations which now attach to them. New England Divisions, 62 I. C. C. 513, 560.

(3l) Words "without regard to the mileage haul" in paragraph (6) of section 15 of the act, do not forbid consideration of the element of distance in a proceeding involving divisions. They serve rather to emphasize the fact that other elements may outweigh the element of distance, in which event the Commission may properly disregard the mileage haul. The clause is inclusive rather than

exclusive, and the general words "among other things" constitute a clear exposition of the intent of Congress that the Commission should consider all the facts and circumstances. New England Divisions, 62 I. C. C. 513, 560, 561.

(3m) The stautory provision for recapture of excess earnings from individual carriers clearly negatives the idea that the Congress contemplated or intended that all carriers in a group should so share in the aggregate earnings of the roads in the group that all would be upon an equality. Such a plan would stifle all incentive to skill, efficiency, economy, and good management. New England Divisions, 62 I. C. C. 513, 560, 561, 562, 565.

(3n) The duty cast upon the Commission by section 15a is continuing and looks to the future. It does not constitute a guaranty to the carriers, nor is the obligation cumulative. The Commission is not restricted by past or present statistics of operation and earnings. These are serviceable only as they illuminate the future. What is contemplated by the law is that in this exercise of rate-making power the result shall reflect the Commission's best judgment as to the basis which may reasonably be expected for the future to yield the prescribed return. Rates on Grain, Grain Products, and Hay, 64 I. C. C. 85, 89

(3o) In determining what is "in the public interest" in a given case, as antecedent to the affirmative exercise of this broad grant of power, the commission must take into consideration not only the interests of the particular shippers located at or near the terminal involved, but also the interests of the carriers and of the general public. York Mfrs. Asso. v. P. R. R. Co., 73 I. C. C. 40, 49.

(3p) The phrase "under substantially similar circumstances and conditions," in section 2 of the act, "refers to matters of carriage, and does not include competition," which is "extraneous to the transportation." Rates on Bunker Coal, 73 I. C. C. 62, 74.

(3q) The purpose of the act is to facilitate, not to impede, commercial operation. When shippers and railways unite in asking that a particular thing be done; when that thing is manifestly for the interest and convenience of all parties; when no harm can result, but when, upon the contrary, the fundamental purposes of the act will be promoted, such a construction should be placed on the statute as will permit it. Rates on Bunker Coal, 73 I. C. C. 62, 76.

(3r) The act applies to common carriers engaged in the transportation of property from any place in the United States to a foreign country in so far as such transportation takes place within the United States. Southern Acid & Sulphur Co. v. A. & N. M. Ry., 74 I. C. C. 641, 642.

(3s) A carrier under section 15 of the act as amended June 29, 1906, is entitled to have a finding by the Commission that any particular charge is unreasonable and unjust before it is required to change such charge. I. C. C. v. Stickney, 215 U. S. 98, 105, 30 Sup. Ct. 66, 54 L. Ed. 112.

(3t) The Interstate Commerce Act as amended does not attempt to equalize fortune, opportunities or abilities. On the contrary, it in turn contemplates that if a carrier receives services from an owner of property transported, or uses instrumentalities furnished by the latter, he shall pay for them, the only restriction being that he shall pay no more than is reasonable, and the only permissive element being that the Commission determine the maximum in case there is complaint or upon its own motion. I. C. C. v. Diffenbaugh, 222 U. S. 42, 46, 32 Sup. Ct. 22, 56 L. Ed. 83.

(3u) When the United States has exercised its exclusive powers over interstate commerce, so far as to take possession of the field, the states no more can supplement its requirements than they can annul them. Pennsylvania R. Co. v. Public Service Commission, 40 Sup. Ct. 36.

(3v) In construing a statute it is not proper to confine attention to particular words, phrases, or sections. The fundamental rule is to ascertain and give effect to the intention of the legislature as gathered from the language of the whole statute. S. P. Co. Ownership of Atlantic S. S. Lines, 77 I. C. C. 128.

(3w) It is the Commission's duty to apply a statute as it finds it, and for the courts to determine its validity where that question arises. Interchangeable Mileage Ticket Investigation, 77 I. C. C. 200, 202.

(3x) If paragraph (12) of section 1 of the act is at all doubtful in construction, the construction adopted by the

commission as administrative agency in its enforcement, followed for many years, without any attempt of Congress to change it, even when a bill for that purpose was long pending before it, and without any challenge of its correctness by any other department of the Government, while not controlling, is not to be disregarded without most cogent and persuasive reasons. Robertson v. Downing, 127 U. S., 607. Assigned Cars for Bituminous Coal Mines, 80 I. C. C., 520, 529.

(3y) A contract between carriers can not be permitted to defeat plain requirements of the law. St. Louis & O'Fallon Ry. Co. v. E. St. L. & S. Ry. Co., 81 I. C. C., 538, 541.

ALL OTHER CITATIONS

California Commercial Assn. v. Wells-Fargo & Co., 14 I. C. C. 422, 428; Traer v. C., B. & Q. R. R. Co., 14 I. C. C. 165, 169; Glenn W. Traer v. C., B. & Q. R. R. Co., 14 I. C. C. 165, 168; National Wholesale Lumber Dealers' Assn. v. A. C. L. R. R. Co., 14 I. C. C. 154, 163; Rail & River Coal Co. v. B. & O. R. R. Co., 14 I. C. C. 86, 88; In re Jurisdiction Over Water Carriers, 15 I. C. C. 205, 206, 207; American Bankers' Assn. v. American Express Co., 15 I. C. C. 15, 21; Duncan & Co. v. N., C. & St. L. Ry. Co., 16 I. C. C. 590, 599; California Commercial Assn. v. Wells-Fargo & Co., 16 I. C. C. 458, 461; Swift & Co. v. C. & A. R. R. Co., 16 I. C. C. 426, 428; Chicago Lumber & Coal Co. v. Tioga Southeastern Ry. Co., 16 I. C. C. 323, 332; Enterprise Fuel Co. v. Penn. R. R. Co., 16 I. C. C. 219, 223; West End Improvement Club v. O. & C. B. R. & B. Co., 17 I. C. C. 239, 244, 245, 246, 247; St. L. & S. F. R. R. Co. v. State, 26 Okla. 62, 72, 107 P. 929; McElvain v. Railroad, 151 Mo. App. 126, 146, 151, 131 S. W. 736; Pittsburgh, Etc., R. Co. v. R. R. Comm., 171 Ind. 189, 210, 86 N. E. 328; Coeur d'Alene & S. Ry. Co. v. U. P. R. R. Co. (Wash. 1908), 95 P. 71, 77; Boise Commercial Club v. Adams Express Co., 17 I. C. C. 115, 119; Merchants' Cotton Press & Storage Co. v. I. C. R. R. Co., 17 I.C.C. 98; Federal Sugar Refining Co. v B. &. O. R. R. Co., 17 I. C. C. 40, 46; Associated Jobbers of Los Angeles v. A., T. & S. F. Ry. Co., 18 I. C. C. 310, 315; In Re Advances in Rates, Eastern Case, 20 I. C. C. 243, 264; Railroad Commission of Nevada v. S. P. Co., 21 I. C. C. 329, 334, 335, 336; Omaha & C. B. St. Ry. Co. v. I. C. C. 191 Fed. 40, 48; Omaha & C. B. St. Ry. Co. v. I. C. C. 191 Fed. 40, 47; Arkansas Fertilizer Co. v. U. S., 193 Fed. 667, 673; Denver & R. G. R. R. Co, v. I. C. C. 195 Fed. 968, 971; N. Y. Central v. U. S., 212 U. S. 481, 495, 29 Sup. Ct. 304, 53 L. Ed. 613; I. C. C. v. C., R. I. & P. Ry. Co., 218 U. S. 88, 110, 30 Sup. Ct. 651, 54 L. Ed. 946; L. & N. R. R. Co. v. Mottley, 219 U. S. 467, 474, 31 Sup. Ct. 265, 55 L. Ed. 297; Transit Case 24 I. C. C. 340, 350; C. M. N. O. & T. P. Ry. Co. v. Dodd (Ky, 1913), 156 S. W. 894, 895, St. L. S. W. Ry Co. of Texas v. Spring River Stone Co. (Mo. 1913), 153 S. W. 465, 468. In re Advances on Manganese Ore, 25 I. C. C. 663, 665; In re Advances on Hay, 25 I. C. C. 680, 684; Import Rates on Manganese Ore, 25 I. C. C. 663, 665; National Wool Growers' Asso. v. O. S. L. R. R. Co., 25 I. C. C. 675, 676; Protection of Potato Shipments in Winter, 26 I. C. C. 681, 685; Dubuque Shippers' Asso. v. C. & N. W. Ry. Co., 26 I. C. C. 565, 566; Colorado Free Pass Investigation, 26 I. C. C. 491, 496; St. Louis, Springfield & Peoria R. R. v. P. & P. U. Ry. Co., 26 I. C. C. 226, 236; The Transit Case, 26 I. C. C. 204, 210; Board of Trade of the City of Chicago v. C. & A. R. R. Co., 27 I. C. C. 530, 535; T. & P. Ry. Co. v. U. S., 205 Fed. 380, 384; O. & C. B. S. R. R. Co. v. I. C. C., 33 Sup. Ct. 890, 891,, 230 U. S. 324; Pennsylvania Co. v. United States, 35 Sup. Ct. Rep. 370, 373; U. S. v. L. & N. R. Co., 35 Sup. Ct. 363, 368; United States v. A., T. & S. F. Ry. Co., 34 Sup. Ct. 986, 992, 234 U. S. 476, 58 L. Ed. —; Central R. Co. of New Jersey v. Anchor Line, 219 Fed. 716, 718; St. L.-S. W. Ry. Co. v. S. Samuels & Co., 211 Fed. 588, 590; Industrial Railways Case, 29 I. C. C. 212, 266; Huerfano Coal Co. v. C. & S. E. R. R. Co., 28 I. C. C. 502, 505; Waverly Oil Works v. P. R. R. Co., 28 I. C. C. 621, 625; Decatur Navigation Co. v. L. & N. R. R. Co., 31 I. C. C. 281, 288; Five Per Cent Case, 31 I. C. C. 351, 357; Pacific Nav. Co. v. S. P. Co., 31 I. C. C. 472, 480; Corp. Comm. of Okla. v. A., T. & S. F. Ry. Co., 31 I. C. C. 532, 540, 541; New York Dock Ry. v. B. & O. R. R. Co., 32 I. C. C. 568, 574; Zoller Hop. Co. v. Sou. Pac. Co., 143 Pac. 931, 934; N. Y. C. & H. R. Ry. Co. v. General Electric Co. (N. Y. Trial Term, 1914), 146 N. Y. Supp. 322, 327; X. Zoller Hop. Co. v. So. Pac. Co., 143 Pac. 931, 934; Southern Pac. Co. v. Frye & Bruhn (Wash. 1914), 143 Pac. 163, 165; Palmer v. Southern Express Co. (Tenn. 1914), 165 S. W. 236, 243; K. C. & M. Ry. Co. v. Oakley (Ark. 1914), 170 S. W. 565, 566; Western & A. R. Co. v. White Provision Co., 82 S. E. 644, 645; C., R. I. & P. Ry.

Co. v. Beatty (Okla. 1914), 141 Pac. 442; Y. & M. V. R. Co. v. Messina (Miss. 1915), 67 So. 963, 966. The Cummins Amendment, 33 I. C. C. 682, 692, 695; Michelson v. Judson Freight Forwarding Co. (Ill. 1915), 109 N. E. 281, 285; Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 289; Texas & Pac. R. Co. v. I. C. C., 162 U. S. 197; Import and Domestic Rates, 36 I. C. C. 389, 392; Rates on Railroad Fuel and Other Coal, 36 I. C. C. 1, 11; Adams Exp. Co. v. Croninger, 226 U. S. 491, 57 L. Ed. 314, 44 L. R. A. (N. S.) 257, 33 Sup. Ct. Rep. 148; Chicago, B. & O. R. Co. v. Miller, 226 U. S. 513, 57 L. Ed. 323, 33 Sup. Ct. Rep. 155; Chicago, St. P., M. & O. R. Co. v. Latta, 226 U. S. 519, 57 L. Ed. 328, 33 Sup. Ct. Rep. 155; Wells-Fargo & Co. v. Neiman-Marcus Co., 227 U. S. 469, 57 L. Ed. 600, 33 Sup. Ct. Rep. 267; Kansas City Southern R. Co. v. Carl, 227 U. S. 639, 57 L. Ed. 683, 33 Sup. Ct. Rep. 391; Missouri, K. &T. R. Co. v. Harriman, 227 U. S. 657, 57 L. Ed. 690, 33 Sup. Ct. Rep. 397; Chicago, R. I. & P. R. Co. v. Cramer, 232 U. S. 490, 58 L. Ed. 697, 34 Sup. Ct. Rep. 383; Boston & M. R. Co. v. Hooker, 233 U. S. 97, 58 L. Ed. 868, L. R. A. 1915-B 450, Ann. Cas. 1915-D 593; George M. Pierce Co. v. Wells, F. & Co., 236 U. S. 278, 59 L. Ed. 576, 35 Sup. Ct. Rep. 351; New York, P. & N. R. Co. v. Peninsula Produce Exch., 240 U. S. 34 ante 230, 36 Sup. Ct. Rep. 230; Southern Exp. Co. v. Byers, 36 Sup. Ct. 410, 411; 240 U. S. 612, 60 L. Ed. 825; Stonega Coke & Coal Co. v. L. & N. R. R. Co., 39 I. C. C. 423, 541; Southwestern Portland Cement Co. v. T. & P. Ry., 41 I. C. C. 39, 41; American Paper & Pulp Asso. v. B. & O. R. R. Co., 41 I. C. C. 506, 511; Unrepeated Message Case, 44 I. C. C. 670, 674; Carowicz & Co. v. C. P. Ry. Co., 46 I. C. C. 290, 291; Dimmitt-Caudle-Smith L. S. C. Co. v. C., B. & Q. R. R., 47 I. C. C. 287, 319, 320; Donovan v. Wells Fargo, 265 Mo. 291, 177 S. W. 839; Haseltine v. Central National Bank, 155 Mo. loc. cit. 74, 56 S. W. 895; Barber Asphalt Co. v. French, 158 Mo. 534, 58 S. W. 934, 54 L. R. A. 492; American Silver Mfg. Co. v. Wabash R. R. Co., 174 Mo. App. 184, 156 S. W. 830; Hardwick v. Wabash R. R. Co., 181 Mo. App. 156, 168 S. W. 328; Foster Lumber Co. v. A., T. & S. F. Ry. (Mo. 1917), 194 S. W. 281, 284; Illinois Cent. R. R. v. Public Utilities Commission, 38 Sup. Ct. 170, 176, 245 U. S. 493; 62 L. Ed. 425; Unification of R. R. Operation, 47 I. C. C. 757; Shreveport-Texas Cattle, Lignite, Wood and Tanbark, 48 I. C. C. 283, 290; Morgantown & Kingwood Divisions, 49 I. C. C. 540, 544 548 549; United States v. Hill, 39 Sup. Ct. 143; Legality of Express Franks, 50 I. C. C. 599, 602, 603; In the Matter of Private Cars 50 I. C. C. 652, 694, 704; Missouri, K. & T. R. Co. v. Ward, 244 U. S. 383, 37 Sup. Ct. 617, 61 L. Ed. 1213; Georgia F. & A. R. Co. v. Blish Milling Co., 241 U. S. 190, 36 Sup. Ct. 541, 60 L. Ed. 948; Southern R. Co. v. Prescott, 240 U. S. 632, 36 Sup. Ct. 469, 60 L. Ed. 836; Atchison, T. & S. F. R. Co. v. Robinson, 233 U. S. 173, 34 Sup. Ct. 556, 58 L. Ed. 901; Atchison, T. & S. F. R. Co. v. Harold, 241 U. S. 371; 36 Sup. Ct. 665, 60 L. Ed. 1050; Chicago & A. R. Co. v. Kirby, 225, U. S. 155, 32 Sup. Ct. 648, 56 L. Ed. 1033, Ann. Cas. 1914-A 501; Southern Ry. Co. v. Lewis & Adcock Co. (Tenn. 1918), 201 S. W. 131, 132; Toledo & O. C. Ry. Co. v. S. J. Kibler & Bros. Co. (Ohio 1918), 119 N. E. 733; Midway Co-op. Elevator Co. v. Great Northern Ry. Co. (N. Dak. 1918), 169 N. W. 494; Colonial Nav. Co. v. N. Y., N. H. & H. R. R. Co., 50 I. C. C. 625, 630, 631; Northport Smelting & Refining Co. v. G. N. Ry. Co., 53 I. C. C. 641, 642; Western Union Telegraph Co. v. Bogeli, 40 Sup Ct. 167; Public Service Com'n v. New York Central R. R. Co., 183 N. Y. S. 799; J. F. French & Co. v. Pere Marquette Ry. Co. (Mich. 1919), 171 N. W. 491; Chesapeake & O. Ry. Co. v. National Bank of Commerce of Norfolk (Va. 1919), 95 S. E. 454; Western Union Telegraph Co. v. Bowles (Va. 1919) 98 S. E. 645; Shrader v. Steubenville East Liverpool & B. V. T. Co., (W. Va. 1919), 99 S. E. 207; Bobzein v. New York Cent. R. Co. 176 N. Y. S. 406; Cicardi Bros. Fruit & Produce Co. v. Pennsylvania Co. (Mo. 1919), 213 S. W. 531; Missouri, K. & T. Ry. v. Pennsylvania Co. (Mo. 1919), 213 S. W. 531; Missouri, K. & T. Ry. v. Miller (Tex. 1919) 211 S. W. 543; Western Union Telegraph Co. v. Beasley (Ala. 1920), 87 So. 858; State ex rel. Railroad Com'rs v. Atlantic Coast Line R. Co. (Fla. 1921), 85 So. 773; Delaware, L. & W. R. Co. v. Henry Nuhs Co. (N. J. 1919), 111 Atl. 223; Chicago, R. I. & P. Ry. Co. et al. v. Gist (Okla. 1920), 190 Pac. 878, 879; Shroyer v. Chicago, R. I. & G. Ry. Co. (Tex. 1920), 222 S. W. 1095; Shrader v. Steubenville, East Liverpool & G. V. T. Co. (W. Va. 1919), 99 S. E. 207; Schuette & Co. v. Director General 57 I. C. C. 709, 712; Intrastate Fares Within Illinois, 59 I. C. C. 350, 362; Postal Telegraph-Cable Co. v. W. U. Tele-

graph Co., 59 I. C. C. 512, 516; Express Classification, 59 I. C. C. 265, 362; Intrastate Rates Within Illinois, 59 I. C. C. 350, 362, 363; Lake Superior Paper Co. v. Director General, 61 I. C. C. 709, 716; Ridge Coal Mining Co. v. M. P., 62 I. C. C. 259, 261; National Industrial Traffic League v. A. & R. R. R., 61 I. C. C. 120, 124; In the Matter of Bills of Lading, 64 I. C. C. 374, 354; Coal from D., T. & I. R. R. Mines, 64 I. C. C. 564, 566; Salt from Louisiana Mines to Chicago, 66 I. C. C. 81, 93; New England Divisions, 66 I. C. C. 196, 204; New England Divisions, 66 I. C. C. 196, 204; Keokuk & Hamilton Bridge Co. v. Wabash Ry., 66 I. C. C. 545, 548; Construction of the word "Deficit," 66 I. C. C. 765, 767, 771, State of Texas v. Eastern Texas R. Co., 42 Sup. Ct. 281; Certain Teed Products Corp. v. C. R. I. & P. Ry. Co., 68 I. C. C. 260, 262; Meyersdale Smokeless Coal Co. v. B. & O. R. R., 69 I. C. C. 74, 76; Kansas City Board of Trade v. A. T. & S. F. Ry. Co., 69 I. C. C. 185, 191; Hastings Commercial Club v. C., M. & St. P. Ry., 69 I. C. C. 489, 493; Rates on Bunker Coal, 73 I. C. C. 62, 76; State v. Public Service Commission (Mo. 1923), 249 S. W. 65; Gardner Shipping Co. v. P. R. R. Co., 74 I. C. C. 461, 462; Southern Acid & Sulphur Co. v. A. & N. M. Ry. Co., 74 I. C. C. 641, 642; Ocean Steamship Co. of Savannah, 78 I. C. C. 251, 256; Adriatic Mining Co. v. C. & N. W. Ry. Co., 78 I. C. C. 611, 619; Pacific Spruce Corporation v. McCoy, 294 Fed. 711; Reduced Rates from New York Piers, 81 I. C. C. 312, 329. Robinson & Reynolds v. Atlantic Coast Line R. Co., (Ga., 1922) 112 S. E. 389; Payne v. Bassett, (Tex., 1921), 235 S. W. 917.

III. TIME OF TAKING EFFECT.

IMPORTANT CASES SINCE 1908

(a) A statute passed to take effect at a future date must be understood as speaking from the time it goes into operation, and not from the time of its passage, and before the time of going into effect no rights may be acquired under it and no one is bound to regulate his conduct according to its terms. Nicola, Stone & Myers Co., v. L. & N. R. R. Co., 14 I. C. C. 199, 206.

(b) The legislative intent was to make August 28, 1906, the effective date of the Hepburn Act, which was approved June 29, 1906. Nicola, Stone & Myers Co. v. L. & N. R. R. Co., 14 I. C. C. 199, 206.

(c) The law stands for what it means from the date when it takes effect and not from the date when it is construed by the Commission. Ordinarily the date of the announcement by the Commission of its interpretation of a particular provision is therefore of little real importance. Liberty Mills v. L. & N. R. R. Co., 23 I. C. C. 182, 185.

IV. ENFORCEMENT.

CASES 1887-1908

(a) The Northern Pacific Railroad Company, notwithstanding certain provisions in its charter, is subject, like all other interstate carriers, to the authority conferred by Congress in the Act to Regulate Commerce. Citing and affirming Raworth v. Northern Pac. R. Co., 3 Inters. Com. Rep. 857, 5 I. C. C. Rep. 257; Merchants' Union v. Northern Pacific R. Co., 4 I. C. R. 183.

(b) An action against a carrier for violation of the Interstate Commerce Act in making unlawful discriminations may be maintained in the name of the United States by the district attorney under § 12 of such act as amended March 2, 1889, and February 10, 1891, to provide that upon the request of the Commission it shall be the duty of any district attorney to institute in the proper court, and to prosecute under the direction of the attorney general all necessary proceedings for its enforcement and for the punishment of all violations thereof. United States v. Missouri P. R. Co. (C. C. D. Kan.), 5 I. C. R. 106.

IMPORTANT CASES SINCE 1908

(c) A suit to enforce an order of reparation entered by the Interstate Commerce Commission brought under the Interstate Commerce Act as amended June 29, 1906, is an action sounding in tort for damages. Naylor & Co. v. Lehigh Valley R. Co., 188 Fed. 860, 861.

(d) Section 8 of the Act does not have any relation to the jurisdiction of the Commission. It creates a substantive right of action to recover damages for the violation by a carrier of some provision of the Act, but leaves the right enforceable only in the courts. Joynes v. Penn. R. R. Co., 17 I. C. C. 361, 369.

(e) The Act to Regulate Commerce remains in full force and effect in so far as it may be inconsistent with the provisions of the Federal Control Act or other acts applicable to federal control or with any order of the President.

Johnston v. A. T. & S. F. Ry., 51 I. C. C. 356, 361.

ALL OTHER CITATIONS

Gage v. Erie R. R. Co., 33 I. C. C. 593, 594; Postal Telegraph-Cable Co. v. W. U. Telegraph Co., 59 I. C. C. 512, 516; Lustig-Burgerhoff Co. v. Director General, 74 I. C. C. 395; Interchange Mileage Ticket Investigation, 77 I. C. C. 200, 202; McElvain v. Railroad, 151 Mo. App. 126, 151, 131 S. W. 736; Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 520, 556; A. G. S. Ry. Co. v. McCleskey, 160 Ala. 630, 634, 49 So. 433.

V. AMENDMENTS.

§1. War Legislation.

See Government Control; War Legislation.

IMPORTANT CASES SINCE 1908

(a) The amendment to the act declares a public policy established by Congress, which it is the duty of the Commission to protect and perpetuate. Blakely Southern R. R. Co. v. A. C. L. R. R. Co., 26 I. C. C. 344, 349.

(b) Where there are two acts on the same subject the general rule is undoubtedly to give effect to both if possible, but if the two acts are repugnant in any of their provisions the latter act, even though it may contain no repealing clause, will operate to reveal the former act to the extent of the repugnancy. Colonial Nav. Co. v. N. Y., N. H. & H. R. R. 50 I. C. C. 625, 630.

(c) Both the legislative history and the provisions of the transportation act, 1920, make it clear that the purpose of Congress in this legislation was broader than the mere regulation of individual railroads. Congress was endeavoring to assure an effective transportation system for the nation, and the principle was recognized that the various carriers, while independently owned, are nevertheless to a large extent interdependent, and that they owe a duty to one another in the public interest. New England Divisions, 66 I. C. C. 196, 198.

(d) Contention that the language of the federal control act did not give power to the President or the Director General to assess a penalty, and that Congress could not have given either of them that power because the imposition of a penalty is a legislative function which can not be delegated. HELD: The Director General was authorized to inaugurate any reasonable and just regulation and practice which he might find necessary to eliminate the abuse of excessive and unreasonable detention of freight cars. American Wholesale Lumber Asso. v. Director General, as Agent, 66 I. C. C. 393, 396.

(e) The word "deficit" as used in paragraph (a) of section 204 of the Transportation Act, 1920, construed to mean a deficiency or decrease in a carrier's railway operating income for that portion (as a whole) of the period of federal control during which it operated its own railroad as compared with its average railway operating income of the corresponding portions of the test period. Construction of the Word "Deficit," 66 I. C. C. 765.

(f) In the definition of the word "carrier" in paragraph (a) of section 204 of the Transportation Act, 1920, Congress meant those carriers which sustained losses in income under private operation in the federal control period as compared with the test period Construction of the Word, "Deficit," 66 I. C. C. 765, 771.

(g) The valuation of the carriers, pursuant to Interstate Commerce Act, § 19a, as amended by Transportation Act, 1920, § 433, required to be made for the purposes of section 15a, enacted by Transportation Act of 1920, § 422, of all the real property of the carriers used in the service of transportation, includes the property used in intrastate commerce as well as that in interstate commerce. Railroad Commission of Wisconsin v. Chicago, B. & Q. R. Co., 42 Sup. Ct. 232.

(h) Transportation Act, 1920, § 402, which amended Interstate Commerce Act, § 1, by adding new paragraphs thereto, must be read in connection with it and with the other amendments of it, which show an intention to regulate interstate and foreign commerce, and to affect intrastate commerce only as incidental to such regulation, so that the broad language of the added paragraphs will not be considered to depart from such purpose, unless they so plainly declared. State of Texas v. Eastern Texas R. Co., 42 Sup. Ct. 281.

ALL OTHER CITATIONS

City of Spokane v. N. P. Ry. Co., 15 I. C. C. 376, 388; West End Improvement Club v. O. & C., B. R. & B. Co., 17 I. C. C. 239, 246; State v. Adams Express Co., 171 Ind. 138, 141, 85 N. E. 337 and 966; Unification of Railroad Operation, 47 I. C. C. 757, 763; American Wholesale Lum-

ber Asso. v. Director General, as Agent, 66 I. C. C. 393, 396; Public Service Commission v. New York Central R. Co., 183 N. Y. S. 799; Coma v. St. L., S. & F. Ry. Co., 74 I. C. C. 400, 402; Acme Cement Plaster Co. v. Director General, as Agent, 81 I. C. C. 290, 301.

VI. TRANSPORTATION ACT.

See Transportation Act.

§2. Construction.

ALL CITATIONS

New England Divisions, 66 I. C. C. 196, 198; Construction of the Word ,'Deficit," 66 I. C. C. 765, 771; Railroad Commission of Wisconsin v. Chicago, B. & Q. R. Co., 42 Sup. Ct. 232; State of Texas v. Eastern Texas R. Co., 42 Sup. Ct. 231; Bloedel-Donovan Lumber Co. v. Director General, as Agent, 68 I. C. C. 95, 96 Coma v. St. L. S. F. Ry. Co., 74 I. C. C. 400, 402, Acme Cement Plaster Co. v. Director General, as Agent, 81 I. C. C. 298, 301.

ACTIONS AT LAW

See Allowances §14½; Bills of Lading IV, §15; Cars and Car Supply §3, §33; Courts I; Demurrage §22; Discrimination §16; Freight Charges; Interstate Commerce Commission II, VII, VIII; Loss and Damage §10, §13½; Overcharges; Reparation §23; Undercharges; War Legislation.

CASES 1887-1908

(a) Money paid without knowledge that it was a wrongful exaction, but in the belief of the truth of the positive assertions of the one to whom it was paid that it was rightful, is not paid voluntarily, and it may be recovered back. Cook v. Chicago, R. I. & P. R. Co. (Iowa), 3 I. C. R. 383.

(b) Permitting the recovery of attorneys' fees on recovery against a railroad company for violation of a statute regulating rates does not violate the constitutional provision as to equality. Burlington, C. R. & N. R. Co. v. Dey (Iowa), 3 I. C. R. 584.

(c) No right of action can spring out of an illegal contract, and this rule applies, not only when the contract is expressly illegal, but whenever it is opposed to public policy. Cleveland, C. C. & I. R. Co. v. Closser (Ind), 3 I. C. R. 387.

(d) The Act of February 4, 1887, § 12, as amended in 1889 and 1891, is constitutional and valid, so far as it authorizes or requires the circuit courts of the United States to use their process in aid of inquiries before the Interstate Commerce Commission. Interstate Commerce Commission v. Brimson (U. S. Sup Ct.), 545, Rev'g. 4 I. C. R. 315.

(e) The voluntary joinder of parties has the same effect for purposes of jurisdiction as if they had been compelled to unite. Merchants' Cotton Press & S. Co. v. Insurance Co. of North America (U. S. Sup. Ct.), 4 I. C. R. 499.

(f) The right of removal must be determined by the pleadings at the time the petition is filed. Merchants' Cotton Press & S. Co. v. Insurance Co. of North America (U. S. Sup. Ct.), 4 I. C. R. 499.

(g) A contract to render personal service cannot be specifically enforced. Ames v. Union P. R. Co. (C. C. D. Neb.), 4 I. C. R. 619.

(h) The terms "carelessly, wrongfully, and negligently failed and neglected" to deliver a message, used in a complaint, import ordinary and simple negligence, and nothing more. Butner v. Western U. Telegraph Co. (Okla.), 4 I. C. R. 770.

(i) To impeach a witness the evidence must reflect the opinions of the people in the community in which he lives. United States v. Howell (D. C. W. D., Mo.), 4 I. C. R. 818.

(j) Law is a rule of civil conduct prescribed by the supreme power in the state. Swift v. Philadelphia & R. R. Co. (C. C. N. D., Ill.), 5 I. C. R. 116.

(k) A declaration seeking to recover back unreasonable rates imposed by a carrier upon shipments after the Interstate Commerce Act became effective is bad in failing to aver that no rates were published and in existence as required by the law. Swift v. Philadelphia & R. R. Co. (C. C. N. D., Ill.), 5 I. C. R. 116.

(l) A private person cannot maintain a bill in equity to enforce the provisions of the Act of Congress of July 2, 1890, against unlawful restraints and monopolies, as § 7, which is the only one giving a private remedy, confers only the right to sue at law for damages. Pidcock v. Harrington (C. C. S. D. N. Y.), 5 I. C. R. 161.

(m) A common carrier is subject to garnishment of property delivered to it

for transportation, which is not in actual transit at the time of garnishment. Landa v. Missouri, K. & T. R. Co. (Mo.), 5 I. C. R. 254.

(n) Mo. Rev. Stat. 1889, chap. 74, and chap. 10, § 543, permitting garnishment of railroad companies, does not violate the federal statute regulating commerce between the states. Landa v. Missouri, K. & T. R. Co. (Mo.), 5 I. C. R. 254.

(o) Rev. Stat. 1889, chap. 74, and chap. 10, § 543, permitting garnishment of railroad companies, does not violate the federal power to regulate commerce between the states. Landa v. Missouri, Kansas & Texas R. Co., 5 I. C. R. 254.

(p) A common carrier is subject to garnishment of property delivered to it for transportation which is not in actual transit at the time of garnishment. Landa v. Missouri, Kansas & Texas R. Co., 5 I. C. R. 254.

(q) A railroad company which has an arrangement with another company by which it is enabled to forward all matter intrusted to it for transportation to a designated place, which it adopts as a station on its line, is estopped to deny its possession of property intrusted to it at such place for shipment. Landa v. Missouri, Kansas & Texas R. Co., 5 I. C. R. 254.

(r) If the court instructs the jury to find more than is absolutely necessary for them to find in order for plaintiffs to recover, such action cannot be complained of by the defendant. Seawell v. Kansas City, Ft. S. & M. R. Co. (Mo.), 5 I. C. R. 262.

(s) Special findings of fact returned by the jury, which are inconsistent with the general verdict, control the latter, and the court should either render a judgment in accordance with such findings, or set aside the findings and verdict and grant a new trial. Rouse v. Youard (Kan. App.), 5 I. C. R. 315.

(t) When the special findings of fact returned by the jury are inconsistent with the general verdict, the special findings of fact are controlling, and the court should either render a judgment in accordance with the special findings, or set the findings and verdict aside and grant a new trial. Rouse v. Youard, 5 I. C. R. 315.

(u) Where there is evidence to prove each fact necessary to support the verdict of the jury, and the jury have rendered their verdict on such evidence, this court cannot disturb the verdict, although the court might have come to a different conclusion on the whole evidence. Rouse v. Youard, 5 I. C. R. 315.

(v) Where a person has been educated in a particular profession or trade, as a physician, surgeon, veterinarian, or engineer, or the like, he is presumed to understand thoroughly the questions pertaining to his profession or trade; he is termed an expert, and is qualified to give opinions on subjects coming within the scope of his profession or trade; but a witness who is not educated in any particular profession or trade is not competent to give an opinion in any matter that requires science or skill to determine, although he may have frequently seen the treatment of diseases by physicians, or operations made by surgeons, and have assisted veterinarians in the treatment of stock for diseases, and has read extensively from books and papers treating on diseases of stock. Rouse v. Youard, 5 I. C. R. 315.

(w) Testimony as to the distance between two places is not so conclusive as to render immaterial the admission of jurors who had formed an opinion upon the question which is given by a person not a surveyor, who states that he measured the distance with a surveyor's chain, but who cannot tell how long the chain was. Missouri Pacific R. Co. v. Smith, 5 I. C. R. 348.

(x) Jurors who have sat in a number of cases tried at the same term are not qualified to sit in another case involving the same issues, under the Arkansas statute providing that no person who has formed or expressed an opinion concerning the matter in controversy which might influence his judgment shall be sworn as a juror. Missouri P. R. Co. v. Smith (Ark.), 5 I. C. R. 348.

(y) Persons are incompetent as jurors in an action for the statutory penalty for overcharge for transportation, in which the main issue is as to the distance between two places, who have already sat as jurors in another case in which the same issue was involved. Missouri Pacific R. Co. v. Smith, 5. I. C. R. 348.

(z) The original waybill is admissible in evidence in a suit against a connecting carrier for refusal to deliver the goods on tender of the charges agreed on in

the bill, where, in connection with other evidence, it shows that the carrier had paid accrued charges in amount equal to the sum specified, as tending to show that it did not intend to ratify that contract. Dwyer v. Gulf, C. & S. F. R. Co., 5 I. C. R. 361.

(aa) A case before the Commission involving alleged discrimination in furnishing cars, and demanding reparation, is not barred, under section 9 of the Act by the previous institution in the State court of a suit for damages between the same parties, based on such discrimination. Gallogly v. Cincinnati, H. & D. R. Co. 11 I. C. C. 1.

IMPORTANT CASES SINCE 1908

(bb) Bill of lading provisions with respect to filing of claims or institution of suits on account of loss, damage, or delay, found to prohibit payment of meritorious claims seasonably filed with the carrier after the two year and one day period has elapsed, but in that they do not accord the shipper the right to a reasonable period after declination of a claim within which to institute suit, where carrier fails to promptly adjust claims, found unreasonable, discriminatory, and undudly prejudicial. Reasonable provision prescribed. Decker & Sons v. Director General, 55 I. C. C. 453.

(cc) Defendants may reasonably and properly provide that the period prescribed within which suit shall be instituted after the declination of a claim shall date from the definite declination in writing of the claim. Decker & Sons v. Director General, 55 I. C. C. 453, 460.

(dd) When a shipper has complied with carrier's requirements with respect to duly filing a claim, he is entitled to a reasonable period after the declination of the claim within which to institute suit if he so desires. Decker & Sons v. Director General, 55 I. C. C. 453, 460.

ALL OTHER CITATIONS

Decker & Sons v. Director, 55 I. C. C. 453, 459.

ADDITIONAL CHARGES AND SERVICES

See Agency; Allowances §8 (1), (2), (2½), (3), (4), (4½), (5), (6), (7), §12 (1); Assorting Packages; Back Haul; Baggage Transfer; Branch Lines; Bridge and Tolls; Car Ferry; Car Shortage; Compress Companies and Charges; Demurrage; Drayage Charges; Evidence §2½; Export Rates and Facilities; Facilities and Privileges §3, §4, §5, §6, §7, §8, §9, §10, §11, §12, §12½, §13, §14, §15, §15½, §16; Floatage; Heater Cars; Lighterage; Precooling; Reconsignment; Refrigeration; Special Rates and Service; Storage; Substitution of Tonnage; Switch Tracks and Switching §5; Terminal Facilities; Track Storage; Transfer; Warehousing; Weights and Weighing §6, §7.

IMPORTANT CASES SINCE 1908

(a) There must be a point beyond which an additional charge over the line-haul rate can be justified if additional service is in fact rendered. Second Industrial Railways Case, 34 I. C. C. 596, 602.

(b) The question whether or not a particular kind of delivery is in the nature of an additional service, or whether it is such a delivery as the carrier must perform without additional charge, is one of fact to be determined by examining the history of the rates, the nature of the service, the physical condition of the land and tracks, the custom of the carrier, and other pertinent evidence. R. R. Commissioners of Fla. v. F. E. C. Ry., 42 I. C. C. 616, 624, 626.

(c) The Commission has never intended to suggest that an additional charge would be proper for services which by long continued general custom and usage have been treated as covered by the line-haul rate. National Poultry, Butter & Eggs Assn. v. B. & O. S. W. R. R. Co., 43 I. C. C. 392, 396.

(d) A carrier is entitled to reasonable compensation for each service rendered. For services that it may render or procure to be rendered off its own line or outside the mere matter of transportation over its line, it may charge and receive compensation. Anaconda Copper Mining Co. v. Director General, 57 I. C. C. 723, 738.

(e) Carriers may generally charge for services performed for shippers, but such compensation must be provided for in lawfully published tariffs. Hart Bros. v. P. M. R. R. Co., Unrep. Op. 1875.

(f) A carrier is entitled to reasonable compensation for each service rendered. For services that it may render or procure to be rendered off its own line or

outside the mere matter of transportation over its line, it may charge and receive compensation. Anaconda Copper Mining Co. v. Director General, 51 I. C. C. 723, 738.

(g) The line-haul rate covers only one placement of the car for loading or unloading, and an additional charge may and should be made for each additional placement for that purpose. Wharton Steel Co. v. Director General, as Agent, 59 I. C. C. 11, 21.

(h) A carrier is entitled to additional revenue for additional service, other things being equal. But considerations other than distance alone are involved in a determination of the propriety of group rates. Commercial Coal Co. v. L. & N. R. R. Co., 83 I. C. C. 464, 467.

ALL OTHER CITATIONS

Associated Jobbers of Los Angeles v. A., T. & S. F. Ry. Co., 18 I. C. C. 310, 318; In re Suspension of Western Classification No. 51, 25 I. C. C. 442, 488; Sheridan Chamber of Commerce v. C., B. & Q. R. R. Co., 26 I. C. C. 638, 649; Pittsburgh Steel Co. v. L. S. & M. S. Ry. Co., 27 I. C. C. 173, 180; Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co., 27 I. C. C. 238, 242; Interstate Com. Com. v. A. T. & S. F. Ry. Co., 34 Sup. Ct. 814, 818; 58 L. Ed. —, 234 U. S. —, reversing 188 Fed. 229, 929, and affirming the decision of the Commission in 18 I. C. C. 317, 318; L. & P. Ry. Co. v. United States, 209 Fed. 244, 249; United States v. Erie Ry. Co., 209 Fed. 283, 286; American Brake Shoe & Foundry Co. v. B. Ry, of C., 28 I. C. C. 350; Becker v. P. M. R. R. Co., 28 I. C. C. 645, 656, Dunnage Allowances, 30 I. C. C. 538, 543, 542; Concentration of Cotton at Points in Arkansas, 29 I. C. C. 106, 107; Paducah Board of Trade v. I. C. R. R. Co., 29 I. C. C. 583, 593, 597; New Orleans Live Stock Exchange v. L. & N. R. R. Co., 31 I. C. C. 609, 612; Rates on Bananas from Gulf Ports, 30 I. C. C. 510, 516; Rea-Patterson Milling Co. v. M., K. & T. Ry. Co., Unrep. Op. A-653; Cady Lumber Co. v. A., T. & S. F. Ry. Co., Unrep. Op. A-590; Stock & Sons v. L. S. & M. S. Ry. Co., 31 I. C. C. 150, 151, 152; Five Per Cent Case, 31 I. C. C. 351, 408; New Orleans Live Stock Exchange v. L. & N. R. R. Co., 31 I. C. C. 609, 612; Unrep. Op. A-764; Newport Mining Co. v. C. & N. W. Ry., 33 I. C. C. 645, 648; R. R. Comm. of California v. A. G. S. R. R. Co., 32 I. C. C. 17, 20; Mobile Chamber of Commerce v. M. & O. R. R. Co., 32 I. C. C. 272, 279; Philadelphia Team Owners' Protective Asso. v. P. & R. Ry. Co., 32 I. C. C. 387, 391; Hoyt & Bergen v. C. & N. W. Ry. Co., 32 I. C. C. 319, 324; Corporation Commission of Oklahoma v. W. F. & N. W. Ry. Co., Unrep. Op. A-828; Russell Bros. v. C., R. I. & P. Ry. Co., Unrep. Op. A-863; Stacy Fruit Co. v. Northern Express Co., Unrep. Op. A-868; Transportation and Disposal of Waste Material, 34 I. C. C. 337, 338, 339; New England Coal & Coke Co. v. N. & W. Ry. Co., 33 I. C. C. 276, 280; Chattanooga Packet Co. v. I. C. R. R. Co., 33 I. C. C. 384, 391; Tampa Board of Trade v. A. & V. Ry. Co., 33 I. C. C. 457, 461; Car Spotting Charges 34 I. C. C. 609; 616, 618; 1915 Western Rate Advance Case, 37 I. C. C. 114, 160; Westport Stone Co. and Big Four Stone Co. Case, 38 I. C. C. 316, 318; Osceola Mill & Elevator Co. v. M. St. P. & S. S. M. Ry. Co., 38 I. C. C. 335, 336; Commercial Exchange of Philadelphia v. N. Y. C. & H. R. R. R. Co., 38 I. C. C. 551, 557; Royal Milling Co. v. G. N. Ry. Co., 41 I. C. C. 29, 32; Iron Ore Rate Cases, 41 I. C. C. 181, 200; American Paper & Pulp Asso. v. B. & O. R. R. Co., 41 I. C. C. 506, 511; Public Service Commission of Washington v. A. & V. Ry. Co., 42 I. C. C. 54, 62; Hammond, Standish & Co. v. M. C. R. R. Co., 42 I. C. C. 102, 103; Hale, Halsell Grocery Co. v. M., K. & T. Ry. Co., 42 I. C. C. 491, 493; Export Grain Storage Charges, 42 I. C. C. 530, 543; R. R. Commissioners of Fla. v. F. E. C. Ry., 42 I. C. C. 616, 623; Southern Rice Growers' Asso. v. T. & N. O. R. R. Co., 43 I. C. C. 90, 92; Sterling Salt Co. v. Pa. R. R., 43 I. C. C. 276, 278; Lake Cargo Coal Rates, 46 I. C. C. 159, 194; Virginia Portland Cement Ry. Co., 49 I. C. C. 332, 335; National Live Stock Exchange v. A. & S. Ry., 50 I. C. C. 578, 589, 590; Heated Car Service Regulations, 50 I. C. C. 620, 624; In re Private Cars 50 I. C. C. 652, 680, 709; Advance Lumber Co. v. S. A. L. Ry., 55 I. C. C. 149, 150; Memphis-Southern Investigation, 55 I. C. C. 515, 540; Pacific Engineering & Construction Co. v. C., R. I. & P. Ry., 56 I. C. C. 247, 249; McCloud River Ry. Co. v. S. P. Co., 56 I. C. C. 287, 292; Swift & Co. v. Director General, 56 I. C. C. 309, 315, 316; Perishable Freight Investigation, 56 I. C. C. 449, 488; Pennsylvania R. Co. v. Swift & Co., 258 Fed. 289; Boston & M. R. R. v. Great Falls Mfg. Co. (N. H. 1920), 111 Atl. 691; California Citrus League v. Director General, 58 I. C. C. 373, 380; Pittsburgh Forge & Iron Co. v. Director General,

59 I. C. C. 29, 31; Interchange Switching at Topeka, 64 I. C. C. 259; Omaha Live Stock Exchange, v. C. M. & St. P. Ry. Co., 69 I. C. C. 688, 692.

ADJACENT FOREIGN COUNTRY

See Alaska; Canada; Coastwise Traffic; Cuba; Foreign Commerce; Jurisdiction of Commission; Mexico; Porto Rico.

CASES 1887-1908

(a) The provisions of the act apply to foreign as well as domestic common carriers engaged in the transportation of passengers or property, for a continuous carriage or shipment, from a place in the United States to a place in an adjacent foreign country. Matter of Grand Trunk. Co., 2 I. C. C. 496, 503.

IMPORTANT CASES SINCE 1908

(b) The Commission's jurisdiction in connection with transportation to or from an adjacent foreign country is over that portion of the transportation within the confines of the United States. The Commission can not, therefore, prescribe joint through rates from points in Canada to points in the United States, but it can control the rates which the lines in the United States charge for services rendered within the United States. Joint rates from and to points in Canada are a convenience to the public and the shippers and should be encouraged. Carey Mfg. Co. v. G. T. W. Ry., 36 I. C. C. 203.

(c) Commission can not prescribe joint through rates from Canada into the United States, but can control rates from ports of entry to destinations in the United States. Carey Mfg. Co. v. G. T. W. Ry. Co., 36 I. C. C. 203, 206.

(d) Carriers have a right to contract for limitation of liability beyond their own lines after delivering the property to another carrier on shipments to nonadjacent foreign countries, but bill of lading should disclose the class of traffic in connection with which it is to apply, and should recite that it is not to be used on shipments to points in adjacent foreign countries. Express Classification, 1920, 59 I. C. C. 265, 269.

(e) The Commission's territorial jurisdiction carries up to the international boundary line, at which that of Congress itself halts, and as to foreign commerce is thus coextensive with that of the federal government. No act of Congress has force of law beyond that boundary line, but up to it, as everywhere else within the United States, the Interstate Commerce Act has full effect just as the Federal Control Act had effect when these shipments moved. International Nickel Co. v. Director General, as Agent, 66 I. C. C. 627, 629.

(f) The provisions of the act apply to common carriers engaged in the transportation of property by railroad from any place in the United States through a foreign country to any other place in the United States, and from or to any place in the United States to or from a foreign country, but only in so far as such transportation takes place within the United States. American Cyanamid Co. v. Director General, 69 I. C. C. 337, 343.

(g) The Commission's jurisdiction over commerce between the United States and a foreign country is limited to that part of the transportation within the United States. But all carriers parties to joint rates are jointly and severally liable for any damages resulting from their application. California Sugar & White Pine Co. v. Director General, as Agent, 73 I. C. C. 338, 339.

(h) Contention that rates from points in United States to points in Mexico, increased under General Order No. 28 of director general, were unlawful since laws of Mexico required publication of increased rates for 30 days before becoming effective, not sustained. Rates assailed were lawfully established under acts administered by this commission, which is without jurisdiction to determine whether or not they were lawfully established under laws of Mexico. Greene Cananea Copper Co. v. Director General, as Agent, 80 I. C. C. 121.

(i) In International Nickel Co., 66 I. C. C., 627, and other cases, it has been held that the commission has no jurisdiction to prescribe joint rail rates between points in United States and adjacent foreign countries; that its territorial jurisdiction is coextensive with that of the Federal Government; that commission's orders can be enforced against American lines only; that in fixing future rates it can deal only with service up to or from international border; but that as assessment of unreasonable rates is a tort it can award reparation against American lines parties to such rates to or from points in United States and points in adjacent foreign countries.

Boston Wool Trade Asso. v. A., T. & S. F. Ry. Co., 83 I. C. C. 445, 449.

(j) The commission has no jurisdiction to prescribe conditions of contract of carriage entered into at point in adjacent foreign country so far as movement to border is concerned; or of misrouting by carrier prior to receipt of shipment by American carrier at border point. This is equally applicable to shipment from nonadjacent foreign country up to time American rail carrier receives shipment. Boston Wool Trade Asso., v. A., T. & S. F. Ry. Co., 83 I. C. C., 445, 449.

ALL OTHER CITATIONS

I. C. C. v. H. S. Co., 224 U. S. 474, 484, 32 Sup. Ct. 556, 56 L. Ed. 849; Lykes Steamship Line v. Commercial Union, 13 I. C. C. 310, 315; Eagle Pass Lumber Co. v. National Railways of Mexico, 25 I. C. C. 5; Humboldt S. S. Co. v. White Pass & Yukon Route, 25 I. C. C. 136, 140; Fullerton Lumber & Shingle Co. v. B., B. & B. C. R. R. Co., 25 I. C. C. 376, 378; Young & Son v. C. P. Ry. Co., Unrep. Op. A-35; Rates on Soda Ash and Other Commodities, 28 I. C. C. 613, 615; The Essex Terminal Railway File No. 24129; Grand Lake Co. v. M. C. R. R. Co., Unrep. Op. A-573; International Paper Co. v. D. & H. Co., 33 I. C. C. 270, 272, 273, 274; International Paper Co. v. D. & H. Co., 33 I. C. C. 270, 274; Rates on High Explosives to G. T. Ry. System Stations, 33 I. C. C. 567, 569, 570; Gold Stamp Mining Co. v. G. N. Ry. Co. Unrep. Op. 1978; Benjamin v. M. C. R. R. Co. Unrep. Op. 2025; Big Basin Lum. Co. v. S. P. Co., 37 I. C. C. 730, 737; Fairmont Creamery Co. v. Adams Express Co., Unrep. Op. 2248; Emery & Co. v. B. & M. R. R., 38 I. C. C. 636, 637; Aetna Powder Co. v. Wabash R. R. Co., 39 I. C. C. 199, 201; Burke v. Gulf, C. & F. Ry. Co. (Mun. Ct., N. Y.), 147 N. Y. Supp. 794; Houston, E. & W. T. Ry. Co. v. Inmann et al. (Eex. Civ. App.), 134 S. W. 275; Best v. Great Northern Ry. Co., 159 Wis. 429; 150 N. W. 484; United States v. Grand Trunk Ry. Co. of Canada (D. C.,) 225 Fed. 283, 285; Texas & P. R. R. Co. v. I. C. C., 162 U. S. 197, 16 Sup. Ct. 666, 40 L. Ed. 940; Aldrich v. Atlantic Coast Line R. Co., 89 S. E. (S. C. 1916), 315, 316; Fairmont Creamery Co. v. Adams Exp. Co., 43 I. C. C. 724; Hill v. N. C. & St. L. Ry., 44 I. C. C. 582, 588; Lake and Rail Rate Cancellations (No. 3), 44 I. C. C. 745, 748; Carlowitz & Co. v. C. P. Ry., 46 I. C. C. 290, 292; Car Service Regulations, 50 I. C. C. 620, 623; Eastern Car Co. (Ltd.) v. C. G. Rys., 51 I. C. C. 627, 629; Carey Mfg. Co. v. G. T. W. Ry. Co., 36 I. C. C. 203; Affirming International Paper Co. v. D. & H. Good v. G. N. Ry., 48 I. C. C. 435; Heated Co., 33 I. C. C. 270; Commercial Club of Omaha v. B. & O. R. R., 52 I. C. C. 205, 258; Booth Fisheries Company v. American Express Co., 53 I. C. C. 735, 736; Galveston, H. & S. A. Ry. Co. v. Woodbury et al., 41 Sup. Ct. 114; Quintal & Lynch (Ltd.) v F. E. C. Ry. Co., 57 I. C. C. 289, 290; Increased Rates, 1920, 58 I. C. C. 220, 254; Payment of Charges in U. S. Currency, 59 I. C. C. 263, 264; Lake Superior Paper Co. (Ltd.) v. Director General, 61 I. C. C. 709, 718; Waco Chamber of Commerce v. Director General, as Agent 73 I. C. C. 708, 709; Southern Acid and Sulphur v. A. & N. M. Ry. Co., 74 I. C. C. 641, 642; Dexter & Carpenter Inc. v. Davis 281 Fed. 385; American Trading Co. v. Director General as Agent, 78 I. C. C. 387, 391. Aunt Jemima Mills Co. v. Director General, as Agent, 83 I. C. C. 549, 550; Keith Co. v. Director General, as Agent, 83 I. C. C. 167.

ADVANCED RATES

I. CONTROL AND REGULATION.
- §1. Jurisdiction of Commission.
  - (1) Inquiry into reasonableness.
  - (2) Power to require advance.
  - (3) Prescribe minimum rate.
  - (4) To suspend advance.
  - (5) To suspend reduction.
  - (6) Elimination of water competition.
- §2. Limitation of power.

II. JUSTIFICATION OF INCREASE.
- §2½. In general.
- §3. Burden of proof.
- §4. Effect.
- §5. Right to advance.
  - (½) In general.
  - (1) To avoid reducing other rates.
  - (1½) Decline in tonnage.
  - (2) To equalize rates.
  - (2½) Fourth section violations.
  - (3) To preserve commodity relationship.

(4) Unreasonably low prior rate.
(5) Congestion of traffic.
(5½) Government Initiated Rates.
(6) Erroneous prior rate.
(7) Expense of competition.
(7¼) Low or high state rate.
(7½) Paper rates.
(8) To prefer particular locality.
(9) Inadequate facilities.
(9½) Retention of differentials.
§6. Right to earn.
(½) In General.
(1) On bona fide investment.
(2) On unearned increment.
(3) On reproduction value.
(4) On surplus.
(5) For permanent improvements.
(6) All traffic will bear.
(7) Cost of insurance.
III. EVIDENCE.
§6½. In general.
§7. Change in conditions.
(1) In general.
(2) Increased operating expenses.
(3) Impairment of credit.
(4) Cessation of competition.
(5) Competition in general.
(6) Disputes concerning visions.
(7) Lack of revenue.
(8) Percentage increases.
(9) Government advances.
§8. Presumptions.
(1) Continuance of prior rate.
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§8½. Comparisons.
§8½a. Combination rule.
§9. Concerted action.
§9½. Double advances.
§10. Economy of management.
§10½. Fractions.
§10½a. Physical valuation.
§11. Scientific management.
§11½. Differentials or rate relationship.
§12. Branch lines.
(1) Operation.
(2) Purchase.
§13. Detriment to shipper.
§14. Benefit to industry.
§14½. Motive of carrier.
§14¾. Previous decision of Commission.
§15. Standard for judging advance.
§15½. Two-line haul.
§16. Uniformity of advance.
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IV. REASONABLENESS OF ADVANCED RATES.
§17. In general.
§18. Circumstances and conditions.
(½) In general.
(1) Low receipts per ton mile.
(2) Water competition.
(3) Heavy and uniform tonnage.
(4) Low grade commodity.
(5) Ratio of rate to value.
(6) To gain import duty.
(7) Rates in like territory.
(8) Circuitous route.
(9) Use of commodity.
(10) Increased divisions.
(11) Bulk.
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V. DISCRIMINATION THROUGH ADVANCE.
§19. In general.
§19¼. Legal rate.
VI. REMEDIES AND PROCEDURE.
§19½. In general.
§20. Injunctions.
§21. Investigations.
§21½. Orders.
VII. REPARATION.
§22. In general.
VIII. TARIFFS AND PUBLICATION.
§23. In general.
§24. Construction.

CROSS REFERENCES

See Demurrage §20; Mails; Proportional Rates; Through Routes and Joint Rates VI, §24; Water Carrier VI.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Jurisdiction of Commission.

See Interstate Commerce Commission I; Jurisdiction of Commission.

(1) Inquiry into Reasonableness.

CASES 1887-1908

(a) A carrier always has the power to put up rates, but the fact that it has the power scarcely affords sufficient reason for the institution of proceedings to determine whether other rates than those now existing would be sustainable. Harris v. Duval, Receiver, F. Ry. & Navigation Co., 2 I. C. C. 514.

(b) The act provides that all interstate rates shall be filed with the Commission, and requires annual reports of the operations and financial condition of all interstate carriers. When a schedule is filed announcing an advance of general application, for which no apparent reason exists, such action is a proper subject of investigation, and if it thereupon appears that the advance is unwarranted the Commission should exhaust whatever power it has to correct the injustice. In the Matter of Proposed Advances in Freight Rates, 9 I. C. C. 382.

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(c) In this connection it is wise to bear in mind that in proceedings under section 15, relating to suspended schedules proposing increases of rates, the issue is not solely whether the rate is just and reasonable, as appears from the fact that the section authorizes the Commission to enter upon a hearing concerning the "propriety" of a rate. This term is comprehensive enough to cover all the considerations entering into a rate, such as its reasonableness per se, its relative reasonableness, or its preferential or prejudicial character. The provision as to burden of proof would seem to mean simply that when the new rate is an increased rate, as to one issue only, namely, whether it is just or reasonable, the burden of proof shall be on the carrier. while, when the rate is an increased rate this particular issue is necessarily a part of the case, it does not follow that it must be the sole issue. Even though the Commission is always to consider whether an increased rate is just and reasonable, it is not precluded from considering the rate from other viewpoints, such as that of its preferential or discriminatory character. Wickwire Steel Co. v. N. Y. C. & H. R. R. Co., 30 I. C. C. 415, 420.

(d) The commission may institute an investigation without first suspending the tariffs involved. The Fifteen Per Cent Case, 45 I. C. C. 303, 310.

(e) Contention that rates from points in United States to a point in Mexico, increased under General Order No. 28 of director general, were unlawful since laws of Mexico required publication of increased rates for thirty days before becoming effective not sustained. Rates assailed were lawfully established under acts administered by commission, which is without jurisdiction to determine whether or not they were lawfully established under laws of Mexico. Greene Cananea Copper Co. v. Director General, as Agent, 80 I. C. C. 121.

ALL OTHER CITATIONS

Michigan Buggy Co. v. G. R. & I. Ry. Co., 15 I. C. C. 297, 299; In Re Advances in Rates, Eastern Case, 20 I. C. C. 243, 248; In Re Advances on Coal to Lake Ports, 22 I. C. C. 604, 612; Arlington Heights Fruit Co. v. S. P. Co., 175 Fed. 141, 142;In Re Advances on Barley, 24 I. C. C. 664, 669; In Re Advances on Hay, 25 I. C. C. 680, 681; In Re Suspension of Western Classification No. 51, 25 I. C. C. 442, 498; Wharton Steel Co. v. D., L. & W. R. R. Co., 25 I. C. C. 303, 313; New England Investigation, 27 I. C. C. 560, 617; Wickwire Steel Co. v. N. Y. C. & H. R. R. R. Co., 27 I. C. C. 168; 169; Switching at Galesburg, Ill., 31 I. C. C. 294, 297; Ellicott Brick Co. v. B., R. & P. Ry. Co., Unrep. Op. A-560; Transcontinental Commodity Rates, 32 I. C. C. 449, 451; Live Stock Rates from Colorado Points to Omaha, 35 I. C. C. 682, 689; 1915 Western Rate Advance Case, 35 I. C. C. 497, 562; 1915 Western Rate Advance Case, 35 I. C. C. 497, 562; Excelsior from St. Paul, Minn., 36 I. C. C. 349, 364, 365; Fresh Meat and Packing House Product Rates, 38 I. C. C. 665, 666; Eastern Export Iron and Steel Cases, 43 I. C. C. 5, 11; Bituminous Coal to C. F. A. Territory, 46 I. C. C. 66, 109; Holt Mfg. Co. v. S. P. Co., 51 I. C. C. 397, 398; Virginia Iron Coal & Coke Co. v. Director General, 53 I. C. C. 583-586; Michael E. Goss v. Director General, 58 I. C. C. 169, 173; Green Cananea Copper Co. v. Director General, as Agent, 80 I. C. C. 121.

§1(2). **Power to Require Advance.**

CASES 1887-1908

(a) The Interstate Commerce Commission cannot compel a railroad company to increase its rates, which are supposed to be so low as to be ruinous to itself or its rivals. Re Chicago St. P. & K. C. R. Co. (Com.), 2 I. C. R. 137.

(b) The Commission has no power to

compel a railroad company to increase its rates, which are supposed to be so low as to be ruinous to itself or to its rivals. Re St. Paul, Chicago & Kansas City R. Co., 2 I. C. C. 137.

(c) The Commission has no power and authority in this proceeding to order other carriers not parties to this proceeding to raise their rates on pig iron transported from Youngstown and Cleveland, Ohio, to New England points in order to overcome the difference in the cost of production of pig iron now existing against petitioner; nor would the Commission enter upon the consideration of any such subject in a proceeding to which such carriers were not parties and in which such localities sought to be burdened with higher rates, for example. Youngstown and Cleveland, Ohio, had no opportunity to be heard; and the findings of fact in the present proceeding, which show that the rates already charged petitioner by the defendants are in themselves, as well as relatively, just and reasonable rates, demonstrate that the Commission could not order the defendants to lower these rates from Poughkeepsie to all points on the Boston & Albany Road one half, and to Holyoke nearly one half, in order to overcome the difference in the cost of production of pig iron now existing against petitioner. The Poughkeepsie Iron Co. v. N. Y. C. & H. R. Co., 3 I. C. R. 248.

ALL OTHER CITATIONS

Kansas City Transportation Bureau v. A., T. & S. F. Ry. Co., 15 I. C. C. 491, 497; Merchants' Dispatch Storage Co. v. I. C. R. R. Co., 17 I. C. C. 98, 102; Boileau v. P. & L. E. R. R. Co., 22 I. C. C. 640, 654; In Re Advances on Fresh Meats, 23 I. C. C. 652, 655.

§1. (3) Prescribe Minimum Rate.

ALL CITATIONS

Percy Kent Co. v. N. Y. C. & H. R. R. Co., 15 I. C. C. 439, 442.

§1. (4) To Suspend Advance.

See Suspended Rates.

Important Cases Since 1908

(a) Since the amendment of 1910 any person can, upon making a sufficient showing of unreasonableness or unlawful discrimination, secure the suspension of any proposed rate. Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R., 51 I. C. C. 635, 643.

ALL OTHER CITATIONS

In Re Investigation of Rates on Lumber, 21 I. C. C. 16, 17; In Re Rates on Plaster and Gypsum Rock, 27 I. C. C. 67, 70; Wickwire Steel Co. v. N. Y. C. & H. R. R. Co., 27 I. C. C. 168, 169; The New England Investigation, 27 I. C. C. 560, 614; Rates on Lumber and Other Forest Products, 30 I. C. C. 371, 373; Sawyer & Austin Lumber Co. v. St. L., I. M. & S. Ry. Co., Unrep. Op. A-481; Wickwire Steel Co. v. N. Y. C. & H. R. R. Co., 30 I. C. C. 415, 416, 420; Switching at Galesburg, Ill., 31 I. C. C. 294, 296, 297; Class Rates Between Stations in Louisiana, 33 I. C. C. 302, 303; Atchison, Topeka & Santa Fe Ry. Co. v. Kansas City Stock Yards Co., 33 I. C. C. 92, 101; Class Rates Between Stations in Louisiana, 33 I. C. C. 302, 303; Lumber from Arkansas City, Ark., 43 I. C. C. 423, 427; The Fifteen Per Cent Case, 45 I. C. C. 303, 317.

§1 (5) To Suspend Reduction.

IMPORTANT CASES SINCE 1908

(a) The Commission decides that it has the power to suspend reductions of rates in any case where such suspension will operate to prevent an apparent discrimination. However, a prima facie case clearly and affirmatively persuasive should be presented before the power to suspend is exercised. This, not having been done, the complaint is dismissed. In Re Suspension of Rates on Packing House Products, 21 I. C. C. 68, 70.

§1. (6) Elimination of Water Competition.

IMPORTANT CASES SINCE 1908

(a) Act to Regulate Commerce, §4, providing that when a carrier by rail shall, in competition with a water route, reduce rates, it shall not be permitted to increase such rates unless after hearing by the Interstate Commerce Commission it shall be found that the proposed increase rests on changed conditions other than the elimination of water competition. HELD: When construed in the light of the purpose of its enactment, of the earlier paragraphs of the section, and of other sections in the Act to Regu-

late Commerce desired to prevent unjust discrimination, not to apply where reduction in rates was, with the approval of the commission, given after hearing, by order entered on application of the carrier for relief from operation of the section, the specific purpose of which was to prevent discrimination by charging less for the longer haul, unless in the opinion of the commission the circumstances made it just. Skinner & Eddy Corp. v. V. S., 39 Sup. Ct. Rep 375.

(b) Changed conditions found by Interstate Commerce Commission HELD to be something other than the "elimination of water competition," which Congress intended should not justify raising rates reduced by a carrier by rail in competition with a water route. Skinner & Eddy Corp. v. V. S., 39 Sup. Ct. Rep. 375.

§2. Limitation of Power.

IMPORTANT CASES SINCE 1908

(a) Commission has no authority to approve rate increases with a view to stimulating business. Five Per Cent Case, 31 I. C. C. 351, 426.

(b) When investigation precedes the suspension of proposed increased rates, the Commission cannot, as a matter of law, require the cancellation of such rates at the time. The Fifteen Per Cent Case, 45 I. C. C. 303, 317.

ALL OTHER CITATIONS

In Re Advances in Rates, Eastern Case, 20 I. C. C. 243, 248; Wharton Steel Co. v. D., L. & W. R. R. Co., 25 I. C. C. 303, 313; Coal Rates from Oak Hills, Colo., 30 I. C. C. 505, 508; Harmon & Co. v. N. Y., N. H. & H. R. R., 50 I. C. C. 455, 456.

II. JUSTIFICATION OF INCREASE.

§2½. In General.

CASES 1887-1908

(ab) Carriers making an advance in rates should be able to present a satisfactory justification of such advance, particularly when the old rates have been of many years' standing and the advance is great and the traffic affected is of large and constant volume and of vital importance to a large section of country. Railroad Commission of Florida v. S. F. & W. R. Co., 3 I. C. C. 688, 700.

(cde) An increase which results solely from the withdrawal of a lower export rate, or from the maintenance of a published tariff, cannot ordinarily be condemned as unlawful. Railways are entitled to share in the general prosperity of the country; they have suffered severely in the past and should be allowed to recuperate while that prosperity continues; but it does not follow necessarily that they are entitled to advance former rates which were not reduced on account of financial depression. Re Proposed Advances in Freight Rates 9. I. C. C. 382.

(fg) Commission instituted an investigation as to advances in freight rates. Under the competitive conditions heretofore prevailing tariff rates on grain and grain products from Chicago to New York have not exceeded 17½c during the last four years, except for a brief period, while the actual rates have been materially and sometimes greatly below that figure. The legality of the recent advance of this rate to 20c depends upon two considerations: First, whether the increased rate is reasonable, having reference to the cost and value of the service, and as compared with rates on other commodities; and, second, whether it is unreasonable in the absolute, regarded as essentially a tax upon the people who ultimately pay the transportation charge. A rate of 17½c on grain and grain products from Chicago to New York is not shown to be unremunerative or disproportionate as compared with other rates. Whether tested by cost of movement, by what the carriers have voluntarily accepted in the past, or by comparison with rates on somewhat similar kinds of traffic, it is not unprofitable nor unreasonably low. It is from 2c to 5c higher than the rates actually received in recent years, and nothing appears in the financial condition of the carriers to justify a greater advance. HELD: Respondent carriers should readjust their rates on grain and grain products in accordance with the views herein expressed on or before May 15, 1903. In the Matter of Proposed Advances in Freight Rates, 9 I. C. C. 382.

(fga) Transportation by rail is a quasi-public service, not to be sold to the highest bidder, and the charges therefor are not controlled by the law of supply and demand. Freight rates do not in fact rise and fall with changes in prices of market commodities, though they are often affected by commercial conditions; and when reductions have

been made on account of commercial depressions, it is difficult to see why corresponding advances may not properly be made with the return of business prosperity. In the Matter of Proposed Advances in Freight Rates, 9 I. C. C. 382.

(h) When a railroad company advances a rate which has been for sometime in force, the fact of its continuance is in the nature of an admission against that company, which tends to show the unreasonableness of the advance. Central Yellow Pine Asso. v. Illinois C. R. Co., 10 I. C. C. 505.

(ij) The advances in freight rates by defendants were not justified by the increased cost of operating the roads, where, although the operating expenses have constantly increased, they have been enlarged by the inclusion therein of large expenditures for permanent improvements, and defendants' gross earnings have increased from year to year to such extent as to result in a constant increase of net earnings. Central Yellow Pine Asso. v. Illinois C. R. Co., 10 I. C. C. 505; Tift v. Southern R. Co., 10 I. C. C. 548.

(kl) Carriers have no right to advance a rate which is already reasonably high and which yields an adequate return for the service rendered, solely because additional revenue is needed. Tift v. Southern Ry., 10 I. C. C. 548.

(m) Where an advance in rates which have been long maintained and the evidence shows that the traffic affected is large, important and constantly increasing, the advance will be held unjust, unless it is satisfactorily explained. Tift v. Southern Ry., 10 I. C. C. 548, 581.

IMPORTANT CASES SINCE 1908

(n) Roads should not be permitted to make a general rate increase until they have eliminated unlawful concessions, rebates, and preferences. Industrial Railways Case, 29 I. C. C. 212, 218.

(o) Before they may fairly ask the general public to share further in casting their burdens, the railroads must themselves properly conserve their sources of revenue by making every service rendered by them contribute reasonably to their earnings. Industrial Railways Case, 29 I. C. C. 212, 218.

(p) When an important and long-standing rate relation is sought to be changed, the justification must be clear and convincing. Reshipping Rates on Grain from Omaha, 32 I. C. C. 590, 594.

(q) Rates cannot be justified by mere general statements made by a witness. Some concrete and persuasive evidence must ordinarily be adduced. Lumber from Michigan Points, 36 I. C. C. 184, 189.

(r) The consideration of a general increased rate case is necessarily a study of tendencies. The Fifteen Per Cent Case, 45 I. C. C. 303, 314.

(s) Increases in individual rates must of necessity occur under any plan of unification where wide disparities and inconsistencies exist, but these are justified only to the extent that they are necessary to secure a harmonious rate structure and to avoid any undue depletion of carriers' revenues. Memphis-Southwestern Investigation, 77 I. C. C., 500.

ALL OTHER CITATIONS

Rail-and-Lakes Rates from Central Freight Asso. Territory, 26 I. C. C. 671, 674; Louisville & Nashville Railroad Coal & Coke Rates, 26 I. C. C. 20, 24; Iowa-Minnesota Cement Rates, 28 I. C. C. 477, 482; Rates on Tomatoes from Jacksonville to Kansas City, 29 I. C. C. 522; New England and Canadian High Explosives Rates, 29 I. C. C. 697, 698; Transcontinental Rates from Group F, 28 I. C. C. 1, 6; Gottron Bros. Co. v. G. & W. R. R. Co., 28 I. C. C. 38, 46; New York and Cheese Rates, 28 I. C. C. 330; Grain Rates in C. F. A. Territory, 28 I. C. C. 549, 557; Mary Mac Plantation Co v. Y. & M. V. R. R. Co. A-109; Wickwire Steel Co. v. N. Y. C. & H. R. R. Co., 30 I. C. C. 415, 419; Switching at Baltimore, Md., 30 I. C. C. 581, 583; The Five Per Cent Case, 31 I. C. C. 351, 354; California-Nevada Lumber Rates, 31 I. C. C. 464; Merchants' & Mfr's. Asso. v. B. & O. R. R. Co., 30 I. C. C. 388, 389; Chamber of Commerce of Washington v. B. & O. R. R. Co., 30 I. C. C. 446; Judd & Detweiler, Inc., v. B. & O. R. R. Co., 31 I. C. C. 455, 456; The Five Per Cent Case (Diss. Op.), 32 I. C. C. 325, 333, 335, 340; Cement Rates from Salt Lake City, 33 I. C. C. 5; The Cummins Amendment, 33 I. C. C. 682, 693; Between Shreveport and Texarkana, 32 I. C. C. 180, 182; Freight Rates from Minnesota Points, 32 I. C. C. 361, 365; Gregg & Co. v. N. Y. C. & H. R. R. R. Co., Unrep. Op. A-768; 1915 Western Rate Advance Case, 35 I. C. C. 497, 562; Eastern Live Stock Case, 36 I. C. C. 675, 703; Lettuce from Texas Points, 36 I. C. C. 511, 513; Morris & Co. v. U. P. R. R.

Co., 36 I. C. C. 540; Pig Iron from Virginia Furnaces, 36 I. C. C. 552, 554, 555; Official Classification Ratings, 37 I. C. C. 166, 188; 1915 Western Rate Advance Case, 37 I. C. C. 114, 151, 152; Colorado Class Rates, 37 I. C. C. 203, 208; Eagle Ice Co. v. C., M. & St. P. Ry. Co., 37 I. C. C. 250, 255; Coal to Cleburne and other Points, 39 I. C. C. 617, 618; Stonega Coke & Coal Co. v. L. & N. R. R. Co., 39 I. C. C. 523, 535; Cement to Texas Points, 40 I. C. C. 94, 100; Southeastern Lumber, 42 I. C. C. 548, 558; Pacific Lumber Co. v. N. W. P. R. R., 51 I. C. C. 738, 770; Anaconda Copper Mining Co. v. Director General, 57 I. C. C. 723, 726; Newspapers on Passenger Cars, 57 I. C. C. 743; Atlantic Refining Co. v. Director General, as Agent, 58 I. C. C. 46, 47; Increased Rates, 1920, 58 I. C. C. 220; Mine Timbers from Missouri to Illinois Points, 58 I. C. C. 545, 548; Arkansas Jobbers & Mfgrs. Asso. v. Director General, 59 I. C. C. 662, 670; Abbot v. Director General, 61 I. C. C. 296, 299; Cedar Rapids Gas Co. v. Director General, 62 I. C. C. 636, 641; Barnett Oil & Gas Co. v. Director General, 61 I. C. C. 568, 570; Leavenworth Chamber of Commerce v. Director General, 62 I. C. C. 697, 698; Switching Charge To and From South Tacoma, 61 I. C. C. 128, 129; Substitution for increases in Rates, 61 I. C. C. 518, 520; Wilhoit Oil Co. v. Director General, as Agent, 62 I. C. C. 313; Naval Stores Between South Atlantic Ports, 63 I. C. C. 450; New York Central Railroad Company and Other Railroad Companies in New York, 64 I. C. C. 55; Reparation as Relating to Increase of Rates, 68 I. C. C. 5; Iron and Steel Articles from Ohio & Mississippi River Crossings, 73 I. C. C. 753.

§3. Burden of Proof.

See Burden of Proof; Evidence I.

CASES 1887-1908

(a) Carriers making an advance in rates should be able to present a satisfactory justification of such advance, particularly when the old rates have been of many years' standing and the advance is great and the traffic affected is of large and constantly increasing volume and of vital importance to a large section of country. R. R. Comm. of Fla. v. Savannah, F. & W. R. Co., 3 I. C. R. 688.

(b) A satisfactory justification must be made where large advances are made on old rates of long standing, where the traffic affected is large and constantly increasing and of vital importance to a large section of country. Railroad Commission of Florida v. Savannah, F. & W. R. Co. (Com.), 3 I. C. C. 688.

(c) Under the competitive conditions which heretofore prevailed, tariff rates on grain and grain products from Chicago to New York have not exceeded 17½ cents during the last four years, except for a brief period, while the actual rates have been materially and sometimes greatly below that figure. The legality of the recent advance of this rate of 20 cents depends upon two considerations: First, whether the increased rate is reasonable, having reference to the cost and value of the service, and as compared with rates on other commodities; and, second, whether it is reasonable in the absolute, regarded as essentially a tax upon the people who ultimately pay the transportation charge. Re Proposed Advances in Freight Rates 9 I. C. C. 382.

(d) Rates in force on freight articles from St. Louis, Mo., to Texas common points prior to March 15, 1903, afforded reasonable compensation to the carriers, and as they had been in effect for a long period, and the material advances of such rates on that date were made through concerted action of the carriers, justification for the advances should be clearly shown; but this is a general investigation, in which no complainant is demanding relief from some particular rate, and no particular rates have been investigated, and it does appear, moreover, that the financial condition of the respondents, especially those operating in Texas, is not favorable. While impressed with the belief that these advances in rates are improper, the Commission does not feel warranted in making an order condemning such advances in this proceeding. Rates from St. Louis to Texas Common Points 11 I. C. C. 238.

IMPORTANT CASES SINCE 1908

(e) For each rate, a carrier offers and obligates itself to perform a certain amount of service. If the service so offered and for a long time performed in consideration of that rate includes taking the property transported from a given point and delivering it at a given point, the delivery at that point is in no sense a "free service." The carrier may increase the rate or it may curtail the service performed for that rate, but

if such action is challenged it must bear the burden of showing that the new rate of service is reasonable and free from unjust discrimination. Rates in Chicago Switching District, 34 I. C. C. 234, 242.

(f) The burden resting upon carriers under section 15 of the Act to Justify Increases in the rates proposed by them and under suspension has always been regarded by the Commission as a substantial requirement in the law which can not be met by a merely perfunctory showing by the carriers. The propriety of such rates must be sustained by evidence of a probative nature showing satisfactory reasons for the increase and that the higher rates are reasonable. Echols & Co. v. A. & W. Ry., 34 I. C. C. 644, 646.

(g) "Propriety" is a broader and more inclusive term than "reasonable." 1915 Western Rate Advance Case, 35 I. C. C. 497, 589.

(h) While section 15, in defining the power of suspension, gives the Commission jurisdiction over any new "rate, fare, charges classification regulation or practice," the provision in the same section specifies only the "increased rate" in defining the carrier's duty as to burden of proof in such cases. The intention of Congress, however, as gleaned from the law and from the mischief to be remedied was to shift the burden of proof to the carrier to justify any change disadvantageous to the shipper existing at the time suspended schedule is filed. "Rate," "fare," and "charge," broadly speaking, denote the compensation of the carrier; "classification," "regulation," and "practice" are merely incidents of a rate, fare, or charge which serve to determine the amount, availability, or elasticity thereof, or of the value of the whole service rendered. By placing the burden of proof upon the carrier to justify a proposed increased rate, Congress placed the burden of proof upon the carrier to justify the propriety of stop-over changes. Stopping of Cars in Transit to Complete Unloading, 36 I. C. C., 130, 132.

(i) The burden of proof to show that a rate increased after January 1, 1910, is just and reasonable is not removed by a general permission of the Commission which did not approve any specific rate as reasonable in itself or as properly adjusted with respect to other rates; for it is the total rate which must be justified and not the amount of the increase. Globe Soap Co. v. A. & S. Ry. Co., 40 I. C. C. 121, 123.

(j) It is as much an increase of rate to give less service for the same amount as to charge a greater amount for the same service. Consolidation Coal Co. v. C. & O. Ry. Co., 60 I. C. C. 763, 767.

(k) The law places upon carriers the burden of showing that proposed increased rates are reasonable and otherwise lawful. The fact that they are made in accordance with a basis of long standing, while entitled to due consideration, is not of itself sufficient justification. Class and Commodity Rates from Illinois and Other States, 75 I. C. C. 59, 60; Silica from Southern Illinois, 73 I. C. C. 406, 408, 409; Butter Eggs and Dressed Poultry from Texas, 73 I. C. C. 466, 468.

(l) Explanation of increases is not justification. Linseed Oil from Edgewater, N. J., to C. F. A. Points, 74 I. C. C. 153, 154.

(m) Proposed increased rates on cement from Oglesby, La Salle, and Dixon, Ill., and Hannibal and Ilasco Junction, Mo., to certain Kentucky junction points found not justified. Carriers made no attempt to justify the proposed rates, which would result in violations of both the aggregate of intermediate and long and short haul provisions of section 4 of the Act, but merely explained the circumstances which led to their publication. Cement from Illinois and Mississippi Points, 77 I. C. C. 164.

(n) The commission is not impressed by a desire to establish increased rates upon wholly technical grounds, and the fact that carriers failed to take full measure of increase which it authorizes can not, in the absence of any showing that existing rates are unduly low or unlawful, sustain the burden of proof which rests upon them. Fruits, Melons, and Vegetables from the Southwest, 77 I. C. C., 180, 182.

(o) Where rates have been increased January 1, 1910, burden of proof to show their reasonableness is upon defendant carriers. Elem Coal Co. v. L. V. R. R. Co., 80 I. C. C. 647.

ALL OTHER CITATIONS

Oregon & Washington Lumber Mfrs. Assn. v. U. P. R. R. Co., 14 I. C. C. 1, 13; Pacific Coast Lumber Mfrs. Assn. v. N. P. Ry. Co., 14 I. C. C. 23, 39; In Re Advances in Rates, Eastern Case, 20 I. C.

C. 243, 255; In Re Advances in Rates, Western Case, 20 I. C. C. 307, 311, 314; In Re Advances on Lumber and Forest Products, 21 I. C. C. 455, 456; Victor Mfg. Co. v. S. Ry. Co., 21 I. C. C. 222, 226; U. S. Leather Co. v. S. Ry. Co., 21 I. C. C. 323, 325; Ohio Allied Milk Products v. Erie R. R. Co., 21 I. C. C. 522, 528; In Re Advances in Rates by Carriers' Operating Between the Mississippi and Missouri Rivers, 21 I. C. C. 546, 555; In Re Advances on Locomotives, 21 I. C. C. 103, 111; In Re Advances on Grain, 21 I. C. C. 22, 35; In Re Advances on Iron and Steel Articles, 22 I. C. C. 486; Davis Sewing Machine Co. v. P. C. C. & St. L. Ry. Co., 22 I. C. C. 291; Citizens of Somerset v. Washington Ry. & Elec. Co., 22 I. C. C. 187, 188; In Re Advances in Rates for the Transportation of Fluid Milk, 23 I. C. C. 500; In Re Advances in Rates on Soft Coal, 23 I. C. C. 518; Arlington Heights Fruit Exchange v. S. P. Co., 21 I. C. C. 671, 672; In Re Advances on Barley, 24 I. C. C. 664, 670; In Re Advances on Salt, 25 I. C. C. 610; Lake-and-Rail Class Rates from Pennsylvania, 26 I. C. C. 669, 671; Rates on Linseed Oil, 26 I. C. C. 265, 271; Advances in Rates on Cottonseed from Oklahoma to Little Rock, Ark., 26 I. C. C. 211, 212; In Re Fence Posts from Arkansas Stations to Kansas City, 26 I. C. C. 42, 43; Rates on News Print Paper from Sault Ste. Marie, Ont., 26 I. C. C. 13, 15; Advances on Iron Ore, 26 I. C. C. 675, 676; Lake-and-Rail Rates from Pennsylvania Points, 26 I. C. C. 669, 671; Collingwood Brick Co. v. P. M. R. R. Co., 26 I. C. C. 572, 573; Coal Rates on the Stony Fork Branch, 26 I. C. C. 168, 174; In Re Advance on Butter and Eggs from Topeka to the Southeast, 27 I. C. C. 692, 694; Board of R. R. Comrs. of Montana v. D. & R. G. R. R. Co., 27 I. C. C. 522, 523; Lumber Rates from Memphis and Other Points to New Orleans, 27 I C. C. 471, 486; Western Fruit Jobbers' Assn. v. C., R. I. & P. Ry. Co., 27 I. C. C. 417, 418, 426; Pig Iron Rates from Virginia to Pennsylvania, 27 I. C. C. 343; Rates on Tin Cans and Other Commodities, 27 I. C. C. 298, 300; Virginia-Carolina Chemical Co. v. A. C. L. R. R. Co., 27 I. C. C. 234; Wickwire Steel Co. v. N. Y. C. & H. R. R. R. Co., 27 I. C. C. 168; 170; Wisconsin Steel Co. v. P. & L. E. R. R. Co., 27 I. C. C. 152, 163; Shoal Creek Coal Co. v. T., St. L. & W. R. R. Co., 27 I C. C. 107, 109; In Re Advances in Break-bulk Rates, 27 I. C. C. 78, 80; In Re Advances on Coal Within Chicago Switching District, 27 I. C. C. 71, 77; In Re Rates on Plaster and Gypsum Rock, 27 I. C. C. 67, 68; People's Fuel & Supply Co. v. G. T. W. Ry. Co., 27 I. C. C. 24, 29; Brick Rates from Ohio Points to Huntington, W. Va., 28 I. C. C. 292 297; Rates on Plaster and Gypsum Rock, 27 I. C. C. 67, 68; Break-bulk Rates on Grain, 27 I. C. C. 78, 80; Wisconsin Steel Co. v. P. & L. E. R. R. Co., 27 I. C. C. 152, 163; Wickwire Steel Co. v. N. Y. C. & H. R. R. R. Co., 27 I. C. C. 168, 170; Virginia-Carolina Chemical Co. v. A. C. L. R. R. Co., 27 I. C. C. 234, 236; Memphis Freight Bureau v. L. & N. R. R. Co., 26 I. C. C. 402; Robinson Land & Lumber Co. v. M. & O. R. R. Co., 26 I. C. C. 427, 429; Rates on Asphalt and Asphaltum, 26 I. C. C. 614, 616; In Re Advance in Demurrage Charges, 25 I. C. C. 314, 323; In Re Advances on Hops, 25 I. C. C. 16; Bristol Door & Lumber Co. v. N. & W. Ry. Co., 25 I. C. C. 87, 89; In Re Milling-In-Transit Regulations, 25 I. C. C. 90, 92; In Re Advances on Corn, 25 I. C. C. 46 47; In Re Advances on Knitting Factory Products, 25 I. C. C. 634, 639; Deming Lumber Co. v. S. P. Co., 24 I. C. C. 598, 599; In Re Advances on Sand 24 I. C. C. 249, 253; Lumbermen's Exchange of St. Louis v. A. & S. R. R. Co., 24 I. C. C. 220; R. R. Com. of Oregon v. S. P. Co., 24 I. C. C. 273, 274; In Re Advances on Barley, 24 I. C. C. 664, 669; Arlington Heights Fruit Exchange v. S. P. Co., 24 I. C. C. 671, 672; In Re Advances on Fruits and Vegetables, 24 I. C. C. 164, 165; Commodity Rates Between Missouri River Points, 20 I. C. C. 265, 267; Missouri River Building Stone Rates, 28 I. C. C. 269 272; Kansas-Iowa Brick Rates, 28 I. C. C. 285, 287; Rates on Crushed Stone, 30 I. C. C. 22, 23, 24; Rates on Crushed Stone from McCook and Thornton Ill., 29 I. C. C. 136, 137; Duluth Log Rates 29 I. C. C. 420, 421; Rates on Potash and Other Commodities, 29 I. C. C. 626, 628; Gottron Bros. Co. v. G. & W. R. R. Co., 28 I. C. C. 38, 46; Commodity Rates Between Missouri River Points, 28 I. C. C. 265, 267; Class and Commodity Rates from Stations in Maine, 31 I. C. C. 18, 22; Corporation Com. of Oklahoma v. A., T. & S. F. Ry., 31 I. C. C. 532, 535, 536; Empire Coke Co. v. B. & S. R. R. Co, 31 I C. C. 573, 582; Merchants' & Mfrs. Asso. v. B. & O. R. R. Co., 30 I. C. C. 388, 389; Cement Rates from Mason City, 30 I. C. C. 426, 428; Chamber of Commerce of Washington, D. C., v. B. & O. R. R., 30 I. C. C. 446, 447, 448; Coal Rates from Oak Hills, Colo., 30 I. C. C.

505, 508; Page Milling Co. v. N. & W. Ry. Co., 30 I. C. C 605, 611; The Five Per Cent Case (Diss. Op.), 32 I. C. C. 325, 333, 351, 355, 349; Freight Rates from Minnesota Points, 32 I. C. C. 361, 363; Cement Rates from Points in Illinois, 32 I. C. C. 369, 371. 374; Northbound Rates on Hardwood, 32 I. C. C. 521, 524; Rules Governing Shipments of Freight in Peddler Cars, 32 I. C. C. 428, 433; Transcontinental Commodity Rates, 32 I. C. C. 449, 451; Class and Commodity Rates To and From Quincy, Ill., 32 I. C. C. 471, 477; The Five Per Cent Case, 31 I. C. C. 351, 425; Corporation Comm. of Okla. v. A., T. & S. F. Ry. Co., 31 I. C. C. 532, 536; Lumber Rates from Helena, Ark., and other points, 33 I. C. C., 297, 301; Bituminous Coal Rates to Baltimore and Other Cities 33 I. C. C. 307, 317; Chamber of Commerce, Houston, Texas, v. I. & G. N. Ry. Co. 32 I. C. C. 247, 256, 257; Lumber Transit Privileges at Buffalo, N. Y., 33 I. C. C. 601 604; Gregg & Co. v. N. Y. C. & H. R. R. Co., Unrep. Op. A-768; Rates on Hay to Chicago, 34 I. C. C. 150, 152; Rates in Chicago Switching District, 34 I. C. C. 234, 242; Rates on Lumber from Southern Points, 34 I. C. C. 652, 680; Rate on Hogs, 34 I. C. C. 627; Rates on Lumber from Southern Points, 34 I. C. C. 680; Regulations as to Storage of Dairy Products, 35 I. C. C. 469, 471; 1915 Western Rate Advance Case, 35 I. C. C. 497, 561; Lighterage and Storage Regulations at New York, 35 I. C. C. 47, 66, 67; Regulations as to Storage of Dairy Products, 35 I. C. C. 469 471; Switching Charges to South Omaha, Neb., 36 I. C. C. 198, 201; Coal Switching Reparation Cases in Chicago, 36 I. C. C. 226 236; Peppard Seed Co. v. A., T. & S. F. Ry., 36 I. C. C. 311, 312; East Jersey R. R. & T. Co. v. C. R. R. of N. J., 36 I. C. C. 146, 149; Lettuce from Texas Points, 36 I. C. C. 511, 513; Omaha Packing Co. v. C., M. & St. P. Ry., 37 I. C. C. 378, 379; Holmes & Hallowell Co. v. G. N. Ry. Co., 37 I. C. C. 627, 639; Jackson Chamber of Commerce v. P. & R. Ry., 38 I. C. C. 233, 235; Swift & Co. v. M., L. & T. R. R. & S. S. Co., 38 I. C. C. 242, 243; Weinstock-Nichols Co. v. C., C., C. & St. L. Ry., 38 I. C. C. 288, 289; 1915 Western Rate Advance Case, 37 I. C. C. 114, 152, 153; Coal from Colorado and Wyoming Mines, 37 I. C. C. 430; Rate Increases in Western Classification Territory, 38 I. C. C. 94, 97; Hides to Boston, Mass., 38 I. C. C. 194, 195; National Dock & Storage Warehouse Co. v. B. & M. R. R., 38 I. C. C. 643, 650; Jacob Co. v. A., T. & S. F. Ry., 39 I. C. C. 411, 413; Union Sulphur Co. v. B. & O. R. R., 39 I. C. C. 349, 350; Bowie Lumber Co. v. M., L. & T. R. R. & S. S. Co., 39 I. C. C. 609, 610; Pacific Coast-Southwest Lumber, 40 I. C. C. 387, 394; Bancroft & Sons Co. v. N. Y., N. H. & H. R. R. Co., 40 I. C. C. 411, 416; Manure from Jersey City, N. J., 40 I. C. C. 465, 469; Globe Soap Co. v. A. & S. Ry. Co., 40 I. C. C. 121, 123; Cottonseed Products from Texas, 41 I. C. C. 333, 334; Hillerich & Son Co. v. I. C. R. R. Co., 41 I. C. C. 448, 449; Oil Barrels to Oklahoma, 41 I. C. C. 557, 559; New England Plaster, 41 I. C. C. 687, 703; Wabash Sand & Gravel Co. v. C. & E. I. R. R. Co., 42 I. C. C. 138, 142; Miller Bros. v. St. L. & S. F. R. R. Co., 42 I. C. C. 261, 266; Illinois Steel Co. v. C. & N. W. Ry., 42 I. C. C. 383; Lake-and-Rail Rate Cancellations, 42 I. C. C. 513, 520; Mississippi R. R. Comm. v. N. O. M. & C. R. R. Co., 42 I. C. C. 574, 576; Valley City Mil. Co. v. G. R. & T. Ry., 43 I. C. C. 75, 76; National Poultry, Butter & Egg Asso. v. B. & O. S. W. R. R. Co., 43 I. C. C., 392, 397; Fairmont Cramery Co. v. A., T. & S. F. Ry. Co., 43 I. C. C., 515, 517; Southeastern Cotton Goods, 43 I. C. C., 530, 536; Northern Potato Traffic Asso. v. B. & O. R. R., 43 I. C. C., 545, 546; McGowan-Forshee Lumber Co. v. F. A. & G. R. R., 43 I. C. C., 581, 584; Mayfield & G. County Com. v. I. C. R. R., 49 I. C. C., 421, 422; Green v. A. & V. Ry. Co., 43 I. C. C., 662, 664; Westbound Rail-and-Lake, 44 I. C. C., 424, 425; Haskell Mfg. Co. v. N. Y., N. H. & H. R. R., 44 I. C. C., 499, 500; Swift & Co. v. B. & O. R. R., 45 I. C. C., 8, 11; U. S. Brewing Co. v. M. C. R. R., 45 I. C. C., 67, 68; Britian Bros. v. St. L. & S. F. R. R., 45 I. C. C., 87, 89; Old Vincennes Distillery Co. v. B. & O. S, W. R. R., 45 I. C. C., 447, 448; Western Stoneware Co. v. C. B. & Q. R. R., 46 I. C. C., 331, 332; Indianapolis Cham. of Com. v. C., C., C. & St. L. Ry., 46 I. C. C. 547; 552; Syracuse Cham. of Com., v. M. C. R. R. 47 I. C. C., 14, 15; Switching Absorptions, 47 I. C. C., 583, 586; Grain Screenings Rating, 48 I. C. C., 576; Cordley & Hayes v. B. & M. R. R., 49 I. C. C., 11; New England Dry Goods, 49 I. C. C., 147, 155; Alabama Chemical Co. v. S. A. L. Ry., 49 I. C. C., 399, 400; Proposed Increases in New England, 49 I. C. C., 421, 454; Cement to Iowa Points, 49 I. C. C., 595, 596; Marsh & Truman Lumber Co. v. L. & N. R. R., 49 I. C. C., 605, 607; Showers Bros. Co. v. A. A. R. R. Co.,

48 I. C. C. 518, 519; Western Trunk Line Potatoes, 50 I. C. C. 407, 413; Coal from Arkansas and Other States, 49 I. C. C. 727; West Virginia Rail Co. v. I. C. R. R., 53 I. C. C., 21, 23; Northern Potato Traffic Asso. v. C. & N. W. Ry., 53 I. C. C., 100, 101; Advances on Coal Within Chicago Switching District, 53 I. C. C., 442, 453; Swift & Co. v. S. A. & A. P., 53 I. C. C., 515, 516; Monarch Paper Co. v. C. P., 53 I. C. C., 620, 621; National Tube Co. v. Lake Terminal Ry., 55 I. C. C., 469, 481; Northern Grain & Warehouse Co. v. Director General, 55 I. C. C., 488; Virginia-Caroline Chemical Co. v. Director General, 55 I. C. C., 583, 584; Portland Traffic & Transportation Assn. v. B. & M. Ry., 55 I. C. C. 733, 737; Charleston Ore. Co. v. S. A. L., 57 I. C. C., 551, 552; Atlantic Refining Co. v. Director General, as Agent, 58 I. C. C., 46, 48; Absorption of Terminal Charges at Galveston, Tex., 59 I. C. C., 490, 494; Carey Mfg. Co. v. Director General, as Agent, 59 I. C. C., 640, 643; Leavenworth Chamber of Commerce v. Director General, 62 I. C. C., 697, 698; Atlantic Ice & Coal Corp. v. Southern, 61 I. C. C., 111, 112; Switching Charge to and from South Tacoma, 61 I. C. C., 128, 129; Interchange Switching at Wichita, 61 I. C. C., 205, 207; Leavenworth Chamber of Commerce v. Director General, 62 I. C. C., 697, 698; Absorption of Switching Charges at Toledo, 62 I. C. C., 30, 31; National Livestock Shippers League v. A. T. & S. F. 63 I. C. C., 107, 117; Absorption of Switching Charges at Toledo, Ohio, 64 I. C. C., 8, 9; Miller Bros. v. St. L. & S. F. R. R., 64 I. C. C., 593, 595; Space Rental Charges on Cotton, 66 I. C. C., 121, 123; Brick from Texas Producing Points to Interstate Destinations, 69 I. C. C., 421; Class and Commodity Rates from Illinois and Other States, 73 I. C. C., 59. 60; Butter, Eggs, and Dressed Poultry from Texas, 73 I. C. C., 466, 468. Lawton Refining Co. v. Director General, as Agent, 73 I. C. C., 121; Wilbur Lumber Co. v. Director General, as Agent, 73 I. C. C., 152, 155; Coal from Kentucky, Tennessee and Virginia, 73 I. C. C. 447, 450; Bituminous Coal from Mines on the C. & N. R. R., 74 I. C. C. 723, 725; Linseed Oil from Edgewater (Undercliff, N. J.), to C. F. A. Points, 74 I. C. C., 154; Absorption of Charges between Croxton and Jersey City, 74 I. C. C., 329; Ice in Carloads, from Points in Illinois, Iowa, Michigan, Minnesota, and Wisconsin, to Points Within the Chicago District, 81 I. C. C., 30, 32; American Farm Bureau v. A. & R. R. R. Co., 80 I. C. C., 232, 233, 234; Sublimed Lead to Trunk Line Points, 58 I. C. C. 343; Trunk Line and Ex-Lake Iron Ore Rates 69 I. C. C. 589; Handling Charges at Certain Ports, 78 I. C. C. 4, 8; Anson, Gilkey & Hurd Co. v. S. P. Co., 78 I. C. C. 495, 511; Grain and Flaxseed from Twin Cities, 78 I. C. C. 575, 578; American Farm Bureau v. A. & R. R. R. Co., 80 I. C. C. 232, 233, 234; Elem Coal Co. v. L. V. R. R. Co., 80 I. C. C. 647; Ice to Points within Chicago District 81 I. C. C. 30, 32; Petroleum and Petroleum Products, 81 I. C. C. 71; Class Rates to and from Delaware Division Stations, 81 I. C. C. 758, 761; Minimum Class Rates from Atlantic Seaboard, 83 I. C. C. 711.

§4. Effect.

IMPORTANT CASES SINCE 1908

(a) Where the differences in distance between competitive localities are relatively great a 15 per cent increase would seriously affect competitors in a common market. The Fifteen Per Cent Case, 45 I. C. C., 303, 316.

(b) The Commission's sanction of a general adjustment of rates does not carry with it the approval of any particular rate under that adjustment. Globe Soap Co. 40 I. C. C., 121. Steel & Tube Co. v. Director General, as Agent, 61 I. C. C., 526, 529.

(c) Any general increase necessarily disturbs pre-existing rates, either by varying amounts, if it be a percentage increase, or by varying percentages, if it be a flat increase. Wofford Oil Co. v. Director General, 66 I. C. C., 509, 510.

ALL OTHER CITATIONS

In Re Advances on Coal to Lake Ports, 22 I. C. C., 604, 611; In Re Advances on Potatoes, 25 I. C. C., 247, 248; Lake and Rail Rates from Pennsylvania Points, 26 I. C. C., 669; Collingwood Brick Co. v. P. M. R. R. Co., 26 I. C. C., 572; Advance in Rates on Cotton Seed from Points in Oklahoma to Little Rock, Ark., 26 I. C. C., 211, 212; Coal Rates to Davenport, Ia., 26 I. C. C., 140; Peoples' Fuel & Supply Co. v. G. T. W. Ry. Co., 27 I. C. C., 24; Lumber Rates from Texas, Louisiana, and Arkansas, 28 I. C. C., 471, 475; Oklahoma Grain Rates, 28 I. C. C., 462; Lumber Rates from Helena, Ark., and Other Points, 33 I. C. C., 297; Mixed Car Dealers' Ass'n. v. D. L. & W. R. R. Co. et al, 33 I. C. C., 133, 136; 1915 Western Rate Advance Case, 35 I. C. C., 497, 610; The Fifteen Per Cent

Case, 45 I. C. C., 303, 324; Live Poultry & D S. Ass'n. v. A. T. & S. F. Ry., 49 I. C. C., 235; Increased Rates, 1920, 58 I. C. C., 220, 246; Globe Soap Co., 40 I. C. C., 121.

§5. Right to Advance.

(½). In general.

CASES 1887-1908

(a) An increase which results solely from the withdrawal of a lower export rate, or from the maintainance of a published tariff cannot ordinarily be condemned as unlawful. While railroads have suffered severely in the past, and should be allowed to recuperate while prosperity continues it does not follow necessarily that they are entitled to advance former rates which were not reduced on account of finanicial depressions. In the Matter of Proposed Advances in Freight Rates, 9 I. C. C., 382.

(b) The legality of the recent advance to 20 cents of the tariff rates on grain and grain products from Chicago to New York, which have not exceeded 17½ cents during the last four years, except for a brief period, while the actual rates have been materially and sometimes greatly below that figure, depends upon two considerations: First, whether the increased rate is reasonable, having reference to the cost and value of the service, and as compared with rates on other commodities; and, second, whether it is reasonable in the absolute, regarded as essentially a tax upon the people who ultimately pay the transportation charge. In the Matter of Proposed Advances in Freight Rates, 9 I. C. C., 382.

IMPORTANT CASES SINCE 1908

(c) The ordinary considerations of justice require that money invested in railroads by invitations of the government should be allowed a fair return. This does not mean that the Commission should permit rates which will guarantee all railroad investment, nor which will guarantee any railroad investment at all times but it should allow rates which will yield to this capital as large a return as it could have obtained from other investments of the same grade. If rates formerly in effect have become insufficient then higher rates should be permitted. Rates should be such as to render possible a high class, not an extravagant, transportation service. In Re Advances in Rates—Eastern Case, 20 I. C. C., 243, 262.

(d) Within certain limits it may be the right of the Commission to consider the question of advanced rates in Official Classification territory as one of public policy and not one of strict legal right. If the true interest of the whole commuity requires it the railroads might perhaps be allowed fair earnings with which to aid their properties in addition to the payment of return to their stockholders even though there is not strict requirement of law which commands it. In Re Advance in Rates—Eastern Case, 20 I. C. C., 243, 266.

(e) Carriers are not justified in increasing rate claimed to be unduly low which is established under compulsion of competitive conditions. Grain Rates in C. F. A. Territory, 28 I. C. C., 549, 557.

(f) Rates might properly be increased where existing rates do not afford adequate compensation for added risk and liability. The Cummins Amendment, 33 I. C. C., 682, 697.

(g) Reasonableness of proposed increases can not be established by pointing to fourth section violations that are thereby obviated. Rates between Shreveport and Texarkana, 32 I. C. C., 180, 182.

(h) That proposed increased rates may eliminate fourth section departures does not establish that the rates published are reasonable. Ice Rates to Long Branch, 35 I. C. C., 73, 75.

(i) The fact that a general adjustment of the rates on a certain railroad has been approved by the state railroad commissions of certain only of the states traversed, is not sufficient to justify the increase of a rate attacked. Rosenblum v. B. & M. R. R., 43 I. C. C., 435, 437.

(j) The Commission can not say that merely because a higher intrastate rate exists that an increase of an interstate rate to meet the state-made rate is justified, even though the transportation conditions as to distance and territory are similar. Old Vincennes Distillery Co. v. B. & O. S. W. R. R. Co., 45 I. C. C., 447, 451.

(k) Rates in effect via routes over which traffic seldom or never moves are known as paper rates and increases in such rates are paper increases. Alabama Packing Co. v. L. & N. R. R., 47 I. C. C., 524, 526, 528.

(l) Fact that the combined passenger and newspaper traffic has increased to a point where the transportation facili-

ties are inadequate does not furnish any justification for proposed rates on newspapers transported in passenger cars between stations on the Kansas City, Kaw Valley & Western Ry., Kansas City, Mo., to Lawrence, Kan., inclusive. Newspapers on Passenger Cars, 57 I. C. C., 743.

(m) Mere acquiescence of shippers in increased rates proposed by carriers does not afford sufficient justification for their approval. Lion Coal Co. v. U. Ry. Co., 60 I. C. C., 674, 681.

(n) The Commission has required the cancellation of suspended schedules because of threatened violations of the long-and-short-haul provision of the fourth section of the act. Salt from Louisiana Mines to Chicago, 66 I. C. C., 81, 91.

(o) The requirements of section 15a of the Act may not be defeated or jeopardized by the action of particular rail carriers seeking to augment their own net earnings, irrespective of the effect of rate changes adverse to the carriers of the country generally, or of a large territorial group. Transcontinental Cases of 1922, 74 I. C. C., 71.

ALL OTHER CITATIONS

Morgan Grain Co. v. A. C. L. R. R. Co., 19 I. C. C., 460; In Re Advance in Rates—Eastern Case, 20 I. C. C., 243, 305, 262; Deming Lumber Co. v. S. P. Co., 24 I. C. C., 598; In Re Advances on Furniture, 25 I. C. C., 299, 302; In Re Advances on Potatoes, 25 I. C. C., 247; In Re Advances on Live Stock, 25 I. C. C. 63, 65; Rates on Excelsior and Flax Tow from St. Paul, 26 I. C. C. 689, 694; Collinwood Brick Co.. v. P. M. R. R. Co., 26 I. C. C. 572, 573; Transcontinental Commodity Rates, West Bound, 26 I. C. C., 456, 464; Robinson Land & Lumber Co. v. M. & O. R. R. Co., 26 I. C. C., 427, 428; Davis Bros. Lumber Co. v. C. R. I. & P. Ry. Co., 26 I. C. C., 257, 263; Coal Rates on the Stony Fork Branch, 26 I. C. C.,168,174; Louisville & Nashville Railroad Coal and Coke Rates, 26 I. C. C., 20, 24; California -Nevada Lumber Rates, 28 I. C. C., 313, 315; Omaha-Wisconsin Grain Rates, 28 I. C. C. 602; Transit Rates on Logs and Staves at Alexandria, La., 34 I. C. C., 169, 171; Rates in Chicago Switching District, 34 I. C. C., 243, 242; Peninsular Portland Cement Co. v. C. N. R. R. Co., Unrep. Op., 2024; Eagle Ice Co. v. C. M. & St. P. Ry. 37 I. C. C., 250; Stone to Des Moines, Iowa, 37 I. C. C., 372, 373; Gile & Co. v. S. P. Co., 39 I. C. C., 193; Lumber from Michigan Points, 39 I. C. C., 367, 369, 370; Cotton-seed Products from Texas 41 I. C. C., 333; Camp Bowie, Tex., Rates, 49 I. C. C., 528; Lion Coal Co. v. U. Ry. Co., 60 I. C. C., 674, 681; Rates between Ohio River and Cumberland River Points, 61 I. C. C., 10; Lithopone and Zinc Oxide between Western Points, 61 I. C. C., 208; Substitution for Increases in Rates, 61 I. C. C., 518, 522, 523; Barnett Oil & Gas Co. v. Director General, as Agent, 61 I. C. C., 568, 570; Proposed Increased Rates from and to El Paso, 61 I. C. C., 689; Glass and Glassware from Oklahoma and Texas, 61 I. C. C., 733; Transcontinental Cases of 1922, 74 I. C. C., 71; Iron and Steel Articles, 89 I. C. C. 17.

§5. (1) To Avoid Reducing Other Rates.

IMPORTANT CASES SINCE 1908

(a) The fact that unless the rates to several communities are increased another and competing community will be entitled to lower rates than it now enjoys is no justification for the increase. Texas Common Point Case, 26 I. C. C., 528, 532.

(b) Where existing rates resulted in violations of sections 3 and 4, and making of other reductions would bring about further departures, held advances were justified. In Re Advances on Knitting-Factory Products, 25 I. C. C., 634, 639, 640.

ALL OTHER CITATIONS

Commercial Club of Omaha v. Anderson & Saline Ry. Co., 18 I. C. C., 532, 536, 537; Banner Milling Co. v. N. Y. C. & H. R. R. Co., 19 I. C. C., 128, 131; Brick Rates from Ohio Points to Huntington, W. Va., 28 I. C. C., 292, 297; Coal Rates to Dewey, Okla., 30 I. C. C., 115; Wickwire Steel Co. v. N. Y. C. & H. R. R. Co., 30 I. C. C., 415, 420; Lumber Rates to Knoxville, Tenn., 30 I. C. C., 524, 526; Cement Rates from Points in Illinois, 32 I. C. C., 369, 372.

§5. (1½) Decline in Tonnage.

ALL CITATIONS

Lumber Rates, 31 I. C. C., 464, 465; Class Rates from Kansas Points, 78 I. C. C. 741.

§5. (2)To Equalize Rates.

See Equalization of Rates; Relative Rates.

IMPORTANT CASES SINCE 1908

(a) The fact that rates are in-

creased so as to effect a differential, or so as to more equitably equalize rates between competing coal fields, and that such increase is made without regard to the reasonableness of the resulting rates, may not be considered as conclusive or in anywise determinative as to the justness or reasonableness of the rates in themselves. The Commission is not concerned with the increase in the rates, but with the increased rate. In Re Advances on Coal to Lake Ports, 22 I. C. C. 604, 612.

(b) That a readjustment between adjoining towns is necessary is not in itself a justification for advancing rates to one of them. Lumbermens' Exchange of St. Louis v. A. & S. R. R. R. Co., 24 I. C. C. 220, 222.

(c) The Commission repeatedly has sanctioned increases of rates for the purpose of bringing such rates into harmony with the established rate structure. Westbound Lake and Rail Knit Goods Commodity Rates, 32 I. C. C., 54, 57.

(d) When investigating the propriety of increased rates under suspension the Commission, in addition to the question of their reasonableness, may consider to what extent they may involve unlawful discriminations and preferences in their relation to other rates; but to withhold approval of proposed rates that are found to be reasonable and in harmony with the general interstate rate adjustment in the territory in question solely because the state rates are on a lower level would put both the carriers and the Commission under the control of state authorities in many cases involving interstate rates. Danville, Va., Class and Commodity Rates, 38 I. C. C., 742, 745.

(e) Proposal to increase the rate on scrap iron and steel south-bound from Cairo and Metropolis, Ill., to St. Louis, Mo., to the basis of the southbound rate from Brookport and Thebes, Ill., and to increase the rate northbound from St. Louis to all four points to the same basis, found justified. Proposed increases will remove an inconsistent adjustment; the resulting rates will compare favorably with rates on the same commodities in the same general territory; and the same rates will apply in both directions. Scrap Iron and Steel between River Crossings, 77 I. C. C. 32.

ALL OTHER CITATIONS

Menasha Woodenware Co. v. C. & N. W. Ry. Co., Unrep. Op., 476; Lautz Bros. & Co. v. L. V. R. R. Co., 17 I. C. C., 167, 168; Serry v. S. P. Co., 18 I. C. C., 554, 555, 556; Industrial Lumber Co. v. St. L. & G. Ry. Co., 19 I. C. C., 50, 52; In Re Advances on Cement Plaster, 21 I. C. C., 591, 595; United States Leather Co. v. Southern Ry. Co., 21 I. C. C., 323, 325; In Re Unreasonable Rates on Meats, 23 I. C. C., 656, 660, 666; In Re Advances on Lumber to St. Louis, Mo., 24 I. C. C., 686; In Re Advances on Cooperage, 24 I. C. C., 656, 659; In Re Investigation and Suspension of Advances in Rates on Apples, 24 I. C. C., 38, 42; Rates on Drain Tile and Sewer Pipe, 25 I. C. C., 688; Classification of Empty Barrels, 25 I. C. C., 641; Rates on Knitting Factory Products, 25 I. C. C., 634; In Re Advances on Oil, 25 I. C. C., 349, 351; In Re Advances on Corn etc., 25 I. C. C., 46; In Re Hop Rates, 25 I. C. C., 16; Rates on Excelsior and Flax Tow from St. Paul, 26 I. C. C., 689; Cement Rates from Pennsylvania to New Jersey Points, 26 I. C. C., 687, 688; Lake and Rail Rates from Central Freight Association Territory, 26 I. C. C., 671, 674; Class Rates to Watertown, S. D., 26 I. C. C., 635, 636; Class Rates to Watertown S. D., 26 I. C. C., 635, 636; Texas Common Point Case, 26 I. C. C., 528; Mich. Upper Peninsula Pig Iron Rates, 26 I. C. C., 283; Rates on Fuel Wood, Sawdust and Shavings, 26 I. C. C., 254, 256; Rates on Edible Nuts from Louisiana, 26 I. C. C., 213; Rates on Coal from Iowa to Dakotas, 26 I. C. C., 144, 145; Rates on Cantaloupes and Potatoes from Ruston, La., 26 I. C. C., 101; Rates on News Print Paper from Sioux Ste. Marie, 26 I. C. C., 13; Rates on Cement for Paving and Roofing, 26 I. C. C., 11; Rates on Clay Products from Brickland, N. Mex., 26 I. C. C., 8, 9; In Re Advance on Butter and Eggs from Topeka to the Southwest, 27 I. C. C., 692; Lumber Rates from Southern Mills to Eastern Points, 27 I. C. C., 189; Wickwire Steel Co. v. N. Y. C. & H. R. R. Co., 27 I. C. C., 168; Merchants' Freight Bureau of Little Rock v. W. C. F. & N. Ry., 27 I. C. C., 111; Shoal Creek Coal Co. v. T. St. L. & W. R. R. Co., 27 I. C. C., 107; Brick Rates from Ohio Points to Huntington, W. Va., 28 I. C. C., 292, 297; Lumber Rates from the Southwest to Points North, 29 I. C. C., 1; Duluth Log Rates, 29 I. C. C., 420; Kansas-California Flour Rates, 29 I. C. C., 459; Rates on Potash and Other

Commodities, 29 I. C. C., 626, 628; Massachusette-Maine Wool Rates, 28 I. C. C., 396; Sulzberger & Sons Co. v. S. P. Co., Unrep. Op., A400; Coal Rates from Indiana and Illinois Mines, 30 I. C. C., 108; Rates on Iron and Steel Articles, 30 I. C. C., 337; Rates on Bananas from Gulf Ports, 30 I. C. C., 510, 520, 521; Rates on Boots and Shoes from Boston, Mass., 31 I. C. C., 154; Lumber Rates, S. Ry. Points to Eastern Points, 31 I. C. C., 244; Rates on Beer and Other Malt Products, 31 I. C. C., 544; Rice Rates from Helena, Ark., 31 I. C. C., 614; Wheat Rates from Oklahoma, 30 I. C. C., 93, 97; Wickwire Steel Co. v. N. Y. C. & H. R. R. Co., 30 I. C. C., 415, 421; Crawford & Bunce v. P. C. C. & St. L. Ry Co., 32 I. C. C., 12; Class Rates from Terre Haute, Ind., 32 I. C. C., 206; Chamber of Commerce, Houston, Tex., v. I. N. G. Ry. Co., 32 I. C. C., 247, 259; Rates on Cement, Lime, Salt, etc., 32 I. C. C., 532; Rates on Fertilizer Material from Charleston, 32 I. C. C., 537; Class and Commodity Rates to Salt Lake City, Utah, 32 I. C. C., 551, 557; Northbound Rates on Hardwood, 32 I. C. C., 521; Rates on Grain and Grain Products from Topeka, 33 I. C. C., 666; Rates between Shreveport and Texarkana, 32 I. C. C., 180, 182; Cement Rates from Points in Illinois, 32 I. C. C., 369, 372; Rates on Lumber, 32 I. C. C., 494, 496; United States Glue Co. v. C. & N. W. Ry. Co., Unrep. Op., A-930; Ice Rates to Long Branch, 35 I. C. C., 73, 75; Drain Tile from Illinois Points, 35 I. C. C., 83; Cement Rates from Salt Lake City, 33 I. C. C., 5, 7; Boldt Co. v. C. R. I. & P. Ry. Co., 33 I. C. C., 8; Proportional Rates on Grain Products from Omaha, 33 I. C. C., 621, 625; Rates on Lumber from Southern Points, 36 I. C. C., 137; Lumber from Michigan Points, 36 I. C. C., 184, 188; The Iron and Steel Cases, 36 I. C. C., 86, 97, 98; Rates via Rail-and-Lake Routes, 37 I. C. C., 302; Broom Corn to Cincinnati, Ohio, 37 I. C. C., 482; Rate Increases in Western Classification Territory, 38 I. C. C., 94; Mission Brewing Co. v. A. T. & S. F. Ry., 38 I. C. C., 171, 172; Lumber between Points in Western Trunk Line Territory, 38 I. C. C., 370; Coal to Cleburne, Tex., and Other Points, 39 I. C. C., 617; 1915 Western Rate Advance Case, 37 I. C. C., 114, 150; Lumber to Wisconsin Points, 37 I. C. C., 198; Colorado Class Rates, 37 I. C. C., 203, 208; Lumber Rates to Eastern Cities, 37 I. C. C., 212, 216, 217; Stone to Des Moines, Iowa, 37 I. C. C., 372, 373; New Orleans-Texas Rates, 38 I. C. C., 1, 8, 10; Marble from Rutland, Vt., 38 I. C. C., 12, 13; Rate Increases in Western Classification Territory, 38 I. C. C., 94, 96, 97; Official Classification Rates on Paper, 38 I. C. C., 120, 123; Mission Brewing Co. v. A. T. & S. F. Ry. Co., 38 I. C. C., 171, 172; Hoops from Chaffee, Mo., 38 I. C. C., 482, 483, 484; Coal to Glencoe, Mo., 39 I. C. C., 190; Lumber from Michigan Points, 39 I. C. C., 367; Lumber from Easton, Wash., 39 I. C. C., 188; Coal to Cleburne, Tex., 39 I. C. C., 617, 618; Rice from Texas and Louisiana, 40 I. C. C., 285; Pacific Coast-Southwest Lumber, 40 I. C. C., 387, 394; Molasses from Texas and Louisiana, 40 I. C. C., 435, 440; Indiana and Illinois Coal, 40 I. C. C., 603; Lumber to New Mexico Points, 41 I. C. C. 331, 332; Associated Railways Classifications Exceptions, 41 I. C. C. 561, 563, 564; Coal from Pennsylvania Mines, 42 I. C. C. 206; Miller Bros. v. St. L. & S. F. R. R. Co., 42 I. C. C. 261, 267; Southeastern Lumber, 42 I. C. C., 548, 559, 566; Lumber from Indiana Stations, 43 I. C. C., 117; Traffic Bureau of Nashville v. L. & N. R. R. Co., 43 I. C. C., 366, 373; Globe Soap Co. v. A. & S. Ry. Co., 45 I. C. C., 25, 29; Brittian Bros. v. St. L. & S. F. R. R., 45 I. C. C., 87, 90; Prentice & Co. v. N. Y. C. R. R., 48 I. C. C., 405, 406; The Southeastern Sugar Cases, 48 I. C. C., 739; Cement to Iowa Points, 49 I. C. C., 595; Sugar from New Orleans, 49 I. C. C., 494; Cement to Montana (No. 2), 49 I. C. C., 597; Bonner's Ferry Lumber Co. v. G. N. Ry. Co., 51 I. C. C., 221, 224; Memphis Southwestern Investigation, 55 I. C. C., 515, 561, 562, 576; National Council, Farmers' Assos. v. Director General, 56 I. C. C., 399, 407; Bowden Co. v. Director General, 57 I. C. C., 31; Armstrong v. N. Y. P. & N. R. R. Co., 57 I. C. C., 35; Railroad Commissioners of Iowa v. Q. O. & K. C. R. R. Co., 57 I. C. C., 119; Boehmer Coal Co. v. P. C. C. & St. L. R. R. Co., 58 I. C. C., 133; Illinois Coal Traffic Bureau v. Director General, 58 I. C. C., 351; New Orleans Coffee from Galveston, Texas, and Other Gulf Ports, 58 I. C. C., 716 727; Switching Charges Within Chicago District, 59 I. C. C., 125; Petroleum Oil and Petroleum Oil Products, 59 I. C. C., 499; St. Louis Coke and Chemical Co. v. A. L. S., 62 I. C. C., 194; Coal from Kentucky, Tennessee, and Virginia, 60 I. C. C., 166; Acid from Hillsboro to Ohio River Points, 60 I. C. C., 583; Wood Rates between North Pacific Coast Points 61 I. C. C., 159; Soda Products from

Saltville, Va., 61 I. C. C., 559; Barnett Oil & Gas Co. v. Director General, as Agent, 61 I. C. C., 568; Fresh Meats and Dressed Poultry from Ohio River, 61 I. C. C., 610; Dewey Fuel Co. v. Director General, as Agent, 61 I. C. C., 697; Extension of Memphis-Southwestern Scale, 62 I. C. C., 596; Anthracite Coal to New York Stations, 63 I. C. C., 193; Scrap Paper between Western Points, 64 I. C. C., 607; Creosote and Gas-Tar Oils from Chicago, 66 I. C. C., 1; Grain and Grain Products from Memphis, 66 I. C. C., 19; Cotton-seed Cake from Southwest, 66 I. C. C., 640; Swift & Co. v. A. T. & S. F. Ry. Co. 68 I. C. C. 157; Silica from Southern Illinois, 73 I. C. C., 406; Iron and Steel Articles from Utah, 73 I. C. C., 483; Class and Commodity Rates from Illinois and Other States, 73 I. C. C., 59; Increased Rates between Ruston and Texas Points, 73 I. C. C., 341; Silica from Southern Illinois, 73 I. C. C., 406; Iron and Steel Articles from Utah, 73 I. C. C., 483; Building and Roofing Paper from Indiana and Ohio to St. Paul, and Duluth, Minn., 77 I. C. C., 85; Grain and Products from Indiana and Kentucky, 74 I. C. C., 375; Grain, less carload, from Memphis, Tenn., to Birmingham, Ala., 80 I. C. C., 138; Increased Rates on Iron and Steel Articles from St. Louis, Peoria, Chicago, St. Paul, to Kansas, Nebraska, and Colorado, 80 I. C. C., 732; Building and Roofing Paper from Indiana and Ohio, 77 I. C. C., 85; Grain, Grain Products and Feeds, 78 I. C. C. 209. Imported Wool from New York and Boston 80 I. C. C. 309: Class Rates from Points in Kansas, 80 I. C. C. 709; Brick and Clay Products from Texas to Arizona, 81 I. C. C. 20; Grain and Grain Products, 81 I. C. C. 267, 440; Benzol and Blended Gasoline, 81 I. C. C. 735; Grain from Memphis, 80 I. C. C., 138; Grain and Grain Products between Stations in Iowa and Minnesota and Milwaukee, Wis., and Chicago and Peoria, Ill. group points, 81 I. C. C., 267; Grain from Minnesota and South Dakota to Mississippi Valley, 81 I. C. C., 440.

§5. (2½) Fourth Section Violations.

See Long and Short Hauls.

IMPORTANT CASES SINCE 1908

(a) A rate established from an intermediate point in contravention of the fourth section does not constitute a valid justification for increasing the rate from the point to which it is intermediate. Brick from Michigan City, Ind., 42 I. C. C., 509, 510.

(b) The Commission has required the cancellation of suspended schedules because of threatened violations of the long-and-short-haul provision of the fourth section of the act. Salt from Louisiana Mines to Chicago, 66 I. C. C., 81, 91.

(c) Proposed increased rates on iron and steel articles rated "special iron" in southern classification, from Ohio River points, St. Louis, Mo., and points taking the same rates, to points in Carolina territory, Augusta, Ga., and south Atlantic ports and points taking the same rates, designed as a temporary adjustment, the primary purpose of which is to remove fourth section violations at the Virginia cities, found justified in so far as such increased rates do not exceed the existing Virginia cities rates. Iron and Steel Articles from Ohio & Mississippi River Crossings, 73 I. C. C., 753.

ALL OTHER CITATIONS

Rice Products to Jackson, Miss., 44 I. C. C., 364; Iron Ore Rate Cases, 44 I. C. C., 368, 378; Lumber from Arkansas Points, 50 I. C. C., 118; Fort Smith Com. Co. v. K. C. Ry., 50 I. C. C., 136; Kentucky Lumber Co. v. St. L. S. F. Ry. Co., 50 I. C. C., 22; Lumber from Arkansas Points, 50 I. C. C. 118; Garrett Lumber Co. v. C. & O. 55 I. C. C., 637; Potatoes in Western Trunk Line Territory, 59 I. C. C. 42; Standard Oil Co. v. Director General, 60 I. C. C., 105; The Goodman Drilling Co. v. Director General, 61 I. C. C., 164; Substitution for Increases in Rates, 61 I. C. C., 518, 523; Lumber from North Tonawanda to Canadigua, 64 I. C. C., 530; Iron and Steel Articles from Boston and Other Points to Maine Central Railroad Destinations, 66 I. C. C., 100; Salt from Louisiana Mines to Chicago, 66 I. C. C. 81, 91; West Kentucky Coal Bureau v. I. C. R. R. Co., 66 I. C. C. 228; Cotton and Cotton Linters from Mississippi Valley 69 I. C. C. 318, 334; Lumber from California to Minnesota and Wisconsin, 69 I. C. C. 721; Increased Rates on Hosiery, 73 I. C. C. 477; Farm Wagons to Louisiana Points, 73 I. C. C. 547; Lime Between C. F. A. Points and from C. F. A. to Canadian Points, 74 I. C. C. 105; Farm Wagons from Lynchburg to Kentucky, 74 I. C. C. 255; Potatoes from Stations in Colorado, 80 I. C. C. 191: Benzol and Blended Gasoline, 81 I. C. C. 735; Grain and Grain

Products from Illinois, 83 I. C. C. 543; Grate Bars to Memphis, 88 I. C. C. 701; Burlap Bags and Iron and Steel Articles, 89 I. C. C. 131; Increased Rates on Petroleum and Its Products, 83 I. C. C. 98.

§5. (3) To Preserve Commodity Relationship.

See Classification §17, §22; Comparative Rates; Evidence §12; Relative Rates.

CASES 1887-1908

(a) Complainant attacked as unreasonable rates charged on coal, carloads, from mines in Indian Territory and southern Arkansas to Dallas, Tex. These rates were increased from $1.25 to $1.50 per ton on slack coal and from $1.85 to $2.10 per ton on mine run coal. Prior to this advance the rates formerly in effect were published to meet the competition of fuel oil, which latter is not now used for that purpose. HELD: Rates attacked unreasonable to extent they exceeded $1.90 on lump coal and $1.40 on slack coal. Dallas Freight Bureau v. G., C. & S. F. Ry., 12 I. C. C. 223.

IMPORTANT CASES SINCE 1908

(b) Cancelling a commodity rate and reestablishing a higher class rate in order to remove a discrimination and bring rates into a proper relationship held to be justified. In Re Advance on Apples, 24 I. C. C. 38, 42.

(c) An advance in rates correcting an improper relation between two articles is justified. In Re Advances on Trunk-covering Material, 25 I. C. C. 685.

(d) There are cases where increased rates may be proper to secure uniformity in rate relationship, but it is to be remembered that uniformity may be secured in many cases by reduced rates as well as by increased rates. The mere fact that a relation of rates requires readjustment in the interest of uniformity is not proof that rates increased to the level of relatively higher rates are reasonable. Rates on Lumber, 32 I. C. C. 494, 496.

(e) Proposed increased rates are intended to equitably distribute charges among different types of vehicles and to secure additional revenue. Theory not condemned, but increase held unnecessary. New York-Jersey City Ferry Rates, 37 I. C. C. 103, 112, 113.

(f) Proposed increased rates on oyster shells, crushed or ground, from Biloxi, Miss., and other points in Mississippi and Louisiana, to New Orleans, La., Mobile and other Alabama points, and Orange Grove, Miss., so as to create a rate distinction between whole and powdered shells on the one hand, and crushed or ground shells on the other, found justified. Crushed or ground shells are much more valuable than either whole or powdered shells, and the rates proposed compare favorably with rates maintained between other points in same general territory. Oyster Shells from Biloxi, 74 I. C. C. 585.

(g) Proposed establishment of l. c. l. commodity rate on grain and products from Memphis, Tenn., to Birmingham, Ala., and group points, higher than applicable class D rate, so as to restore parity between c. l. and l. c. l. rates on this commodity, found not justified. It is unusual, particularly in the South, for a commodity rate on grain to exceed class D, and establishment of such higher commodity rate would mean application of class D. rate prescribed by commission to but minor portion of articles rated in that class. Grain from Memphis, 80 I. C. C. 138.

ALL OTHER CITATIONS

Freeman Lumber Co. v. St. L., I. M. & S. Ry. Co., 19 I. C. C. 348; In Re Advances in Rates on Flaxseed, 23 I. C. C. 272; In Re Advances on Drain Tile & Sewer Pipe, 25 I. C. C. 688, 693; In Re Advances on Tin Plate, 25 I. C. C. 685; Transcontinental Commodity Rates, Westbound, 26 I. C. C. 456, 464; Davis Sewing Machine Co. v. P. C. C. & St. L. Ry. Co., 26 I. C. C. 282, 283; Rates on Linseed Oil, 26 I. C. C. 265, 270; Rates on Common Brick to Canada, 26 I. C. C. 129, 130; Rates on Fresh Meat and Packing-house Products, 26 I. C. C. 154; Rates on Sash, Doors and Blinds into Texas, 26 I. C. C. 116, 118; Rates on Horses and Mules from Kansas, 26 I. C. C. 47; In Re Fench Posts from Arkansas Stations to Kansas City, 26 I. C. C. 42; Rates on Porch Work, 26 I. C. C. 1; Broom Rates to Colorado Points, 28 I. C. C. 310; Rates on Flax-seed, Minneapolis to Fredonia, Kan., 29 I. C. C. 633, 638; Paper Rates from Manitowoc and Milwaukee to Kaukauna, Wis., 28 I. C. C. 305; Grain Rates in Central Freight Assn. Territory, 28 I. C. C. 549; Rates on Fruits and Vegetables, 30 I. C. C. 56; Malt Rates to Texas Points, 30 I. C. C. 385; Molasses Rates to Knoxville, Tenn., 30 I. C. C. 613; Proportional Rates on Grain Products from

Omaha, 33 I. C. C. 621; Rates on Cotton Piece Goods, 34 I. C. C. 41; Stone to Des Moines, Iowa, 37 I. C. C. 372; Crushed Stone from Wisconsin Points, 37 I. C. C. 593; 1915 Western Rate Advance Case, 37 I. C. C. 114, 129, 130; Official Classification Rates on Paper, 38 I. C. C. 120, 123; Rice from Texas and Louisiana, 43 I. C. C. 29; Wall Board Rating, 43 I. C. C. 189; Barytes from Tennessee, 43 I. C. C. 334; Rates on Dairy Products, 43 I. C. C. 700; Arkansas Jobbers' Asso. v. Director General, 59 I. C. C. 662, 670; E. H. Edwards v. Director, 60 I. C. C. 258; Regrouping and Description of Lumber Articles from Pacific Coast Points, 61 I. C. C. 397; Florida and Georgia to Norfolk, Virginia, Etc., 66 I. C. C. 569; Linseed Oil from Edgewater (Undercliff), N. J., to C. F. A. Points, 74 I. C. C. 153; Rates on Clams, Mussel, and Oyster Shells, 74 I. C. C. 245; Waste Resinous Wood, 77 I. C. C. 448.

§5. (4) Unreasonably Low Prior Rate.

See Evidence §43.

CASES 1887-1908

(a) Transportation by rail is a quasi-public service, not to be sold to the highest bidder, and the charges therefor are not controlled by the law of supply and demand. Freight rates do not in fact rise and fall with changes in prices of market commodities, though they are often affected by commercial conditions; and when reductions have been made on account of commercial depressions, it is difficult to see why corresponding advances may not properly be made with the return of business prosperity. In the Matter of Proposed Advances in Freight Rates, 9 I. C. C. 382.

(b) Carriers have no right to advance a rate which is already reasonably high and yields an adequate return for the services rendered, solely because additional revenue is needed. Central Yellow Pine Asso. v. Illinois C. R. Co., 10 I. C. C. 505; Tift v. Southern R. Co., 10 I. C. C. 548.

IMPORTANT CASES SINCE 1908

(c) If unduly low or unremunerative rates have in the past been established to meet conditions that obtained at the time of their inception, and if conditions have changed so that there is no justification for maintaining such rates, they ought to be increased to a basis where they will be remunerative. Proposed Increases in New England, 49 I. C. C. 421, 426.

ALL OTHER CITATIONS

Fairmont Creamery Co. v. C., B. & Q. R. R. Co., 22 I. C. C. 252; In Re Advances in Class Rates, 25 I. C. C. 268; In Re Classification of Empty Barrels, 25 I. C. C. 641, 642; In Re Advance on Flaxseed, 25 I. C. C. 337, 341; In Re Advances on Hay, 25 I. C. C. 680, 684; In Re Classification of Empty barrels, 25 I. C. C. 641, 642; In Re Advances on Furniture, 25 I. C. C. 299, 302; Robinson Land & Lumber Co. v. M. & O. R. R. Co., 26 I. C. C. 427; In Re Advances on Potatoes, 25 I. C. C. 247, 248; Rates on Sand to Houston, Tex., 26 I. C. C. 677, 679; Rates on Excelsior and Excelsior Wrappers, 26 I. C. C. 44; Rates on Plaster and Gypsum Rock, 27 I. C. C. 67, 68; Rates on Tin Cans and Other Commodities, 28 I. C. C. 247, 249; Grain Rates in C. F. A. Territory, 28 I. C. C. 549, 557; Rates on Soda Ash and Other Commodities, 28 I. C. C. 613; Wickwire Steel Co. v. N. Y. C. & H. R. R. Co., 30 I. C. C. 415, 420; Cement Rates from Mason City, Iowa, 30 I. C. C. 426, 428; California-Colorado Lumber Rates, 30 I. C. C. 461; Rates on Bananas from Gulf Ports, 30 I. C. C. 510, 520; Lumber Rates from Local Points to Chattanooga, 29 I. C. C. 646, 647; National Petroleum Asso. v. A., T. & S. F. Ry. Co., Unrep. Op. A-405; Sawyer & Austin Lumber Co. v. St. L., I. M. & S. Ry. Co., Unrep. Op. A-481; New England Rates, 31 I. C. C. 553; Hide Rates to Los Angeles, Calif., 31 I. C. C. 633; Rates on Fencing and Fencing Material, 30 I. C. C. 650; Rates on Coffee, I. & S. Docket No. 413, 32 I. C. C. 90; Rates on Poultry in Western Trunk Line Territory, 32 I. C. C. 380; The Five Per Cent Case, 31 I. C. C. 351, 358; Gypsum Rates from Winslow, Ariz., Unrep. Op. A-754; Rates on Grain and Grain Products, 33 I. C. C. 374; The Cummins Amendment, 33 I. C. C. 682, 697; Coal and Coke Rates in the Southeast, 35 I. C. C. 187, 190; Fertilizer and Fertilizer Materials from New Orleans, 36 I. C. C. 247, 249; Excelsior from St. Paul, Minn., 26 I. C. C. 349, 365, 366; Lumber rates from Newcastle, 37 I. C. C. 596; Export Grain Case, 37 I. C. C. 190, 192; New Orleans-Texas Rates, 38 I. C. C. 1, 10; Iron and Steel from Pacific Coast Points, 38 I. C. C. 545, 548; Pacific Coast-Southwest Lumber, 40 I. C. C. 387; Duffney Brick Co. v. B. & M. R. R., 39 I. C. C. 118, 122; Union Sulphur Co. v. B. & O. R. R. Co., 39 I. C. C. 349, 351, 352; Dyes from New York, N. Y., 40 I. C. C. 546, 547; Kentucky and Tennes-

see Clay, 41 I. C. C. 498; Rice from California, 42 I. C. C. 437; Acid between Illinois Points, 49 I. C. C. 498; Virginia Iron Coal & Coke Co. v. Director General, 53 I. C. C. 583, 586, 588; Acid from Hillsboro to Ohio River Points, 60 I. C. C. 583, 585; Rates Between North Pacific Coast Points, 64 I. C. C. 159; Increased Rates on Hosiery, 73 I. C. C. 477.

§5 (5) Congestion of Traffic.

IMPORTANT CASES SINCE 1908

(a) It is clear that the congestion of traffic and the detention of cars in connection with export traffic at New Orleans, La., arising partly from rail-carrier inefficiency, partly from indifference of the water-carriers to the losses which fall upon others than themselves, and partly from short-sighted detention of cars by shippers, cannot be remedied by any increase in the rates for line transportation. If the charge for the detention of cars is to be found in the rate for the line transportation of property, then every shipper paying such rate will have a justification for such delays as he may cause, and he will be without any incentive to promptly release equipment. The proper method of securing the release of cars is by the enforcement of fairly constructed car service rules and by an increase in the efficiency of the carriers. Lumber Rates from Memphis to New Orleans, 27 I. C. C. 471, 479.

§5 (5½) Government Initiated Rates.

See Director General.

ALL CITATIONS

Consolidated Gas Co. v. Director General, as Agent, 63 I. C. C. 135, 138; Parlin & Orendorff Co., 59 I. C. C., 63; Columbia Quarry Co. v. Director General, as Agent, 63 I. C. C. 203; Illinois Brick Co. v. Director General, 64 I. C. C. 273, 277; Maltby v. Director General, as Agent, 64 I. C. C. 297; Pure Oil Co. v. Director General, 64 I. C. C. 688; Standard Oil Co. v. Director General, 66 I. C. C. 37; Oxford Paper Co. v. Director General, 66 I. C. C. 159, 163; Anaconda Copper Mining Co., v. Director General, 57 I. C. C. 723, 726; State of Idaho ex rel v. Director General, 58 I. C. C. 342, 344; Abbott v. Director General, as Agent, 61 I. C. C. 296, 299; Schram Glass Mfg. Co. v. Director General, as Agent, 61 I. C. C. 435, 437; Barnett Oil & Gas Co. v. Director General, as Agent, 61 I. C. C. 568; Crucible Steel Co. of America v. Director General, as Agent, 61 I. C. C. 758; Wilhoit Co. v. Director General, as Agent 62 I. C. C. 313; Certain-Teed Products Corp. v. Director General, 63 I. C. C. 93, 97; Consolidated Gas & Electric Co. v. Director General, 63 I. C. C. 135, 138; Rock Products Traffic League v. B. & O. R. R. Co., 68 I. C. C. 146, 148; United Light & Rys. Co. v. Director General, as Agent, 69 I. C. C. 414, 417; Harmon & Co. v. N. Y., N. H. & H. R. R. Co., 50 I. C. C. 455, 456; Consolidated Oil Refining Co. v. K. C. S. Ry., 53 I. C. C. 96; Midvale Steel & Ordnance Co. v. Director General, as Agent, 78 I. C. C. 721, 723.

§5 (6) Erroneous Prior Rate.

See Erroneous Rates.

IMPORTANT CASES SINCE 1908

(a) Where a carrier attempts to justify increased rates on the ground that the lower old rates were put in by mistake, the claim is not persuasive where the old rates have remained in effect for as long a period as two years. The Commission in such cases will regard the rate as one voluntarily and knowingly made. It recognizes that errors will creep in the tariffs, but feels that they should be discovered and eliminated within a reasonable time. Wausau Advancement Assn. v. C. & N. W. Ry. Co., 28 I. C. C. 459, 460.

(b) It does not follow from the fact that southwestern lines are not prosperous that they should get all or any additional revenue by means of an increase in rates on lumber, for lumber may be contributing its fair share. Rates on Lumber from Southern Points, 34 I. C. C. 652, 658.

(c) Error in the publication of rates and rules does not in itself justify cancellation of rates or rules so established and maintained. Intermediate Application of Class Rates, 77 I. C. C. 427.

(h) Tariff naming rates assailed included cornstarch in "list of articles taking by-products rates," but in applying increase under The Fifteen Per Cent case 45 I. C. C., 303, erroneously provided rates for that commodity on higher grain-products basis. Resulting rates found unreasonable to extent they exceeded contemporaneous rates on articles contained in grain by-products list. Reparation awarded. Staley Mfg. Co. v. C. P. Ry. Co., 80 I. C. C. 512.

ALL OTHER CITATIONS

Gottron Bros. Co. v. G. & W. R. R. Co., 28 I. C. C. 38, 46; In Re Advances in Class Rates, 25 I. C. C. 268, 271; Rates on Grain and Grain Products, 30 I. C. C. 426; Wheat Rates from Okla-

homa, 30 I. C. C. 93, 95; Lindsay & Co., Ltd., v. Wells Fargo & Co., Unrep. Op. A-755; Chamber of Commerce, Houston, Tex., v. I. & G. N. Ry. Co., 32 I. C. C. 247; Rates on Fresh Fruits and Vegetables to Seattle, Wash., and Other Points, Unrep. Op. A-912; Cement to Ohio Points, 37 I. C. C. 697, 698; Lumber to New Mexico Points, 41 I. C. C. 331, 332; Sand from Indiana Stations, 43 I. C. C. 619, 621; New York & Pa. Co. v. Director General, as Agent, 58 I. C. C. 124; Aluminum Ore Co. v. Director General, as Agent, 62 I. C. C. 498; Cancellation of Commodity Rates on Strawberries from Virginia Points to Eastern Destinations, 73 I. C. C. 365; Less Carload Commodity Rates from St. Louis, 73 I. C. C. 396; Tampa Gas Co. v. Director General, as Agent, 73 I. C. C. 488; Linseed Oil from New York Lighterage Points, 74 I. C. C. 155; Fertilizer to Montezuma, 74 I. C. C. 657; Sun Co. v. L. Ry & N. Co., 80 I. C. C. 127; Atlantic Refining Co. v. Director General, as Agent, 80 I. C. C. 298; Class Rates to and from Delaware Division Stations, 81 I. C. C. 758, 761; Utah-Idaho Sugar Co. v. Director General, as Agent, 83 I. C. C. 566.

§5 (7) Expense of Competition.

See Competition.

IMPORTANT CASES SINCE 1908

(a) If a carrier elects to discontinue a competitive rate, whether because the competition no longer exists or because it does not care longer to compete, the Commission concerns itself only with whether or not the increased rates are just, reasonable and proper. Tobacco from the Ohio River Crossings, 73 I. C. C. 384, 387.

ALL OTHER CITATIONS

Lumber Rates from Memphis to New Orleans, 27 I. C. C. 471, 481; Grain Rates in C. F. A. Territory, 28 I. C. C. 549, 557; Export Grain Case, 37 I. C. C. 190; Fruits and Vegetables from Norfolk, Va., 38 I. C. C. 252; Iron and Steel from Pacific Coast Points, 38 I. C. C. 545; Coal to Rhode Island Points, 37 I. C. C. 650, 651; Lumber Between Points in Western Trunk Line Territory, 38 I. C. C. 370, 374, 376; Coal to Glencoe, Mo., 43 I. C. C. 412.

§5 (7¼) Low or High State Rate.

See State Rates and Regulation.

IMPORTANT CASES SINCE 1908

(a) An advance in interstate rates to prevent a state commission from reducing intrastate rates is not justified. Coal Rates to Dewey, Okla., 30 I. C. C. 115, 116.

(b) The incongruity between proposed interstate rates and an intrastate scale is a circumstance which relates vitally to the propriety of the rates under suspension. To dispose of this issue it is necessary to have before the Commission the facts and circumstances surrounding the establishment of these intrastate rates. Live-Stock Rates from Colorado Points to Omaha, 35 I. C. C. 682, 689.

(c) It is not in itself a justification of increased rates that they are a consequence of a readjustment of intrastate rates. La Crosse Shippers' Asso. v. C. & N. W. Ry. Co., 38 I. C. C. 453, 455, 456.

ALL OTHER CITATIONS

Freight Rates from Minnesota Points, 32 I. C. C. 361; Rates on Beer and Other Malt Products, 31 I. C. C. 544, 545; 1915 Western Rate Advance Case, 35 I. C. C. 497, 589; Rates on Agricultural Implements, 36 I. C. C. 151, 153; National Dock & Storage Warehouse Co. v. B. & M. R. R., 38 I. C. C. 643, 656; Danville, Va., Class and Commodity Rates, 38 I. C. C. 742, 745; Rosenblum v B. & M. R. R., 43 I. C. C 435, 437; Old Vincennes Distillery Co v. B. & O. S. W. R. R. Co., 45 I. C. C. 447, 451; C. F. A. Class Scale Case, 45 I. C. C. 254, 284; Cotton-seed Products to Texas, 48 I. C. C. 297; Rates Between El Paso and N. Mex. and Arizona, 64 I. C. C. 526; In the Matter of Intrastate Rates in Texas, 68 I. C. C. 25.

§5. 7½) Paper Rates.

See Evidence §12¼.

IMPORTANT CASES SINCE 1908

(a) Increased rates on lumber from Newcastle, Cal., to points between Reno, Nev., and Ogden, Utah, not justified. Reasonableness of increase can not be justified by showing that there is little or no movement and that rates are factors in a combination which is being used to defeat specific through rates. Lumber Rates from Newcastle, Cal., 37 I. C. C. 596, 597.

ALL OTHER CITATIONS

Sandstone, Minn.-Missouri River Building Stone Rates, 28 I. C. C. 269, 271; California-Nevada Lumber Rates, 28 I. C. C. 313, 315; New England and Canadian High Explosive Rates, 29 I. C. C. 697; Alabama Packing Co. v. L. & N. R. R., 47 I. C. C. 524, 526, 528.

§5. (8) To Prefer Particular Locality.
See Evidence §2, §40½; Origin of Traffic.

IMPORTANT CASES SINCE 1908

(a) That a city is an important market should be a reason against, rather than for, discrimination in its favor. In Re Rates on Salt, 24 I. C. C. 192, 194.

(b) That a city is a trade center is no reason for giving it unfair rates. Bowling Green Business Men v. L. & N. R. R. Co., 24 I. C. C. 228, 239.

(c) Carriers seek to justify a proposed rate structure on the ground that otherwise manufacturing will tend to be further concentrated on the congested Atlantic seaboard. They represent that their proposed rate structure will beneficially distribute manufacturing throughout the Middle and Central West. But this they may not do, unless it can be done without creating undue rate preferences. Transcontinental Cases of 1922, 74 I. C. C. 48, 82.

ALL OTHER CITATIONS

In Re Advances on Barley from California Point to Minneapolis, 24 I. C. C. 664; Lumber Rates from Texas, Louisiana and Arkansas, 28 I. C. C. 471; Boxboard Rates from Wilmington, Ill., 29 I. C. C. 694; Wheat Rates from Oklahoma, 30 I. C. C. 93; Rates on Packing House Products, Etc., from Mason City, Etc., 30 I. C. C. 341; Grain Rates to Pittsburgh, Pa., 30 I. C. C. 382; Coal Rates from Oak Hills, Colo., 30 I. C. C. 505; Class and Commodity Rates to and from Quincy, Ill., 32 I. C. C. 471; Cottonseed Products to Port Arthur, Tex., 38 I. C. C. 378; Lithopone and Zinc Oxide Between Western Points, 61 I. C. C. 208.

§5. (9) Inadequate Facilities.

ALL CITATIONS

Newspapers on Passenger Cars, 57 I. C. C. 743.

§5 (9½) Retention of Differentials.
See Differentials.

ALL CITATIONS

Class Rates from New Orleans to Colorado, 59 I. C. C. 734, 736; Consolidated Coal Co. v. Director General, as Agent, 64 I. C. C. 536; Grain and Grain Products from Memphis, Tenn., originating beyond, destined to Carolina territory, 66 I. C. C. 19.

§6 Right to Earn.
See Evidence §6.

(½) In general.

IMPORTANT CASES SINCE 1908

(a) A railroad is justified, no doubt, in maintaining a surplus which will insure dividends to its stockholders during lean years; and it may accumulate through the years funds to meet obsolescence in plant, unless this charge is taken care of in maintenance. The one other legitimate end for which a surplus may in reason be accumulated is to supply facilities in the nature of luxuries, which cannot be made to yield adequate return upon the capital invested. This would appear to be as broad a definition of a legitimate surplus as could be desired and when it is considered that the maintenance accounts of these carriers practically rebuild the roads every ten years, it seems to be as broad a definition as necessity would require. In Re Advances in Rates, Western Case, 20 I. C. C. 307, 336.

(b) It remains for the Supreme Court yet to decide that a public agency such as a railroad created by public authority, vested with governmental authority, may continuously increase its rate in proportion to the increase in its value, either (1) because of betterments which it has made out of income, or (2) because of the growth of the property in value due to increase in value of the land which the company owns. Advances in Rates, Western Case, 20 I. C. C. 307, 339, 340.

(c) Public policy forbids the theory that a carrier is entitled to increase rates so as to earn a return upon betterments created out of income. Its return should come from increased traffic and operating economy. Advances in Rates, Western Case, 20 I. C. C. 307, 340.

(d) It is manifest that when additional revenues are desired and rates are to be increased for that purpose a horizontal advance in all rates on a fixed percentage instead of yielding additional revenues would not improbably result in a reduced revenue. Competitive and commercial conditions have so important a relation to the movement of particular kinds of traffic as to make such a readjustment of a rate schedule inadvisable if not altogether impossible. To increase a rate on a given commodity when it is already as high as competitive and commercial conditions will allow means that it will cease to move, and such a rate will necessarily result in a loss even of the revenue that has theretofore been en-

joyed on that commodity. Railroad Commission of Texas v. A. T. & S. F. Ry. Co., 20 I. C. C. 463, 482.

(e) Evidence that an existing rate is so high that no shipments move thereunder does not show that a proposed increased rate is just and reasonable. Cement Rates from Points in Illinois, 32 I. C. C. 369, 374.

(f) Certain increases in rates, fares, and charges of carriers in official, southern, and western classification territories, to a basis that will enable them to earn an aggregate annual net railway operating income equal to 6 per cent upon the aggregate value of the railway property held for and used in the service of transportation, authorized. Increased Rates, 1920, 58 I. C. C. 220.

ALL OTHER CITATIONS

The Five Per Cent Case (Diss. Op.), 32 I. C. C. 325, 336, 337..

§6. (1) On Bona Fide Investment.

See Evidence §6.

IMPORTANT CASES SINCE 1908

(a) The trend of the highest judicial opinion would indicate that the Commission should accept neither the cost of reproduction nor the capitalization, nor the prices of stock and bonds in the market, nor yet the original investment alone, as the test of present value for purposes of rate regulation. Perhaps the nearest approximation to the fair standard is that of bona fide investment the sacrifice made by the owners of the property—considering as part of the investment any shortage of returns that there may be in the early years of the enterprise. Upon thus taking the life history of the road through a number of years, its promoters are entitled to a reasonable return. This, however, manifestly is limited, for a return should not be given upon wastefulness, mismanagement or poor judgment, and always there is present the restriction that no more than a reasonable rate shall be charged. In Re Advances in Rates, Western Case, 20 I. C. C. 307, 347.

ALL OTHER CITATIONS

Increased Rates, 1920, 58 I. C. C. 220.

§6. (2) On Unearned Increment.

IMPORTANT CASES SINCE 1908

(a) It is a conservative statement of the law to hold that a railroad may not increase the rate upon a number of commodities solely because its real estate has risen in value. In Re Advances in Rates, Western Case, 20 I. C. C. 307, 344.

§6. (3) On Reproduction Value.

IMPORTANT CASES SINCE 1908

(a) Carriers in official classification territory advanced all their class rates and about half of their commodity rates. No testimony was introduced tending to show the cost of reproducing the properties of the defendants. HELD: The Commission was compelled to dispose of the case upon the evidence available; that it is plain that a physical valuation would introduce into the calculation a new element which might lead to a different conclusion. The Commission has several times urged Congress to authorize a reproductive valuation of those railroads subject to federal jurisdiction. It is reported that certain railroad companies are making such valuations themselves, and the results may at any time be urged upon the Commission and the courts as a justification for higher freight rates. The interest of the public ought not to depend upon a valuation made entirely by the owners of these properties, no matter how honestly the work may be prosecuted. In Re Advances in Rates, Eastern Case, 20 I. C. C. 243, 305.

(b) Carriers running west of Chicago advanced some 200 commodity rates. It was contended that the Mann-Elkins Act made all rates in effect January 1, 1910, reasonable; that the credit of the railroads was becoming impaired; that the roads were not earning an adequate return upon the reproduction value of their properties, and had a legal right to earn a reasonable return upon the actual fair value of the railroad as it exists today and as a going concern, and that the cost per unit of service was increasing. HELD: That the burden of proof under the Mann-Elkins Act compelled the railroad to justify as reasonable the increased rate as a whole; that the net earnings of railroads under governmental regulation when there was stability of rates and the extinction of rebates to have been greater than ever before, and that the credit of the railroad was as high as it had ever been, and the dividend paid greater. That to allow a carrier to earn a reasonable return upon the present value of its property rather than upon its bona fide investment therein would mean to permit

rates to increase as the value of the property increased and would be against public policy; and that the Commission could not sanction the idea that any railroad had a legal right to do this. That the gross net earnings of the carriers were greater than ever before in their history, and that upon the record the advanced commodity rates already paid their due share of the value of the service rendered by the carrier, many of them being twice as high for the haul immediately west of Chicago as corresponding rates for a similar rate immediately east of Chicago. Carriers asked to cancel tariffs carrying the advanced rates and adhere to rates already in effect. In Re Advance in Rates, Western Case, 20 I. C. C. 307.

§6. (4) On Surplus.

See Reasonableness of Rates §33.

IMPORTANT CASES SINCE 1908

(a) Carriers in Official Classification territory increased all class rates and about half their commodity rates. They contended they should be allowed to invest in improvements and additions to the property an amount equal to that paid by way of dividends to stockholders. In the year 1910 railroad dividends aggregated $450,131,650. HELD: That inasmuch as every dollar thus added to the value of the property justifies, according to the claim of the defendants, an added net return, the Commission cannot properly permit an advance in rates with the intent to produce an accumulation of surplus for this purpose until the status of the surplus is determined by legislative action or judicial interpretation. In Re Advances in Rates, Eastern Case, 20 I. C. C. 243, 270.

ALL OTHER CITATIONS

In Re Advances in Rates, Western Case, 20 I. C. C. 307, 336, 341.

§6. (5) For Permanent Improvements.

See Reasonableness of Rates §26.

IMPORTANT CASES SINCE 1908

(a) Both the Supreme Court and the Commission are committed to the proposition that in fixing a fair return upon railroad property for the purpose of determining whether a given advance is reasonable the railway ought not to treat as a part of its operating expenses the cost of permanent improvements or extensions, and this must of necessity mean that the rates should not be sufficient to allow both the payment of dividends to stockholders and interest to bondholders, and an additional sum for the purpose of improving and increasing the value of the property. Each generation may well be required to bear its own burden, and the stockholder should not obtain both an adequate dividend upon his stock and an addition to the value of his property. In Re Advances in Rates, Eastern Case, 20 I. C. C. 243, 266.

(b) The purchase of an additional terminal at Norfolk, Va., for the exclusive use of shippers of fruits and vegetables has not enhanced the value of the service accorded to the shipper, but has added materially to the shippers' inconvenience; and does not justify increased rates proposed. Fruits and Vegetables from Norfolk, Va., 38 I. C. C. 252, 256.

ALL OTHER CITATIONS

Advance in Rates, Western Case, 20 I. C. C. 307, 339, 340; Fruits and Vegetables from Norfolk, Va., 38 I. C. C. 252, 256.

§6. (6) All Traffic Will Bear.

IMPORTANT CASES SINCE 1908

(a) The Commission has never accepted the doctrine that the best test of the reasonableness of the rate is whether the traffic will move freely under it, although it has always deemed the state of an industry a pertinent fact in considering the reasonableness of the rate. In Re Transportation of Wool, Hides, and Pelts, 23 I. C. C. 151, 156.

ALL OTHER CITATIONS

Oregon & Washington Lumber Mfrs. Assn. v. U. P. R. R. Co., 14 I. C. C. 1, 15; Commercial Club of Omaha v. Anderson & Saline River Ry. Co., 18 I. C. C. 532, 536; Commercial Club of Omaha v. A. & S. R. Ry. Co., 19 I. C. C. 419, 421; Railroad Commission of Texas v. A., T. & S. F. Ry. Co., 20 I. C. C. 463, 482; In Re Advances on Staves, 23 I. C. C. 382; Cement Rates From Points in Illinois, 32 I. C. C. 369, 374; The Five Per Cent Case (Dis. Op.), 32 I. C. C. 325, 336, 337; Rates on Lumber from Southern Points, 34 I. C. C. 652, 658.

§6. (7) Cost of Insurance.

IMPORTANT CASES SINCE 1908

(a) Defendant rail and water carriers in their bills of lading exempted themselves from all liability for losses except those due to their own negli-

gence, and protected themselves by taking out insurance on the shipments moving over rail and water routes. Shippers also provided themselves with insurance, not being able to rely on those effected by the carriers, since on such insurance the names of the shippers were not specified, the value of the invoice was not known, nor had the shipper any information as to the company in which the insurance was placed, the nature of the policy taken out, or the conditions attaching to the policy. Defendants raised the class rates on rail and water transportation of merchandise from Atlantic ports to Minneapolis and Chicago, the purpose of the increase being to cover the cost of insurance incurred by the carriers. HELD: Since the shippers were not adequately protected by the insurance effected by the carriers, the increases were unreasonable and should be reduced to the former rates. Wyman, Partridge & Co. v. B. & M. R. R. Co., 13 I. C. C. 258, 264.

III. EVIDENCE.

See Evidence.

§6½. In General.

IMPORTANT CASES SINCE 1908

(a) In making increases under General Order No. 28, the President, through the Director General, was meeting a public need for additional revenue, as he certified in that order. In readjusting the resulting rates on petroleum and its products at the instance of interested shippers he exercised an authority and discretion recognized by the federal control act. Atlantic Refining Co. v. Director General, as Agent, 58 I. C. C. 46, 47.

(b) One of the principal difficulties of which complaint has been made by the livestock producers is the lack of prompt and efficient service. To encourage the long haul movement as against the short haul movement under present conditions of car supply would tend to increase rather than reduce transportation difficulties. Ex Parte 74, Application for Increase in Rates, 58 I. C. C. 220, 251.

(c) Wage increases, increased price of material, and other conditions which justified the Director General in increasing the rates under General Order No. 28, prevailed in the first six months of 1918 in the same manner and to the same degree as when that order was entered on June 25, 1918. Lake Park Refining Co. v. Director General, as Agent, 60 I. C. C. 381, 383.

(d) The Commission could not deny an otherwise justified increase because it might be used as a lever for increasing other charges. Switching at Mason City, 73 I. C. C. 308, 310.

ALL OTHER CITATIONS

Graves Bros. v. A. N. R. R., 45 I. C. C. 470, 472 Ex Parte 74, Application for Increase in Rates, 58 I. C. C. 220, 231; Mine Timbers from Missouri to Illinois Points, 58 I. C. C. 545, 548; Acme Cement Plaster Co. v. Director General, as Agent, 62 I. C. C. 119, 121; Lake Park Refining Co. v. Director General, as Agent, 60 I. C. C. 381, 383. Reparation as Relating to Increase of Rates, 68 I. C. C. 5, 7; Continental Paper Co. v. Director General, as Agent, 68 I. C. C. 162, 163; National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co., 68 I. C. C. 213, 246; United Light & Rys Co. v. Director General, as Agent, 69 I. C. C. 417; Petroleum Asso. v. Director General, as Agent, 78 I. C. C. 711, 716; Sand and Gravel from Covington, 81 I. C. C. 295; Acme Fruit Co. v. C. P. Ry. 87 I. C. C. 401.

§7. Change in Conditions.

(1) In General.

See Evidence §9; Reasonableness of Rates §7; Season Rates.

CASES 1887-1908

(a) As rates on iron articles were formerly reduced on account of commercial conditions the advances in those rates may have been proper owing to subsequent changes in such conditions. In the Matter of Proposed Advances in Freight Rates, 9 I. C. C. 382.

IMPORTANT CASES SINCE 1908

(b) The reasonableness of a rate must of necessity depend upon the conditions surrounding the traffic at the time it moves. The length of the haul, the competition to be met, the cost of the service, the value of the service, the density or volume of the tonnage, as well as the general transportation conditions then existing are factors that have a more or less definite relation to the rate that a carrier may reasonably demand for a transportation service. And these factors, except possibly the length of the haul, the grades, and other transportation conditions are in their nature neither permanent nor fixed; but

necessarily change with the general economic panorama. No presumption of law, therefore, can arise against an advanced rate simply because a lower rate previously existed. Memphis Cotton Oil Co. v. I. C. R. R. Co., 17 I. C. C. 313, 318.

(c) That proposed increased rates must rest upon "changed conditions" other than elimination of water competition held not to apply to rates reduced prior to June 18, 1910. Westbound Lake-and-Rail Knit Goods Commodity Rates, 32 I. C. C. 54, 57.

(d) A charge, reasonable in its inception many years ago, may become unreasonably low in consequence of the construction of more adequate facilities, a change in the character of the service rendered, the increased level of operating costs generally, or one or more of these factors. But the existence of such general conditions alone affords no proper basis upon which to test the reasonableness of a specific material increase in charges. Space Rental Charges on Cotton, 66 I. C. C. 121, 125.

ALL OTHER CITATIONS

Pabst Brewing Co. v. C. M. & St. P. Ry. Co., 17 I. C. C. 359, 360; Advance in Rates, Western Case, 20 I. C. C. 307, 319; In Re Advance in Rates, Eastern Case, 20 I. C. C. 243, 285, 306; In Re Advance in Rates, 21 I. C. C. 546, 555, 557; In Re Advances on Grain, 21 I. C. C. 22, 35; In Re Advances on Milk, 23 I. C. C. 500, 502; Chamber of Commerce of Houston v. G., H. & S. A. Ry. Co., 23 I. C. C. 214, 216; In Re Advances in Rates on Freight in Single Packages and Small Lots, 22 I. C. C. 328; In Re Transportation of Wool, Hides and Pelts, 23 I. C. C. 151, 156; In Re Rates for Transportation of Flaxseed, 25 I. C. C. 337; Davis Sewing Machine Co. v. P., C., C. & St. L. Ry., 26 I. C. C. 282; Rates on Linseed Oil, 26 I. C. C. 265; Oklahoma Grain Rates, 28 I. C. C. 462, 466; Emigrant Movables to South Dakota, 29 I. C. C. 40; Industrial Railways Case, 29 I. C. C. 212, 218; Five Per Cent Case, 32 I. C. C. 325, 328; Cement Rates from Salt Lake City, 33 I. C. C. 5, 7; The Cummins Amendment, 33 I. C. C. 682, 692, 693; Scranton-Williamsport Rail & Lake, 43 I. C. C. 182; The Fifteen Per Cent Case, 45 I. C. C. 303, 311, 312, 317; Proposed Increases in New England, 49 I. C. C. 421, 462; Illinois Coal Traffic Bureau v. Director General, 58 I. C. C. 351; Express Rates, 1920, 58 I. C. C. 707; Reduced Rates, 1922, 68 I. C. C. 676, 734.

§7. (2) Increased Operating Expenses. See Reasonableness of Rates §9.

CASES 1887-1908

(a) While the hauling of flat cars empty to the mills, or the practice of shippers to load cars below their capacity, are conditions which, to the extent they exist, are properly taken into account by carrier in fixing rates, it must be assumed that they were considered by defendant in making and maintaining the rates so long in force prior to the advance complained of. Tift v. Southern R. Co., 10 I. C. C. 548.

IMPORTANT CASES SINCE 1908

(b) Everything else remaining the same, an increase in cost of operation would justify an advance in rates. Other things remaining the same, increase in traffic requires a decrease in rates. It may, therefore, happen that the increase of traffic will more than offset the increase in operating expense. Cattle Raisers' Assn. of Texas v. M., K. & T. Ry. Co., 13 I. C. C. 418, 430.

(c) An increase in the cost of labor and in the price of railroad materials and supplies does not necessarily imply that there has been a decrease in the net earnings of the carrier during the same period. A material growth in its traffic and economies resulting from an alert and skillful management may readily overcome the increase in the cost of labor and its materials and thus leave its net revenues unimpaired. Shippers' & Receivers' Bureau of Newark v. N. Y. O. & W. Ry. Co., 15 I. C. C. 264, 265.

(d) If the carrier does not see proper to make improvements that will reduce cost of operation, it cannot claim that it may raise rates because cost approaches or overtakes revenue. Louisville & Nashville Railroad Coal & Coke Rates, 26 I. C. C. 20, 29.

(e) Operating costs having increased is not alone a justification for increase in rates. Memphis Freight Bureau v. L. & N. R. R. Co., 26 I. C. C. 402, 405.

(f) A general statement that cost of conducting terminals has increased and more revenue is needed. This kind of testimony furnishes no justification. It is susceptible of exact proof, and should be so presented. Detroit Switching Charges, 28 I. C. C. 494, 497.

(g) Increased prices of materials and

supplies, the increased cost of fuel, and increased wages are all significant and extremely important factors in a situation of advanced rates. The Fifteen Per Cent Case, 45 I. C. C. 303, 318.

ALL OTHER CITATIONS

Mountain Ice Co. v. D., L. & W. R. R. Co., 15 I. C. C. 305, 320; Winters Metallic Paint Co. v. C., M. & St. P. Ry. Co., 18 I. C. C. 596, 598; Commercial Club, Salt Lake City, v. A., T. & S. F. Ry. Co., 19 I. C. C. 218, 222; In Re Advances in Rates, Western Case, 20 I. C. C. 307, 378; In Re Rates on Hardwood Lumber, 21 I. C. C. 397; In Re Advances on Freight in Single Packages and Small Lots, 22 I. C. C. 328, 331; In Re Advances by the D. & H. Co. on Fluid Milk, 23 I. C. C. 500, 501, 502; Hormel & Co. v. C., M. & St. P. Ry. Co., 26 I. C. C. 112, 114; Joint Coal Rates to Clinton, Ia., 26 I. C. C. 179; Furniture Rates in the Northwest, 26 I. C. C. 655; Rates on Sand to Houston, Tex., 26 I. C. C., 677, 679; In Re Advances on Hay, 25 I. C. C. 680, 682; Kansas-Iowa Brick Rates, 28 I. C. C. 285, 287; New York Butter and Cheese Rates, 28 I. C. C. 330; The Five Per Cent Rate Case, 31 I. C. C., 351, 386; Rates on Lumber from Southern Points, 34 I. C. C. 652, 660; Eastern Livestock Case, 36 I. C. C. 675, 693; Detroit Coal Exchange v. M. C. R. R. Co., 38 I. C. C. 79, 84; Coal to Brooksville, Ky., 43 I. C. C. 115; Traffic Bureau of Nashville v. L. & N. R. R., 43 I. C. C. 366; New England Lumber Rates, 43 I. C. C. 641; The Fifteen Per Cent Case, 45 I. C. C. 303, 312; Ex Parte 74, for Application for Increase in Rates, 58 I. C. C., 220, 230; Reparation as Relating to Increase of Rates, 68 I. C. C. 5, 7.

§7 (3) Impairment of Credit.

IMPORTANT CASES SINCE 1908

(a) The credit of American railroads should be first class. They should be able to borrow money at rates as low as the most stable of the great industries and the most solvent of municipalities. The railroad is interested in getting its money as cheaply as possible while the stock and bond buyer is interested in securing as high a rate as possible for the money which he invests alone. So far as the bond buyer is concerned it is evident that no matter to what elevation rates might be raised, it would not increase by the fraction of a cent the interest which he would receive. It is not to be imagined that an increase in railroad revenues would increase the rate of interest upon railroad bonds. Advances in Rates, Western Case, 20 I. C. C. 307, 331.

ALL OTHER CITATIONS

In Re Advances in Rates, Eastern Case, 20 I. C. C. 243, 251, 252.

§7. (4) Cessation of Competition.

See Competition.

IMPORTANT CASES SINCE 1908

(a) In particular cases the Commission has recognized the natural right of the carrier to adjust its rates on a lower basis than it would otherwise establish, in order to meet competition over other routes and from other quarters, and thus secure a traffic that would be lost to it under higher rates. The Commission has sanctioned such adjustments rather in the interests of the carrier than the shipper. Indianapolis Freight Bureau v. C., C., C. & St. L. Ry. Co., 26 I. C. C. 53, 58.

(b) It is for the carrier to determine whether it will meet water competition. If it elects to discontinue such practice at any point and increase its rates, the Commission is concerned only with the question of whether or not the increased rates are just, reasonable and proper. Rates on Scrap Iron from Gulf Ports, 33 I. C. C. 668, 672.

(c) Reasons other than the elimination of water competition must be shown where it is sought to increase rail rates depressed without authority. Reopening Fourth Section Applications, 40 I. C. C. 35, 40.

(d) If a carrier elects to discontinue a competitive rate, whether because competition no longer exists or because it does not care longer to compete, the commission would concern itself only with whether or not the resulting increased rates are just, reasonable, and proper. Tobacco from Ohio River Crossings, 73 I. C. C. 384, 387.

ALL OTHER CITATIONS

Florida Fruit & Vegetable Assn. v. A. C. L. R. R. Co., 17 I. C. C. 552, 558; Schoenhofen Brewing Co. v. A., T. & S. F. Ry. Co., 17 I. C. C. 329; New Orleans Board of Trade v. L. & N. R. R. Co., 17 I. C. C. 231, 237, sustained L. & N. R. R. Co. v. I. C. C., 184 Fed. 118, enjoined 195 Fed. 541; Audley Hill & Co. v. S. Ry. Co., 20 I. C. C. 225; R. R. Com. of Oregon v. S. P. Co., 24 I. C. C. 273;

Lumbermen's Exchange of St. Louis v. A. & S. R. Co., 24 I. C. C. 220; In Re Advances on Furniture from Nappanee, Ind., to Chicago, Ill., 25 I. C. C. 331; Pig Iron Rates from Virginia to Pennsylvania 27 I. C. C. 343, 346; Emlenton Petroleum Rates, 29 I. C. C. 519; Brownsville, Tex., Class and Commodity Rates, 30 I. C. C. 479; Westbound Lake-and-Rail Knit Goods Commodity Rates, 32 I. C. C. 54, 57.

§7. (5) Competition In General.

See Competition.

IMPORTANT CASES SINCE 1908

(a) But it can not be maintained that because a carrier has once chosen to make a low rate to meet water competition, it is estopped from thereafter increasing that rate. Lumber Between Points in Western Trunk Line Territory, 38 I. C. C. 370, 376.

(b) It is one thing to give consideration to the condition of all competing carriers in fixing rates between competitive points on a reasonable basis, but quite a different matter to lift the entire rate structure of an important territory solely for the purpose of enabling carriers operating through a different and higher rated territory to compete at border points with the carriers operating within that territory on a rate equality without reducing the rates at intermediate points in such higher rated territory. Rates To, From and Between Points South of the Ohio River, Including the Mississippi Valley, 64 I. C. C. 306, 329.

ALL OTHER CITATIONS

In Re Advances in Class and Commodity Rates, 25 I. C. C. 401, 402; Indianapolis Freight Bureau v. C., C., C. & St. L. Ry. Co., 26 I. C. C. 53, 58; Rates on Potash and Other Commodities, 29 I. C. C. 626; Rates on Scrap Iron from Gulf Ports, 33 I. C. C. 668, 672.

§7. (6) Disputes Concerning Divisions.

See Division §4.

IMPORTANT CASES SINCE 1908

(a) Disagreement between carriers over divisions will not be recognized as justification for withdrawal of joint rates or through routes. Especially is this true if such withdrawal occasions higher charges to shippers or receivers, and deprives them of the opportunity to ship via reasonable through routes. Lumber Rates from Mississippi to Eastern Points, 27 I. C. C. 6, 9.

(b) An increase in rates can not be justified on the ground that a particular carrier, which transports shipments over only a portion of the entire through route, receives an unsatisfactory division of the joint rate. Grain from Manitowoc, Wis., 37 I. C. C. 549 551.

(c) Disputes among carriers over divisions is no justification for increased rates. Concentration of Cotton at New Orleans, 83 I. C. C. 18, 20.

ALL OTHER CITATIONS

Advances on Iron Ore, 26 I. C. C. 675, 676; New Mexico Coal Rates, 28 I. C. C. 328, 329; Chicago Lighterage Charges, 28 I. C. C. 390, 392; Oklahoma Grain Rates, 28 I. C. C. 462; Kansas City & M. Ry. Co., Rate Cancellation, 28 I. C. C. 640, 642; Lumber Rates Through Ohio River Crossings, 29 I. C. C. 38; Rates on Crushed Stone from McCook and Thornton, Ill., 29 I. C. C. 136; Dunbar-Hansen Co. v. S. P. Co., Unrep. Op. A-234; Pfister & Vogel Leather Co. v. B. & M. R. R. Co., Unrep. Op., A-238; United States Gypsum Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A-310; Rates on Lumber and Other Forest Products, 30 I. C. C. 371, 372; People's Fuel & Supply Co. v. G. Y. W. Ry. Co., 30 I. C. C. 657, 659; Malt Rates to New Orleans, La., 30 I. C. C. 587, 592; Lumber Transit Privileges at Buffalo N. Y., 33 I. C. C. 601, 605; Illinois-Minnesota Coal Rates Unrep. Op. A-962; Anthracite Coal Rates to Chicago and Other Points, 35 I. C. C. 702; Grain from Manitowoc, Wis., 37 I. C. C. 540; Coal to Kentucky Points 37 I. C. C. 194, 197; Coal from Toluca, Ill, 37 I. C. C. 230; Grain Transit Rules at Buffalo, N. Y., 39 I. C. C. 580, 582; Cincinnati Switching Charges, 44 I. C. C. 353, 354; Coal to Muscatine, Ia,. 46 I. C. C. 450; Graves Bros. Co. v. A. N. R. R., 45 I. C. C. 470, 472; Switching Absorptions, 47 I. C. C. 583, 586; Iron and Steel Fabrication, 49 I. C. C. 249, Potatoes from Kansas Points, 49 I. C. C. 525; Gulf Lumber Co. v. G. & S. R. R. Co., 53 I. C. C. 369, 370; Coal from Norton & Northern Ry. Mines, 58 I. C. C. 739, 741; Coal from Illinois to Michigan, 61 I. C. C. 195; Absorption of Switching Charges at Coeur d'Alene, 60 I. C. C. 275; Grain and Flour from Mississippi River Points to Duluth, 61 I. C. C. 307; Minimum Charges on Less-than-Carload Shipments, 61 I. C. C. 727; Lumber Rates from Pacific Coast, 63 I. C. C. 125; Express Rates on Bangoor & Aroostock R. R., 63 I. C. C. 452, 454; Refining in

Transit of Copper Articles at Laurel Hill, N. Y., 64 I. C. C. 257, 258; Limestone from Illinois Points, 74 I. C. C. 345, 348; Cancellation of Joint Rates from and to Green Hill, S. C., 74 I. C. C. 571; Sisal from Gulf Ports, 88 I. C. C. 704, 706; Limestone Illinois Points, 89 I. C. C. 11; Paper Stock from St. Louis, 89 I. C. C. 267, 269.

§7. (7) Lack of Revenue.

See Evidence §51.

CASES 1887-1908

(a) Carriers are entitled under the act to regulate commerce to determine for themselves what are proper rates in the first instance, but when they make numerous rate advances by concerted action and under circumstances not showing justification for increased revenue, they cannot successfully plead the excuse of financial necessity where the legality of such action as applied to any given commodity is challenged; and the controlling question must be as to the reasonableness and justice of the advance in classification and rate upon the facts shown in each case. National Hay Association v. L. S. & M. S. Ry., 9 I. C. C. 264.

(b) Carriers have no right to advance a rate which is already reasonably high and yields an adequate return for the service rendered, solely because additional revenue is needed. Central Yellow Pine Asso. v. Illinois C. R. Co., 10 I. C. C. 505, 506.

(cde) Carriers have no right to advance a rate which is already reasonably high, and which yields an adequate return for the service rendered, solely because additional revenue is needed. The mere fact of the need of additional revenue to meet increased expenses does not justify the advance in rates on lumber shipments from Georgia to and beyond the Ohio River, which are, for the most part, of low grade and comparatively small value. Tift v. Southern R. Co., 10 I. C. C. 548.

IMPORTANT CASES SINCE 1908

(f) Certain increases in rates, fares, and charges of carriers in official, southern and western classification territories, to a basis that will enable them to earn an aggregate annual net railway operating income equal to 6 per cent upon the aggregate value of the railway property held for and used in the service of transportation, authorized. Increased Rates, 1920, 58 I. C. C. 220.

(g) But the financial condition of a carrier, although an important matter for consideration, does not in itself warrant an increase in rates. Coal from Cumberland R. R. to Southeastern Points, 61 I. C. C. 80, 82.

(h) The mere showing of the poor financial condition of one participating carrier is not sufficient to justify increased joint rates. Bituminous coal from mines on the C. & M. R. R., 74 I. C. C. 723, 725.

ALL OTHER CITATIONS

The Five Per Cent Case, 31 I. C. C. 351, 403, 450 (Dissenting Opinion); Chattanooga Log Rates, 30 I. C. C. 36, 39; The Five Per Cent Case (Diss. Op.), 32 I. C. C. 325, 337; Class and Commodity Rates from Stations in Maine, 31 I. C. C. 18, 20 Lumber Rates from Points in Arkansas, 34 I. C. C. 102, 103; Ladd & Co. v. Gould S. W. Ry. Co., 36 I. C. C. 179, 182; Ex Parte 74, Application for Increase in Rates, 58 I. C. C. 220, 234; Atlantic Refining Co. v. Director General, as Agent, 58 I. C. C. 46, 47; Class and Commodity Rates of Kansas City Rys. Co., 59 I. C. C. 382; Rates Between Ohio River and Cumberland River Points, 61 I. C. C. 10; Illinois Zinc Co. v. Director General, as Agent, 61 I. C. C. 92, 105; Rates on Grain, Grain Products and Hay, 64 I. C. C. 85, 99; Increased Rates on Ice, Carloads, from Various Wisconsin Points to Chicago, 74 I. C. C. 662; Bituminous Coal from Mines on C. & M. R. R., 74 I. C. C. 723.

§7. (8) Percentage Increases.

See Percentage Rates.

IMPORTANT CASES SINCE 1908

(a) A general percentage increase is undesirable because of its serious effect upon commercial conditions and established relationships. The Fifteen Per Cent Case, 45 I. C. C. 303, 325.

(b) Where revenue requirements necesitate a speedy revision of rates to produce increased earnings, adherence to a strict percentage increase would operate to the advantage of shipments traversing the shorter distances, and conversely to the disadvantage of long hauls. The area of competitive markets would be diminished; to the disadvantage of consumers, and the control of nearby producers over such markets would be strengthened. These considerations act less powerfully on goods of high value in comparison with their weight and

bulk where the cost of carriage is comparatively slight in comparison with the prices at which they are sold. Conversely these considerations operate powerfully on goods of relatively low value, in proportion to weight and bulk. On the other hand, a flat increase of certain money amount to preexisting rates tends to increase relatively the per ton and per car charge to nearby producers as compared with those who ship a longer distance. This method, however, imposes the same money handicap per unit of freight on all shippers, and does not tend to tighten the control of nearby producers upon the market. To a certain degree, therefore, it tends to be more in the interest of the consumers than a new system of higher rates adjusted more closely to distance which shipments traverse. Upon a tonnage of such magnitude as that of iron ore, the Commission is not prepared on this record to find that the flat per ton increase is not warranted under the circumstances in which it was instituted, and particularly in a situation such as that here disclosed, where the rates attacked, by whatever method increased, do not appear to be unjust and unreasonable or out of line with similar rates contemporaneously imposed upon the same traffic for comparable distances. Virginia Iron, Coal & Coke Co. v. Director General, 53 I. C. C. 583, 589.

(c) The percentage of increase is not controlling if the resulting rates are reasonable. Ault & Wiborg Co. v. Director General, 62 I. C. C. 133, 134.

(d) The percentage of increase is not controlling if the resulting rates are not unreasonable, Endicott-Johnson Corporation v. Erie R. R. Co., 73 I. C. C. 562, 565.

(e) Percentage of increase of rates is not controlling if resulting rates are reasonable. Nor does the commission regard subsequent reduction of rates as establishing unreasonableness. Sprague Tire & Rubber Co. v. Director General, as Agent, 80 I. C. C. 285, 288.

(f) Fact that rates paid represent a high percentage of increase over rates formerly charged is not proof that rates paid are unreasonable. Ault & Wiborg Co., 62 I. C. C., 133. French Battery & Carbon Co. v. C. & N. W. Ry. Co., 80 I. C. C. 344, 346.

(g) Evidence of the percentage or the amount by which rates are increased does not establish the unreasonableness of the resulting rates. Acme Fruit Co. v. C. P. Ry., 87 I. C. C. 401, 402.

ALL OTHER CITATIONS

The Fifteen Per Cent Case, 45 I. C. C. 303, 316; Calumet & Arizona Mining Co. v. Director General, 57 I. C. C. 332, 336; Phelps Dodge Corporation v. Director General, 57 I. C. C. 714, 716; Anaconda Copper Mining Co. v. Director General, 57 I. C. C. 723, 733; Natchez Chamber of Commerce v. St. L., I. M. & S. Ry. Co., 58 I. C. C. 148, 247; Increased Rates, 1920, 58 I. C. C. 220, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 302; Fish Oil, St. Marys, Ga., to Ohio and Mississippi River Crossings, 60 I. C. C. 511; Acme Cement Plaster Co. v. Director General, 62 I. C. C. 119; Substitution for Increases in Rates, 61 I. C. C. 518, 522, 523; Barnett Oil Co. v. Director General, as Agent, 61 I. C. C. 568, 570; Barnett Oil & Gas Co. v. Director General, as Agent, 62 I. C. C. 133, 134; Boldt Paper Mills v. Director General, as Agent, 62 I. C. C. 471, 472; Lumber Rates Between El Paso and Western Points, 64 I. C. C. 12; Bedford Pulp & Paper Co. v. Director General, as Agent, 64 I. C. C. 219, 220; Maltby v. Director General, as Agent, 64 I. C. C. 297; Silica Sand Producers Traffic Asso. v. C., B. & Q. R. R. Co., 64 I. C. C. 302, 304; Ault & Wiborg v. Director General, as Agent, 64 I. C. C. 443; Sand and Gravel from Michigan City, 64 I. C. C. 512; Madison Lumber & Mill Co. v. Director General, as Agent, 64 I. C. C. 699, 701; Southern Hardwood Traffic Asso. v. I. C. R. R. Co., 66 I. C. C. 68, 74; Wofford Oil Co. v. Director General, as Agent, 66 I. C. C. 509, 510; Gilpin Langdon & Co., Inc. v. Director General, 68 I. C. C. 292, 293; Atlantic Coast Line Ry. Co. v. Railroad Commission of Georgia, 281 Fed 321, Alabama Company v. Director General, 78 I. C. C. 561, 568; Niles Fire Brick Co. v. Director General, as Agent, 80 I. C. C. 380; Central Iron & Steel Co. v. Director General, as Agent, 80 I. C. C. 698; Southern Appalachian Coal Operators v. L. & N. R. R. Co., 83 I. C. C. 130, 138; Lawton Refining Co. v. Director General, as Agent, 83 I. C. C. 443.

§7. (9) Government Advances.

IMPORTANT CASES SINCE 1908

(a) The records are clear that it was the intention of the Railroad Administration to apply to flat increases, where such were specifically provided, to line

haul rates generally throughout the country, including hauls complete within themselves from shipper to consignee between any two points within the switching limits of a city or district. But the interpretation of G. O. 28 was not always uniform as to complete hauls within a district and in some cases and on some commodities the general 25 per cent increase was applied to the existing rate. Illinois Brick Co. v. Director General, 64 I. C. C. 273, 277.

(b) The fact that a flat increase was authorized as reasonable for general application under General Order No. 28 of the director general does not preclude attacks upon particular rates which include that increase upon the ground that the resulting rate was unreasonably high. Lawton Refining Co. v. Director General, as Agent, 73 I. C. C. 121, 122.

(c) The reasonableness of the increases applied to combination rates can not be determined entirely by a construction of General Order No. 28 of the director general, but the controlling question is whether the resulting rates were unreasonable or otherwise unlawful. Wilbur Lumber Co. v. Director General, as Agent, 73 I. C. C. 152, 155.

(d) Fact that rates were not increased in strict conformity with the provisions of General Order No. 28 of the Director General does not, of itself, establish unreasonableness. Tampa Gas Co. v. Diretcor General, as Agent, 73 I. C. C. 488, 490.

(e) Contention that rates were unlawful and unreasonable because not made in accord with intention of General Order No. 28 of director general, not sustained. "Controlling fact to be determined is not whether rate was increased in strict compliance with terms of the general order, but whether resulting rate was unreasonable or otherwise unlawful." Greene Cananea Copper Co. v. Director General, as Agent, 80 I. C. C. 121, 122.

ALL OTHER CITATIONS

Parlin & Orendorff Co., 59 I. C. C. 63; Columbia Quarry Co. v. Director General, as Agent, 63 I. C. C. 203; Illinois Brick Co. v. Director General, 64 I. C. C. 273, 277; Maltby v. Director General, as Agent, 64 I. C. C. 297; Pure Oil Co. v. Director General, 64 I. C. C. 688; Standard Oil Co. v. Director General, 66 I. C. C. 37; Oxford Paper Co. v. Director General, 66 I. C. C. 159, 163; Anaconda Copper Mining Co. v. Director General, 57 I. C. C. 723, 726; State of Idaho ex rel. v. Director General, 58 I. C. C. 342, 344; Abbott v. Director General, as Agent, 61 I. C. C. 296, 299; Schram Glass Mfg. Co. v. Director General, as Agent, 61 I. C. C. 435, 437; Barnett Oil & Gas Co. v. Director General, as Agent, 61 I. C. C. 568; Crucible Steel Company of America v. Director General, as Agent, 61 I. C. C. 753; Wilhoit Co. v. Director General, as Agent, 62 I. C. C. 313; Certain-Teed Products Corp. v. Director General, 63 I. C. C. 93, 97; Consolidated Gas & Electric Co. v. Director General, 63 I. C. C. 135, 138; Wilbur Lumber Co. v. Director General, 73 I. C. C. 152, 158; Alabama Co. v. Director General, as Agent, 78 I. C. C. 561; Van Dusen Harrington Co. v. Director General, as Agent, 78 I. C. C. 729, 730; Mason City Brick & Tile Co. v. Director General, 88 I. C. C. 37, 43.

§8. Presumptions.

See Evidence VI.

(1) Continuance of Prior Rate.

See Continuance of Prior Rate; Evidence §29; Presumptions; Voluntary Rates.

IMPORTANT CASES SINCE 1908

(a) Railways are authorized to establish in the first instance their transportation charges and the presumption of right doing attaches to their acts in the establishment of those rates. No presumption of law against a particular rate springs from the fact that the rate in question was an advance over some previous rate. The burden of proof is always upon the party who attacks an existing rate. The circumstance that the railway has for a series of years maintained a lower rate or a different relation of rates is an evidentiary fact which may be introduced and considered like any other fact. I. C. C. v. Chicago G. W. Ry. Co., 209 U. S. 108, 119, 28 Sup. Ct. 493, 52 L. Ed. 705.

(b) Where a rate has been established and maintained for a considerable period and for the purpose of developing a particular industry and with full knowledge that the industry could not be developed without it, and where, under the influence of such rate, large amounts of money have been invested in property the value of which must be seriously impaired by an advance of the rate, that fact is an important consideration in passing upon the reasonableness

of such advance. Western Oregon Lumber Mfrs. Assn. v. S. P. Co., 14 I. C. C. 61.

(c) It is said that an advance in a long established rate at once suggests the propriety of an inquiry of the carrier for a statement of its reasons for making the advance. But in making its explanation the carrier is not under the necessity of overcoming the technical weight and force of a presumption of law that the previously existing lower rate was a reasonable rate. The long continuance of a lower rate may be said to raise a presumption of fact that the advanced rate is unreasonable. But this in a sense is no presumption at all, for it cannot carry beyond the actual tendency of the fact itself to produce that belief in the mind of the investigator. The fact that the lower rate has long remained undisturbed has strong probative value. Considered merely as evidence, such a rate history, in the absence of some explanation that satisfies the judgment of the propriety and need of an increase in rates would ordinarily have great force. But in every case the Commission must consider and weigh all the other facts of record before arriving at the conclusion that the increase in rates was unreasonable. Memphis Cotton Oil v. I. C. R. R. Co., 17 I. C. C. 313, 318.

(d) The circumstance that carriers have established and voluntarily maintained certain rates for twenty-five years is not conclusive evidence that they were reasonable, but it is in the nature of an admission upon their part to that effect, which requires, when these rates are advanced, some satisfactory explanation. When it further appears that a rate voluntarily maintained for a quarter of a century has within seven years been increased by one-fourth, the reason by which it is sought to justify a still further advance must be even more cogent. This does not conclusively show that the carriers ought not to be permitted to advance such rate at the present time nor in the future, but it is evidence which bears strongly upon the propriety of a present increase. U. S. Leather Co. v. So. Ry. Co., 21 I. C. C. 323, 327.

(e) There exists a presumption in favor of inter-relations in a rate fabric that has long continued undisturbed. And there are common-sense limits within which any attempts at a rate adjustment are necessarily confined. Every act of rate making necessarily carries vestiges of discrimination. The Commission is not called upon to do the impossible and to show such meticulous attention to the adjustment of fractions as to preclude the possibility of any readjustment of rates whatever. With a demonstration of inadequate revenues, and with a presumption in favor of the propriety of the interrelation between rates long in effect, an advance moderate in amount, calculated to produce but a reasonable increment in earnings, and affecting all traffic in the same proportionate degree, is the plain dictate of law and of common sense. The Five Per Cent Rate Case, 31 I. C. C. 351, 450. (Dissenting Opinion.)

ALL OTHER CITATIONS

Louisville & N. R. R. Co. v. I. C. C., 195 Fed. 541, 557; Fairmont Creamery Co. v. C., B. & Q. R. R. Co., 22 I. C. C. 252, 254; Commercial Club of Omaha v. S. P. Co., 20 I. C. C. 631, 636; Sunderland Bros. Co. v. P. M. R. R. Co., 16 I. C. C. 450, 451; Shippers' & Receivers' Bureau of Newark v. N. Y., O. & W. Ry. Co., 15 I. C. C. 264, 265; Indianapolis Freight Bureau v. C., C., C. & St. L. Ry. Co., 15 I. C. C. 504, 529; Pacific Coast Lumber Mfrs. Assn. v. N. P. Ry. Co., 14 I. C. C. 23, 38, 39; Rehearing Denied, 16 I. C. C. 465; Decision Sustained, I. C. C. v. U. P. R. R., 222 U. S. 541, 32 Sup. Ct. 108 Sup. Ct. 108, 56 L. Ed. 308; Western Oregon Lumber Mfrs. Assn. v. S. P. Co., 14 I. C. C. 61, 72; Banner Milling Co. v. N. Y. C. & H. R. R. Co., 14 I. C. C. 398, 408; Hartville Celery Growers' Assn. v. Pac. Ex. Co., 14 I. C. C. 590, 593; Detroit Chemical Works v. N. C. Ry. Co., 13 I. C. C. 357, 362; Burgess v. Transcontinental Freight Bureau, 13 I. C. C. 668, 677; Memphis Freight Bureau v. L. & N. R. R. Co., 26 I. C. C. 402, 404; Missouri River Building Stone Rates, 28 I. C. C. 269; Chamber of Commerce, Houston, Tex., v. I. & G. N. Ry. Co., 32 I. C. C. 247, 257; Freight Rates from Minnesota Points, 32 I. C. C. 361, 364; Reshipping Rates on Grain from Omaha, 32 I. C. C. 590, 594; People v. Public Service Commission for Second District (N. Y. 1915), 109 N. E. 252, 255; 1915 Western Rate Advance Case, 37 I. C. C. 114, 150; New Orleans, Texas Rates, 38 I. C. C. 1, 10.

§8 (2) Temporary Reductions.

(a) Ordinarily the advance of a rate

for a short period followed by the restoration and maintenance of a lower rate formerly in force tends to raise a presumption of fact that the advanced rate was unreasonable. This rule may be modified where a special rate, not compensatory, is put in in order to "scalp" business on competitive traffic. Fairmont Creamery Co v. C. B. & Q. R. R. Co., 22 I. C. C. 252.

IMPORTANT CASES SINCE 1908

(b) Where a carrier lowered a rate to meet the short-line rate and subsequently increased it, the increased rate is not necessarily unreasonable. Wharton Steel Co. v. C. R. R. of N. J., 26 I. C. C. 166.

ALL OTHER CITATIONS

Fairmont Creamery Co. v. C., B. & Q. R. R. Co., 22 I. C. C. 252; In Re Advances on Vehicles, 22 I. C. C. 124, 127.

§8½. Comparisons.

See Comparative Rates; Evidence §12, §13.

IMPORTANT CASES SINCE 1908

(a) Where a comparison of the different parts of a suspended schedule is conclusive that the rates are not based on distance, the mere fact that there are other rates on lumber as high as some of the suspended rates, considering distances alone, is not persuasive that such suspended rates are reasonable. While railroads cannot be expected to grade their rates so closely with regard to distance that there will be no inconsistencies in their schedules, yet when they seek to justify proposed increases by comparisons based on distance, the fact that the proposed schedule was manifestly made without regard to distance is entitled to consideration in determining the weight to be given to the comparisons made. Lumber to Nashville, Tenn., 31 I. C. C. 186, 188.

(b) In considering a proposed rate increase, a comparison of single years with other single years, or of one 5-year period with another, may lead to confusing and inaccurate conclusions. To be on firm ground, the general course of the returns of carriers upon their investment through a long series of years must be examined. The Five Per Cent Case, 31 I. C. C. 351, 364.

(c) The mere fact that an average loading is taken for a larger territory than that covered by the suspended schedule is not sufficient to impair the value of the comparisons made. 1915 Western Rate Advance Case, 37 I. C. C. 114, 127.

(d) Comparisons of proposed increased rates on a particular commodity with higher rates on the same commodity between other points in the same territory are not convincing evidence justifying such increased rates where it is not shown that any substantial tonnage moves on the higher bases, whereas there is a substantial movement between the points to which the increases are proposed. Manure from New Orleans, 73 I. C. C. 400, 402.

ALL OTHER CITATIONS

Coal to Glencoe, Mo., 39 I. C. C. 190, 192; Grain and Grain Products, Chicago to Kansas City, 60 I. C. C. 128; Rock Products Traffic League v. B. & O. R. R. Co., 68 I. C. C. 146, 148.

§8½a. Combination Rule.

IMPORTANT CASES SINCE 1908

(a) Shipments moved under combination rates, each factor of which was increased by general increases of the railroad administration. Tariff of one participating carrier contained rule that increase be added but once to the through combination rate but tariff of remaining carriers contained no such rule. HELD: Principle applied in Sligo Iron Store Co., 66 I. C. C., 643, and 73 I. C. C., 551, is controlling, and carrier publishing combination rule must protect resulting aggregating rate. Reparation awarded against carrier publishing the rule, and remaining carriers authorized to retain full charges authorized by their tariff. Standard Oil Co. v. M. V. R. R. Co., 81 I. C. C. 193.

(b) Combination rates composed of commodity rate and class rate held not to be affected by combination rule in tariff of one of participating carriers providing for application of but a single increase under General Order No. 28 of director general to sum of factors. Acme Cement Plaster Co., v. Director General, as Agent, 81 I. C. C. 298, 302.

(c) Where one of the tariffs used in making combination rates on through shipments contains a rule that such rates will be subject to the increase but once, there is a holding out to the shipper of the rate so constructed which the carrier should protect. Mason City Brick & Tile Co. v. Director General, 88 I. C. C. 37, 41.

ALL OTHER CITATIONS

Cancellation Rule for Combination

Rates, 81 I. C. C. 745; Lawrence v. Director General, as Agent, 83 I. C. C. 369; Combination Rule on Box Shooks, 89 I. C. C. 219.

§9. Concerted Action.

See Evidence §10; Infra §16.

CASES 1887-1908

(a) While carriers are entitled to determine for themselves what are proper rates in the first instance, they cannot justify the making of rate advances by concerted action, under circumstances not showing justification for increased revenue, by the plea of financial necessity; the controlling question must be as to reasonableness and justification of the advance in classification and rates, on facts shown in each case. National Hay Asso. v. Lake Shore & Michigan S. R. Co., 9 I. C. C. 264.

(b) Carriers are entitled under the Act to Regulate Commerce to determine for themselves what are proper rates in the first instance, but when they, as in this case, make numerous rate advances by concerted action and under circumstances not showing justification for increased revenue, they cannot successfully plead the excuse of financial necessity where the legality of such action as applied to any given commodity is challenged; and the controlling question must be as to the reasonableness and justice of the advance in classification and rate upon the facts shown in each case. The National Hay Asso. v. L. S. & M. S. R. Co. et al., 9 I. C. C. 264.

(c) The advance of rates by defendants was the result of concerted action by them and other carriers, and, while the question whether such concert of action is in violation of the Anti-Trust Act is for the determination of the courts it is the province and duty of this Commission, when the reasonableness of rates is in issue before it, to consider whether the advanced rates resulted from untrammeled competition, or were fixed by concert of action or combination of carriers. Central Yellow Pine Asso. v. Illinois C. R. Co., 10 I. C. C. 505; Tift v. Southern R. Co., 10 I. C. C. 548.

(d) The advance of rates by defendants was the result of concerted action by them and other carriers; and, while the question whether such concert of action is in violation of the anti-trust act is for the determination of the courts, it is the province and duty of this Commission, when the reasonableness of rates is in issue before it, to consider whether the advanced rates resulted from untrammeled competition, or were fixed by concert of action or combination of carriers. Central Yellow Pine Asso. v. Illinois C. R. Co., 10 I. C. C. 505; Tift v. Southern, 10 I. C. C. 548.

(e) The advance of rates by defendants was the result of concerted action by them and other carriers, and, while the question whether such concert of action is in violation of the anti-trust act is for the determination of the courts, it is the province and duty of this Commission, when the reasonableness of rates is in issue before it, to consider whether the advanced rates resulted from untrammeled competition, or were fixed by concert of action or combination of carriers. Central Yellow Pine Asso. v. Illinois C. R. Co., 10 I. C. C. 505; Tift v. Southern R. Co., 10 I. C. C. 548.

(fg) Defendants made effective on June 22, 1903, an advance of 2 cents per 100 pounds over rates previously in effect from Georgia points to Ohio River destinations on lumber in carloads whether shipped locally to said Ohio River points or shipped beyond. The rates prior to that date were in effect from September 8, 1899, on which date an advance was made of 1 cent from Group 2 points on the Southern Railway, and of 2 cents from most other grouped shipping points in Georgia, over rates in force May 17, 1894. From the various groups the present advanced rates to Cincinnati, Louisville and Evansville are, as to some, 4 cents higher than in 1892, and as to others, 3 cents higher than in 1891. The rates prior to the advance complained of were remunerative to the carriers. HELD: 1. That complainants, constituting only a small portion of the membership of the Geeorgia Saw Mill Association, which is alleged by defendants to be an unlawful association, were entitled to bring and maintain this proceeding in their own behalf and in the interest of all shippers of the traffic involved and others constituting the public at large. 2. That the advance of rates complained of in this case was the result of concerted action by defendants and other carriers; and while the question whether such concert of action is in violation of the "Anti-TrustAct" is for de-

termination only by the courts, it is the province and duty of this Commission, when the reasonableness of rates is in issue before it to consider whether the advanced rates resulted from untrammeled competition, or were fixed by concert of action or combination of the carriers. 3. That where an advance is made in rates which have been long maintained, and the evidence shows that the traffic affected is large, important, and constantly increasing, the advance will be held unjust, unless it is satisfactorily explained. 4. That the test of the reasonableness of a rate is not the amount of profit in the business of the shipper or manufacturer, but whether the rate yields a reasonable compensation for the services performed. Carriers necessarily and justly participate in the prosperity of their patrons in the resultant enlargement of their own business, and no rule is more firmly grounded in reason, or more universally recognized by carriers, than that the greater the tonnage of the article transported, the lower should be the rate. 5 That if permanent improvements are not included in the operating expenses of defendants, and if only such expenditures for equipment as are properly chargeable to a single year are included, the percentages of operating expenses to gross earnings will be materially reduced. 6. That carriers have no right to advance a rate which is already reasonably high and which yields an adequate return for the service rendered, solely because additional revenue is needed. The mere fact of the need of additional revenue to meet increased expenses does not justify the advance in rates on these lumber shipments from Georgia to and beyond the Ohio River, which are, for the most part, of low grade and comparatively small value. 7. That the hauling of flat cars empty to the mills, or the practice of shippers to load cars below their capacity, are conditions which, to the extent they exist, are properly taken into account by carriers in fixing rates; and it must be assumed that they were considered by defendants in making and maintaining the rates so long in force prior to the advance herein charged. 8. That the rates on lumber, prior to the advance complained of, were reasonably high when compared with the rates on other commodities which are at all analogous to lumber in respect to value, volume, risk, cost of handling, and other circumstances and conditions affecting the transportation of the traffic. 9. That lumber rates should be relatively low, in view of the limited life of the lumber business in Georgia, at the end of which large investments of manufacturers in plants, including buildings, machinery and tram roads, will become practically valueless, the increase in the net revenue of the roads caused by the lumber traffic, the fact that lumber is inexpensive freight and few other commodities furnish greater tonnage, the constancy of the traffic throughout the year, the fact that no special equipment is required for its movement, that it is loaded by shippers and unloaded by consignees, that when flat or open cars are furnished the shipper is at considerable expense to equip them so as to protect the lumber and the train, that it is not a perishable freight and does not require rapidity of movement, that there is small risk and in case of accident the damage is insignificant, and that lumber is an article of general utility. 10. That the advance of 2 cents per 100 pounds in defendants' rates on lumber from Georgia shipping points to Ohio River points, which was made effective June 22, 1903, was not warranted by the facts, circumstances and conditions disclosed in this case, and that the increased rates then put in force are unreasonable and unjust. Tift et al. v. Southern R. Co. et al,, 10 I. C. C. 548.

(h) Rates in force on freight articles from St. Louis, Mo., to Texas common points prior to March 15, 1903, afforded reasonable compensation to the carriers, and, as they had been in effect for a long period, and the material advance of such rates on that date were made through concerted action of the carriers, justification for the advances should be clearly shown; but this is a general investigation, in which no complainant is demanding relief from some particular rate, and no particular rates have been investigated, and it does appear, moreover, that the financial condition of the respondents, especially those operating in Texas, is not favorable. While impressed with the belief that these advances in rates are improper, the Commission does not feel warranted in making an order condemning such advances in this proceeding. Re Class & Commodity Rates from St. Louis to Texas Common Points, 11 I. C. C. 238.

(i) Defendant's rates on cut flowers

from certain points in New Jersey and Pennsylvania to New York City, prior to May 1, 1906, were graduated from 50 to 75 cents per 100 pounds and on empty boxes returned from New York City to said points were graduated according to weight from 5 to 25 cents each; on said date the rates on cut flowers were increased to $1 per 100 pounds, and the rates on empty boxes folded flat were graduated from 50 to 75 cents per 100 pounds and on empty boxes folded flat the rates were made $1 per 100 pounds. HELD: Upon complaint that the advanced rates are excessive, that such rates are unreasonable, but that 60 cents per 100 pounds would be a reasonable rate upon cut flowers from the Chatham district, New Jersey, to New York City, and a similar increase of 10 cents above the rates existing on April 30, 1906, from the other points involved would be reasonable, and that the merchandise rate should apply on empty boxes not folded flat on the return trip. Society American Florists, Etc., v. U. S. Express Co., 12 I. C. C. 121.

(j) The evidence of complainants strongly tended to show that an illegal agreement to advance rates on cotton-piece goods was entered into by transcontinental lines and that the advanced rates were put in in consequence of that agreement; but it is not necessary to pass upon that question, because if it were answered in favor of complainant the Commission should still be of the opinion that this would afford no ground for either reducing the rate from southern mills or awarding reparation. The mere fact that the advance was the product of an unlawful combination will not justify the Commission in setting aside such rate if the Commission is of the opinion that such rate is not unreasonably high. Tift v. Southern Ry. Co. et al., 10 I. C. C. Rep. 548, and other decisions of the commission cited and followed. China & Japan Trading Co. v. Ga. R. R. Co. et al., 12 I. C. C. 236.

(k) The mere fact that an advance in rates is the product of an unlawful combination by interstate carriers will not justify the Commission in setting aside such rate if not unreasonably high. Tift v. Southern Ry. Co., 10 I. C. C. Rep. 548, and other decisions of the Commissioners cited and followed. China & Japan Trading Co. v. Georgia R. Co., 12 I. C. C. 236, 241.

(lm) A rate which is advanced as the result of an agreement among carriers, even if such agreement be with color of violation of the Anti-Trust Act, will not on that ground alone be declared unreasonable; evidence of such violation is pertinent and must be considered, but the existence of such an unlawful agreement, even when proved, is not conclusive of the unreasonableness of the rate so advanced. Enterprise Mfg. Co. v. Georgia R. R., 12 I. C. C. 451, 456.

IMPORTANT CASES SINCE 1908

(n) No presumption of unreasonableness arises from the theory that advanced rates were established as a result of agreement between carriers. Railroad Commission of Texas v. S. F. Ry. Co., 20 I. C. C. 463, 465.

(o) While evidence of collusion or concert of action among carriers to increase rates may be pertinent upon the issue of reasonableness, and will be taken into consideration by the Commission, yet evidence of such concert of action is not for that reason alone conclusive of unreasonableness of the rates so increased. Violations of the anti-trust acts are cognizable only in the courts. The Commission in the exercise of its administrative functions must weigh other factors and give consideration to the evidence as a whole. Excelsior from St. Paul, Minn., 36 I. C. C. 349, 362.

ALL OTHER CITATIONS

Kiser Co. v. C. of Ga. Ry. Co., 17 I. C. C. 430, 440; Chicago Lumber & Coal Co. v. T. S. Ry. Co., 16 I. C. C. 323, 332; Rates on Excelsior and Flax Tow from St. Paul, 26 I. C. C. 689, 692; Live Stock Rates from Colorado Points to Omaha, 35 I. C. C. 682, 689; Excelsior from St. Paul, Minn., 36 I. C. C. 349, 362.

§9½. Double Advances.

IMPORTANT CASES SINCE 1908

(a) When rates are based on combinations and tariffs governing one factor contained provision for the application of a flat increase to the through rate, carriers parties to the tariff governing the other factor which contained no similar provision and who concurred in the tariff containing such provision are bound by the rule which prescribed a specific method for constructing com-

bination on through shipments. Indian Refining Co. v. Director General, as Agent, 60 I. C . C. 438, 439.

(b) Where one of the tariffs used in making combination rates on through shipments contains a rule that such rates will be subject to the increase authorized under General Order No. 28 but once, and tariffs of the other carriers participating in the movement do not publish the clause or refer to any other tariff which publishes such a rule, there is a holding out to the shipper of the rate so constructed and carriers should protect. Sligo Iron Store Co. v. W. M. Ry. Co., 62 I. C. C. 643, 644.

(c) The application of a general increase to each of the several components of a combination rate does not in and of itself warrant a condemnation of the resulting aggregate rate. Walrath & Sherwood Lumber Co. v. Direstor General, 73 I. C. C. 271, 272.

(d) The application of general increases to each factor of combination rates does not in and of itself establish the unreasonableness of the increased aggregate rates. Hydraulic Press Brick Co. v. Director General, 74 I. C. C. 185, 186.

(e) Following Sligo Iron Store Co., 62 I. C. C. 643, and Madison Lumber & Mill Co., 64 I. C. C. 699, where one of the tariffs used in making combination rates on through shipments contains a rule that such rates will be subject to the increase authorized under General Order No. 28 of the director general but once, and tariffs of other carriers participating in the movement do not publish the clause or refer to any other tariff which publishes such a rule, there is a holding out to the shipper of the rate so constructed which carriers should protect. Standard Oil Company (California) v. Director General, as Agent, 74 I. C. C. 188.

(f) Where one tariff used in making combination rates on through shipments contained a rule that such rate would be subject to a single increase, there was a holding out to the shipper of the rate so constructed which the publishing carrier should protect. Standard Asphalt & Refining Co. v. Director General, 74 I. C. C. 274, 275.

(g) Shipments moved under combination rates, to each factor of which was applied the increase under General Order No. 28 of the director general. Tariff of one of the participating carriers provided that such increase be added but once to the combination rate. HELD: Where one of the tariffs used in making combination rates on through shipments contains a rule that such rates will be subject to a single increase there is a holding out to the shipper of the rate so constructed which the publishing carrier must protect. Reparation awarded. Marcus & Co. v. Director General, as Agent, 77 I. C. C. 244, 245, 246.

(h) Neither application of general increases to each factor of combination rates, nor failure of carriers to apply full increases authorized by commission in various cases or under General Order No. 28 of director general, is conclusive of reasonableness of applicable rates. American Fruit & Vegetable Asso. v. B. & A. R. R. Co., 78 I. C. C. 381, 384.

(i) Provisions of General Order No. 28 of director general are not inconsistent with application of double increases to combination rates, and it does not follow that rates increased beyond authority of that order are necessarily unreasonable. United Light & Railways Co., 69 I. C. C., 414, 417. Anaconda Copper Mining Co. v. Director General, as Agent, 80 I. C. C. 481.

(j) Rate on coke from Sunnyside, Utah, to Black Eagle, Mont., to each factor of which was applied increase under General Order No. 28 of director general, found not unreasonable. Between Sunnyside and Black Eagle volume of tonnage is practically all northbound, and return movement of equipment is practically all empty. Anaconda Copper Mining Co. v. Director General, as Agent, 80 I. C. C. 481.

(k) The Commission has uniformly found that, in absence of evidence showing that aggregate charge is unreasonable, double increase made under General Order No. 28, or lack of compliance therewith, does not of itself afford basis for finding of unreasonableness. Buhler Mill & Elevator Co., 66 I. C. C., 613, and cases there cited. Saginaw Milling Co. v. Director General, as Agent, 83 I. C. C. 343.

(l) It is settled that where the combination of separately established locals or proportionals is the usual and recognized basis for rates, the application of flat increases to the separate components of such combination rates is not, when unaccompanied by additional evidence,

sufficient to support a finding of unreasonableness. Mason City Brick & Tile Co, v. Director General, 88 I. C. C. 37, 44.

ALL OTHER CITATIONS

Continental Coal Corp. v. L. & N. R. R. Co., 53 I. C. C. 377, 382; Coal Rates to the Northwest, 53 I. C. C. 590, 593; W. A. Gosline & Co. v. Director General, 55 I. C. C. 220; Solvay Process Co. v. D., L. & W. R. R., 55 I. C. C. 280; Mississippi River & Bonne Terre Ry. v. Director General, 55 I. C. C. 674; National Council, Farmers' Assos., v. Director General, 56 I. C. C. 399, 407; Koenig Coal Co. v. G. T. Ry., 57 I. C. C. 241; Old Ben Coal Corporation v. Director General, 57 I. C. C. 42; New Jersey Power & Light Co. v. Director General, 57 I. C. C. 147; National Supply Co. v. C., M. & St. P. Ry. Co., 57 I. C. C. 739; Old Ben Coal Corp. v. Director General 58 I. C. C. 42; New York & Pennsylvania Co. v. Director General, as Agent 58 I. C. C. 124; Union Cypress Co. v. F. E. C., 58 I. C. C. 442; Parlin & Orendorff Co. v. Director General, as Agent, 59 I. C. C. 63; The 85 Mining Co. v. A. & N. M. Ry. Co., 59 I. C. C. 136; Lowry Lumber Co. v. A. & M. Ry. Co., 59 I. C. C. 159; Alden Coal Co. v. R. I. S. Ry. Co., 59 I. C. C. 223; Pine-Plume Lumber Co. v. Director General, as Agent, 59 I. C. C. 371; Acme Cement Plaster Co. v. Director General, as Agent, 59 I. C. C. 411, 412; Acme Cement Plaster Co. v. Director General, as Agent, 60 I. C. C. 141; National Fireproofing Co. v. Director General, 62 I. C. C. 49, 53; Sligo Iron Store Co. v. W. M., 62 I. C. C. 643; Nason Coal Co. v. Director General, as Agent, 60 I. C. C. 214; Abbott v. Director General, as Agent, 61 I. C. C. 296; Acme Cement Plaster Co. v. Director General, as Agent, 62 I. C. C. 119; Woodbury Lumber Co. v. Director General, as Agent, 62 I. C. C. 293; Louisville Cement Co. v. Director General, as Agent, 62 I. C. C. 362; Tum-a-Lum Lumber Co. v. Director General, as Agent, 62 I. C. C. 491; Cedar Rapids Gas Co. v. Director General, as Agent, 62 I. C. C. 636; Columbia Quarry Co. v. Director General, as Agent, 63 I. C. C. 203; Doe Lumber Co. v. Director General, as Agent, 63 I. C. C. 354, 355; Doe Lumber Co. v. Director General, as Agent, 64 I. C. C. 485, 486; Pioneer Lumber Co. v. Director General, as Agent, 64 I. C. C. 485, 486; Edwards & Bradford Lumber Co. v. Director General, as Agent, 64 I. C. C. 503; Charleston Mining & Mfg. Co. v. Director General, as Agent, 64 I. C. C. 553; Indian Refining Co. v. Director General, 64 I. C. C. 643, 644; Pure Oil Co. v. Director General, as Agent, 64 I. C. C. 688; Madison Lumber & Mill Co. v. Director General, as Agent, 64 I. C. C. 699, 700, 701; Nye-Schneider-Fowler Co. v. Director General, 66 I. C. C. 145, 146; Romann-Bush Pig Iron & Coke Co. v. Director General, 66 I. C. C. 147; Tuffli Bros. Pig Iron & Coke Co. v. Director General, as Agent, 66 I. C. C. 129; Oxford Paper Co. v. Director General, as Agent, 66 I. C. C. 159; Buhler Mill & Elevator Co., v. Director General, as Agent, 66 I. C. C. 613; Proctor & Gamble Co. v. A. N. R. R. Co., 68 I. C. C. 121; Swift & Co. v. Director General, as Agent, 68 I. C. C. 287, 290, 291; DeJean v. Director General, as Agent, 68 I. C. C. 611; Southwestern Portland Cement Co. v. Director General, as Agent, 69 I. C. C. 31; Fairfield Lumber & Coal Co. v. Director General as Agent, 69 I. C. C. 87; Gilpin Langdon & Co. Inc., v. Director General, 68 I. C. C. 292, 293; Atlantic Coast Line Ry. Co. v. Railroad Commission of Georgia, 281 Fed. 321; Far West Clay Co. v. Director General, 69 I. C. C. 580; Tampa Gas Co. v. Director General, 73 I. C. C. 488; Cancellation of Combination Rule on Petroleum, 73 I. C. C. 146; Walrath & Sherwood Lumber Co. v. Director General, as Agent 73 I. C. C. 271, 272; Tampa Gas Co. v. Director General, as Agent, 73 I. C. C. 488; Sligo Iron Store Co. v. W. M. Ry. Co., 73 I. C. C. 551; Silica Sand Producers' Assn. v. C., B. & Q. R. R. Co., 73 I. C. C. 588, 589; Spinnler & Co. v. Director General, as Agent, 73 I. C. C. 611; Standard Asphalt & Refining Co. v. Director General, 74 I. C. C. 274, 275; Atlas Portland Cement Co. v. Director General, 74 I. C. C. 653. Hydraulic-Press Brick Co. v. Director General, as Agent, 74 I. C. C. 185, 186; Standard Oil Co. v. Director General, as Agent, 74 I. C. C. 271; Clarke & Sons v. Director General, as Agent, 74 I. C. C. 396; Falls City Mill & Feed Co. v. Director General, as Agent, 74 I. C. C. 648; Atlas Portland Cement Co. v. Director General, as Agent, 74 I. C. C. 611, 653; Theo. Marcus & Co. v. Director General, 71 I. C. C. 244, 246; C. N. Dietz Lumber Co. v. Director General, 78 I. C. C. 402, 409; Tuffli Brothers Pig Iron & Coke Co. v. Director General, 80 I. C. C. 123; Sun Company v. L. R. & N. Co., 80 I. C. C. 127; Standard Oil Company v. Midland Valley R. R. Co., 81 I. C. C. 193, 195; Fruits, Melons and Vegetables from the Southwest, 77 I.

C. C. 180; Rule for Transcontinental Rates, 78 I. C. C. 24; Moore & Moore v. Director General, as Agent, 78 I. C. C. 31; Sheffield Steel Iron Co. v. Director General, as Agent, 78 I. C. C. 123; Far West Clay Co. v. Director General, as Agent, 78 I. C. C. 283; Garrow & Co. v. Director General, as Agent, 78 I. C. C. 378; Van Dusen Harrington Co. v. Director General, as Agent, 78 I. C. C. 729, 731; Acme Cement Plaster Co. v. Director General, as Agent, 81 I. C. C. 298, 302; Cancellation Rule for Combination Rates, 81 I. C. C. 745; Citizens Gas Co. v. C., C. C. & St. L. Ry. Co., 83 I. C. C. 323, 324; Dixie Portland Cement Co. v. Director General, as Agent, 83 I. C. C. 417; Fairbanks, Morse & Co. v. Director General, as Agent, 83 I. C. C. 496; Memphis Freight Bureau v. M. P. R. R. Co., 80 I. C. C. 88, 90; Sunderland Bros. v. Director General, 83 I. C. C. 229, 337.

§10. Economy of Management.

See Reasonableness of Rates §12.

IMPORTANT CASES SINCE 1908

(a) No general advance in rates should be permitted until carriers have exhausted every reasonable effort toward economy in their business. The inducement to adopt methods of this kind which necessity creates in private occupations does not exist to the same extent in railroad operations. The Commission cannot escape the impression that railroad operators have not given to this important subject the attention which it deserves. An examination of the statistics before the Commission in in this case shows the widest divergence in the cost of doing the same thing upon different railroads. It appears, for example, that the cost of maintaining locomotives per train mile for the year 1910 was 9.22 cents upon the B. & O. R. R., as compared with 6.15 cents upon the B. & M. R. R. It is impossible to resist the conviction that railroads have not in the past given sufficient attention to these details, and in the future they must be prepared to explain these apparent differences in their operating costs, and to show reasonable diligence. In Re Advances in Rates, Eastern Case, 20 I. C. C. 243, 279.

(b) A premium must be put upon efficiency in the operation of American railroads. Rates cannot be increased with each new demand of labor or because of wasteful, corrupt or indifferent management. Nor should rates be reduced with each succeeding improvement in method. Society should not take from the wisely managed railroad the benefits which flow from the foresight, skill and planned cooperation of its working force. We may ruin our railroads by permitting them to impose each new burden of obligation upon the shipper. And we can make no less sure of their economic destruction by taking from them what is theirs by right of efficiency of operation—the elimination of false motion, of unneeded effort and the conservation of labor and material. The standard of rates must be so high that the needed carrier which serves its public with honest and reasonable effort may live. And yet rates should be still so much below the possible maximum as to give high and exceptional reward to the especially capable management, the well coordinated force and plant. Advances in Rates, Western Case, 20 I. C. C. 307, 334.

ALL OTHER CITATIONS

In Re Advances in Rates, Eastern Case, 20 I. C. C. 243, 305; In Re Advances in Break-bulk Rates, 27 I. C. C. 78.

§10½. Fractions.

See Physical Valuation.

IMPORTANT CASES SINCE 1908

(a) Contention that as supplement to General Order No. 28, issued June 12, 1918, published specific increases on coal authorized by the General Order, but not the rule concerning the disposition of fractions, such rates were excepted from the application of that rule. HELD: Not sustained by the provisions of the supplement, and if it were the fact would not be controlling. Tallulah Cotton Oil Co. v. Director General, as Agent, 62 I. C. C. 41.

(b) Rule for disposition of fractions under General Order No. 28 of the director general, applied only to rates quoted in dollars or dollars and cents per ton. Such rule did not, and could not, by any reasonable interpretation, qualify another rule, which was complete in itself and specifically provided for the application of rates stated in cents per ton or other unit. Shipments found overcharged and reparation awarded. Hercules Mining Co. v. Director General, as Agent, 66 I. C. C. 140.

ALL OTHER CITATIONS

Southern Hardwood Traffic Asso. v.

I. C. R. R. Co., 66 I. C. C. 68; Iron and Steel Articles from Boston, 66 I. C. C. 100; Flanley Grain Co. v. Director General, as Agent, 66 I. C. C. 126; Union Traction Co. of Indiana v. Director General, as Agent, 66 I. C. C. 157; MacGowan Coffee Co. v. I. C. R. R. Co., 66 I. C. C. 389; Walsh Fire Clay Products Co. v. Director General, 73 I. C. C. 413.

§10½a. Physical Valuation.

See Physical Valuation.

IMPORTANT CASES SINCE 1908

(a) While the valuation of the railroads under section 19-A of the Interstate Commerce Act is still incomplete, the work has progressed so far that the results are of value and informative in reaching the determination the Commission is now required to make. So far as the work has produced results, either as to particular roads, or as showing general tendencies and principles, the Commission has given consideration thereto. As will appear from examination of the Commission's various valuation reports and from section 19-A itself, the investigation of the Commission under that section is designed to give information as to the original cost of the property, the cost of reproduction now, the accrued depreciation, the amount of the investment, the corporate histories of the properties, the values of the lands, and other values and elements of value, if any. Ex Parte 74, Application for Increase in Rates, 58 I. C. C. 220, 228.

(b) In property appraising all elements of value, the Commission is mindful of the fact that the carriers are operating units and going concerns. This fact has been given due consideration in the light of the financial history of the transportation system of the United States, as developed by the record and as known to the Commission. The needs for working capital, and materials and supplies on hand, have been considered and allowance therefore has been made. Ex Parte 74, Application for Increase in Rates, 58 I. C. C. 220, 229.

ALL OTHER CITATIONS

Ex Parte 74, Application for Increase in Rates, 58 I. C. C. 220, 229, 228.

§11. Scientific Management.

IMPORTANT CASES SINCE 1908

(a) In combating a general advance in rates in Official Classification territory the shippers contended that by the use of "scientific management" $300,000,000 annually could be saved by the proper application of these methods to the business of railroading in the United States. The witness who testified to this stated that they were not in actual operation in over one-tenth of 1 per cent of all the manufacturing establishments in this country. HELD: The system is everywhere in an experimental stage and the Commission cannot find that the defendants could make good any part of their actual advances in wages by the introduction of scientific management. In Re Advances in Rates, Eastern Case, 20 I. C. C. 243, 279.

§11½. Differentials or Rate Relationship.

See Differentials; Relative Rates.

CASES 1887-1908

(a) On January 1, 1900, defendants and other carriers using the Official Classification advanced hay and straw in carloads from sixth to fifth class rates, and have since enforced such advanced charges. It is conceded that hay and straw should take the same rates. Hay in respect of character, use, value and volume corresponds more nearly with articles taking sixth class or lower commodity rates than with those in the fifth class. Apparently all commodities which come to defendants in aggregate volume or tonnage equal to or exceeding that of hay are given commodity rates. Hay as compared with grain and some other articles when carried between the same points gives the carriers less revenue per car, but it does not follow therefrom, taking the whole traffic, local as well as through, that hay may not give the carriers an average revenue per car per mile nearly as great or even greater than that derived from grain or such other articles. Though hay may be less desirable than grain as an article of traffic, it is much more profitable to the carriers, considering its greater volume and the certainty of large quantities seeking transportation each year, than many, if not all, other commodities actually taking fifth or even sixth class rates. Hay is a raw agricultural product which is grown, shipped and consumed in all parts of Official Classification Territory, and, coming to the carriers in steady and large volume, is profitable to them at sixth class rates. The cost to the shipper of transporting hay from the

Middle West to eastern markets constitutes a large part of its value in such markets, and when added to the cost of baling and sale the total approximates or exceeds the price realized by the producer. The increased rates have added to the cost of hay and straw to consumers or diminished the price to producers, or both, and prejudiced in some degree the business of middlemen. The advance in hay rates changed a long-existing rate adjustment as between American and Canadian hay shipped to New England and parts of New York in favor of a producing section in a foreign country from which hay shipments into the United States are required by law to pay a duty as high as $4.00 per ton. HELD: Upon all the facts and circumstances, that the action of defendants on January 1, 1900, whereby hay and straw were advanced from sixth to fifth class and thereafter charged fifth class rates for transportation was unreasonable and unjust and resulted in unlawful discrimination and prejudice against hay and straw, localities in Official Classification Territory wherein those commodities are produced, and against producers, shippers, dealers and consumers of such articles in that section of the country. The National Hay Asso. v. L., S. & M. S. R. Co. et al., 9 I. C. C. 264.

IMPORTANT CASES SINCE 1908

(b) While established or differential relationships of rates are not general, there are many adjustments, some fixed by the carriers and others by the Commission, and it is contended by some shippers that in such cases it is desirable in readjustments such differentials should be maintained. Many relationships in cents per unit were disturbed by the increases made by the Director General, except upon a few commodities of heavy movement which were subjected to specific increases in cents and dollars and cents per unit. A relatively small proportion of these relationships have subsequently been restored. It is evident that there are many competitive situations where no recognized differentials have ever existed but where, nevertheless, the rates have been made to reflect competitive conditions. Such situations greatly outnumber those where fixed relationships have been established. Ex Parte 74, Application for Increase in Rates, 58 I. C. C. 220, 244.

(c) The mere showing of the fact that in making effective the increase provided in General Order No. 28 of the Director General, a slight disturbance was created in the percentage relationship which a specific rate bore to other rates between the same points, and the subsequent voluntary restoration of that relationship, does not warrant a condemnation of the rate in effect during the interim. Ault & Wiborg Co. v. Director General, as Agent, 64 I. C. C. 443.

(d) Not only must the reasonableness of proposed increased rates be shown, but also their propriety in relation to other rates. Coal from Kentucky, Tennessee and Virginia, 73 I. C. C. 447, 450.

ALL OTHER CITATIONS

Ex Parte 74, Application for Increases in Rates, 58 I. C. C. 220, 245; Anthracite Coal to New York Stations, 63 I. C. C. 193; Sand and Gravel from Michigan City, 64 I. C. C. 512; Salt from Louisiana Mines to Chicago, 66 I. C. C. 81; Southern Hardwood Traffic Asso. v. I. C. R. R. Co., 66 I. C. C. 68; Flanley Grain v. Director General, as Agent, 66 I. C. C. 126; Union Traction Co. of Indiana v. Director General, as Agent, 66 I. C. C. 157; MacGowan Coffee Co. v. I. C. R. R. Co., 66 I. C. C. 389; Carney v. Director General, as Agent, 66 I. C. C. 671; Window Glass from Kansas and Oklahoma to Sioux Falls, 66 I. C. C. 757; Salem Glass Works v. Director General, as Agent, 68 I. C. C. 643; Iron and Steel Articles from Utah, 73 I. C. C. 483; Endicott-Johnson Corp. v. E. R. R. Co., 73 I. C. C. 562; Rails and Crossties from Eastern Points to Canada, 74 I. C. C. 3; Fruits, Melons, and Vegetables from Southwest to C. F. A., and trunk line points, 77 I. C. C. 180; Grain and Grain Products Between Stations on Northern Pacific Ry. in Idaho and North Pacific Coast Terminals, 77 I. C. C. 225; Coke from Chicago, Ill., and St. Louis, Mo., to Kansas and Missouri Points, 78 I. C. C. 248; Class Rates from Points in Kansas to Eastern Colorado, 80 I. C. C. 709; Brick and Clay Products from Texas to Arizona, 81 I. C. C. 20.

§12. Branch Lines.

See Branch Lines.

(1) Operation.

See Operation.

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(a) If the branch lines of a railroad are judiciously planned and constructed they should certainly be taken into account in determining the value of the

railroad, for, although they may not earn a large return upon the cost, considered as an independent proposition, they do add to the traffic and the earning power of the entire system; but it must be assumed that the new branches which have been constructed are good investments, otherwise they would not have been built, and that they will add to the earnings of the property in proportion as they have added to its cost. No increase in rate should be called for on this account. City of Spokane v. N. Y. Ry. Co., 19 I. C. C. 162, 171.

(b) So the theory of a carrier that because an expense is incurred in hauling traffic over a particular division or branch, it is entitled at least to the branch rate, plus the additional expense, if not to some profit for the extra service, is an erroneous one. It is calculated to justify an increased rate from almost any point, particularly on coal or coke traffic where the rates from the mines are generally grouped. If, in making rates, a through route is to be divided into divisions, and these divisions subdivided into sections, why should not the separation continue until the road is dissected into as many parts as there are stations, or miles, or even feet of track? L. & N. R. R. Coal and Coke Rates, 26 I. C. C. 20, 30.

ALL OTHER CITATIONS

L. & N. R. R. Coal and Coke Rates, 26 I. C. C. 20, 21, 24; New York Butter and Cheese Rates, 28 I. C. C. 330; Rates on Hogs, 34 I. C. C. 627.

§12. (2) Purchase.

See Evidence §37; Reasonableness of Rates §15.

IMPORTANT CASES SINCE 1908

(a) If the New York Central Co. has exercised poor judgment in the taking on of subsidiary properties at the rentals which are paid, this ought not to permanently impose upon the shipping public an extravagant rate if the leases are unprofitable. The Commission should indulge every reasonable presumption in favor of the good faith and the good judgment of those who put together these properties, but certainly in the final analysis it cannot impose upon the community served by this system an unreasonable rate forever, simply because the managers of this property at some time in the past agreed to pay more for the use of a railroad than it was or is actually worth. In Re Advances in Rates, Eastern Case, 20 I. C. C. 243, 300.

ALL OTHER CITATIONS

Davis Bros. Lumber Co. v. C., R. I. & P. Ry., 26 I. C. C. 257.

§13. Detriment to Shipper.

See Evidence §45.

CASES 1887-1908

(a) Complainant attacked as unreasonable advance of 2c per 100 pounds over rates previously in effect from Georgia points to Ohio River destinations on lumber, carloads, whether shipped locally to said Ohio River points or shipped beyond. Rates on lumber, prior to the advance complained of, were reasonably high when compared with the rates on other commodities which are at all analogous to lumber in respect to value, volume, risk, cost of handling, and other circumstances and conditions affecting the transportation of the traffic. Lumber rates should be relatively low, in view of the limited life of the lumber business in Georgia, at the end of which large investments of manufacturers in plants, including buildings, machinery and tram roads, will become practically valueless, the increase in the net revenue of the roads caused by the lumber traffic, the fact that lumber is inexpensive freight and few other commodities furnish greater tonnage, the constancy of the traffic throughout the year, the fact that no special equipment is required for its movement, that it is loaded by shippers and unloaded by consignees, that when flat or open cars are furnished the shipper is at considerable expense to equip them so as to protect the lumber and the train, that it is not a perishable freight and does not require rapidity of movement, that there is small risk and in case of accident the damage is insignificant, and that lumber is an article of general utility. HELD: The advance of 2c not warranted and the increased rates are unreasonable and unjust. Tift v. Southern Ry., 10 I. C. C. 548.

IMPORTANT CASES SINCE 1908

(b) Where a plant has been established and money invested on the faith of certain transportation rates and conditions, upon which the life of the plant depends, a carrier may not increase those rates and charges to the serious disadvantage of such investment without good cause or reason. Douglas & Co. v. C., R. I. & P. Ry. Co., 16 I. C. C. 232, 237.

(c) An advance in rates resulting

from an increase in a minimum cannot be condemned merely because it affects a contract of sale based on the lower minimum in the absence of any evidence that the rate or minimum advanced is unreasonable. Barnum Iron Works v. C., C., C. & St. L. Ry. Co., 18 I. C. C. 94, 95.

(d) The Commission has never understood that it could dictate the policy of a carrier in the making of its rates in so far as there was just room for the exercise of a policy. It has several times explicitly so declared. It has, however, believed that it might consider what the policy of a carrier has been in determining whether the rates resulting from a change in that policy were just and reasonable. It often happens that the very existence of an industry depends upon the rate accorded to it. If, now, a carrier has established a particular rate for the express purpose of enabling an industry to exist, and if upon the strength of that rate money has been invested which must be destroyed if the rate is withdrawn, this fact might properly be considered in passing upon the reasonableness of the proposed change in the rate. Such fact is not controlling but is one of the circumstances which may properly be kept in view. The Commission might in a proper case order the continued maintenance of a rate upon which the investment of money had been induced, even though it would not in the first instance as an original proposition have directed the establishment of that rate. Oregon & Washington Lumber Mfrs. Assn. v. S. P. Ry. Co., 21 I. C. C. 389, 394.

(e) Testimony as to the effect of an increase in rates will have on the business of the shippers involved is always relevant, but should be established by direct evidence as distinguished from opinion testimony. The mere statement of an opinion that a certain increase in rates will put shippers out of business is not conclusive, since this fact can be established by direct proof of actual conditions encountered or of instances where the increase would have had such an effect, or it might be proved by a showing of what it costs to produce the commodity shipped or the margin of profit on which the operation is conducted, and in many other ways. The Commission may not require witnesses to testify against their will concerning the cost of production of the articles moving in interstate commerce. Stonega Coke & Coal Co. v. L. & N. R. R. Co., 39 I. C. C. 523, 549.

(f) While the depressed condition of the lumber industry would not of itself warrant a finding that respondents have not justified the proposed increased rates respondents are required to show by clear and convincing proof that the proposed increased rates are just and reasonable. Water competitive rates on lumber, 60 I. C. C. 643, 651.

(g) Investments made in expectation of the continuance of existing rates will not be considered in determining the reasonableness of increased rates. Meyersdale Smokeless Coal Co. v. B. & O., 62 I. C. C. 429, 431.

(h) Complainant attacked the unreasonableness and propriety of the level of interstate rates on grain, grain products and hay, carloads, between points in western group, as described in 58 I. C. C. 220. The Commission is asked to find that rates on wheat and hay within the western group are unreasonable to extent they include any part of the general increases authorized by the Commission that rates on coarse grains within the western group are unreasonable to extent they exceed 90% of the rates found reasonable on wheat from and to the same points; and that rates on grain products are unreasonable to extent they exceed rates made by continuing the relationships that now exist. Deflation has taken place in the agricultural industry. The high prices for farm products which prevailed during the war period were reflected in abnormally inflated land values. Many farmers, in reliance upon the stability of the then current prices for farm products, purchased or rented lands or otherwise assumed heavy obligations at the prevailing high prices. As long as prices for their products remained high enough they were able to carry the financial burden which they had assumed, but with price recession many have found it increasingly difficult to continue; others have given up the struggle. In spite of the fact that the past year has been better than the average from the standpoint of tonnage handled, the revenues of the defendants are not shown to have been excessive or in violation of law. Carriers in the western group have been and are now earning considerably less than the fair return to which they are entitled under their constitutional rights entirely independent of section 15a. From the record, it is improbable that a reduction

in the present rates on the commodities in issue would so increase the movement of these commodities as to enable the carriers to make up to any appreciable extent the loss in revenue should a general reduction in these rates be ordered. Of prime importance to the agricultural industry and to the country in general is an adequate and efficient transportation service. The extent to which a marked rate reduction would disable the carriers generally or particularly in the performance of this service is of great consequence. So far as the usual tests of the reasonableness of rates shown by the record, other than perhaps the values of the commodities when viewed fom the standpoint of existing prices may be applied to the question before the Commission, they do not indicate that the general basis of rates on the commodities here in issue is unreasonably high. HELD, the general basis of rates of grain, grain products and hay within the western group has not been shown to be unjust unreasonable, unduly prejudicial, or otherwise in violation of the act. Complaint dismissed Public Utilities Commission of Kansas v. A. T. & S. F. R. Co., 83 I. C. C. 105.

ALL OTHER CITATIONS

L. & N. R. R. Co. v. I. C. C., 195 Fed. 541, 560; Perry & Co. v. N. P. Ry. Co., 23 I. C. C. 247; Whiteland Canning Co. v. P. C. C. & St. L. Ry. Co., 22 I. C. C. 261, 263, rehearing denied, 23 I. C. C. 92; In Re Rates on Cream and Condensed Milk, 21 I. C. C. 522, 523; In Re Proposed Rates on Lumber, 20 I. C. C. 575; Beatrice Creamery Co. v. I. C. R. R. Co., 15 I. C. C. 109, 128; Black Mountain Coal Land Co. v. Southern Ry., 15 I. C. C. 286, 295; Oregon & Washington Lumber Mfrs. Assn. v. U. P. R. R. Co., 14 I. C. C. 1, 19, rehearing denied, 16 I. C. C. 465, 468, decision of Commission sustained, S. P. Co. v. I. C. C., 177 Fed. 963; I. C. C. v. U. P. R. R. Co., 222 U. S. 541, 32 Sup. Ct., 108, 56 L. ed. 308; Western Oregon Lumber Mfrs. Assn. v. S. P. Co., 14 I. C. C. 61, 72, decision of Commission sustained, S. P. Co. v. I. C. C. 177 Fed. 963; I. C. C. v. U. P. R.R. Co., 222 U. S. 541; 21 Sup. Ct. 108, 56 L. ed. 308; Banner Milling Co. v. N. Y. C. & H. R. R. Co., 14 I. C. C. 398, 401; Western Fruit Jobbers' Assn. v. C. R. I. & P. Ry. Co., 27 I. C. C. 417; Rates on Common Brick to Canada, 26 I. C. C. 129, 131; Rates on Coal from Iowa to the Dakotas, 26 I. C. C. 144, 145; Transcontinental Commodity Rates, Westbound, 26 I. C. C. 456, 463; Rates on Crushed Stone, 29 I. C. C. 136, 137; Duluth Log Rates, 29 I. C. C. 420, 421; Chattanooga Log Rates, 30 I. C. C. 36; Grain Rates from St. Paul, Minn., 32 I. C. C. 96; Standard Vitrified Brick Co. v. C. B. & Q. R. R. Co., 32 I. C. C. 208, 211; Crawford & Bunce v. P. C. C. & St. L. Ry. Co., 32 I. C. C. 12, 14; 1915 Western Rate Advance Case, 37 I. C. C. 114, 146; Duffney Brick Co. v. B. & M. R. R. 39 I. C. C. 118, 122, 123; Southern Classification Ratings, 39 I. C. C. 173 Southeastern Lumber, 42 I. C. C. 548, 558; Lumber to Eastern Colorado, 43 I. C. C. 687; Showers Bros. v. A. A. R. R. 48 I. C. C. 518, 520; Farm Wagons from Lynchburg to Kentucky, 74 I. C. C. 255; Andrews Bros. v. A. C. & Y. Ry. Co., 74 I. C. C. 448.

§14. Benefit to Industry.

See Evidence §45.

IMPORTANT CASES SINCE 1908

(a) Carriers in Official Classification territory advanced all the class rates and about one-half the commodity rates. It was urged that to permit these advances would induce larger expenditures in the maintenance of the roads, lead to extensions and improvements, which would in turn employ additional labor, put into circulation additional money and thereby improve general business conditions. It was also urged that the facilities of railway supply houses could only be utilized to the most profitable extent in case additional railroads were constructed and additional equipment required. HELD, the Commission must stand for the entire public, including the railways. It cannot accede to the mere wish of any class. It must recognize the just demand of all classes, and it must have in mind those who do not appear as well as those who are represented before it. The Commission ought not to impose upon the public rates otherwise unreasonable, for the mere purpose of temporarily providing business for the factories of railway supply houses, even though the effect might be to stimulate for the time being other kinds of industries. Just and reasonable rates should be allowed, but the Commission is not justified in permanently imposing rates unduly high in order that business conditions might be temporarily improved. In Re Advances in Rates—Eastern Case, 20 I. C. C. 243, 250, 251.

(b) The desire of dock operators to

increase the movement of traffic over their docks is not in itself a sufficient reason to justify an increase in all-rail rates. Coal from Kentucky, Tennessee and Virginia, 73 I. C. C. 447, 451.

ALL OTHER CITATIONS

Straw Rates from Stations in Missouri to Alton, Ill., 29 I. C. C. 562, 564.

§14½. Motive of Carrier.

See Evidence §34½.

IMPORTANT CASES SINCE 1908

(a) The motives which underly the action of carriers in increasing rates are not matters about which the Commission may indulge in speculation. The question whether proposed rates are reasonable must be determined upon the facts disclosed by the record. Freight Rates from Minnesota Points, 32 I. C. C., 361, 363.

§14¾. Previous Decision of Commission.

See Previous Decision of Commission.

(a) A previous decision of the Commission concerning the same or an allied rate relationship will be considered in determining the propriety of an advanced rate. Lumber from Sioux City, Ia., 47 I. C. C. 540; Rice from Texas and Louisiana (No. 2), 49 I. C. C. 172, 175; Anderson-Theobald Co. v. V. R. R., 50 I. C. C. 596; Chamber of Commerce of Johnson City, Tenn., v. S. Ry., 50 I. C. C. 605; San Antonio Freight Bureau v. I. & G. N. Ry., 52 I. C. C. 521; Allegheny Ore & Iron Co. v. C. & O. 53 I. C. C. 415; Du Pont de Nemours & Co. v. Hines, 55 I. C. C. 151; Bowden Co. v. Director General, 57 I. C. C. 31; South Carolina Fares and Charges 60 I. C. C. 290; Nebraska Rates, Fares and Charges, 60 I. C. C. 305; Intrastate rates within the State of Texas, 60 I. C. C. 421; Glass and Glassware from Oklahoma and Texas, 61 I. C. C. 733; Intrastate rates within Texas, 62 I. C. C. 591; Illinois Zinc Co. v. Director General, as Agent, 61 I. C. C. 92, 105; La Crosse Chamber of Commerce v. A. A. R. R. Co., 61 I. C. C. 289; Rates to and from Nashville, 61 I. C. C. 308; Substitution for Increases in Rates, 61 I. C. C. 518, 520, 522; Proposed Increased Rates from and to El Paso, 61 I. C. C. 689, 691; Providence Fruit & Produce Exchange v. Director General, as Agent, 62 I. C. C. 179; St. Louis Coke & Chemical Co. v A. & S. R. R. Co., 62 I. C. C. 194; Sapula Refining Co. v. Director General, as Agent, 62 I. C. C. 493; Green Coffee from Gulf Ports, 64 I. C. C. 26; Pulpwood from South Carolina to Canton, N. C., 63 I. C. C. 287; Acid from Hillsboro to Ohio River Points, 66 I. C. C. 383; Wilbur Lumber Co. v. Director General, as Agent, 73 I. C. C. 152, 158; Rates from Northern Points to Bristol, Tenn.-Va., 73 I. C. C. 389; Walsh Fire Clay Products Co. v. Director General, as Agent, 73 I. C. C., 413; Sligo Iron Co. v. W. M. Ry. Co., 73 I. C. C. 551; Richard City, Tenn., to Stations in Tennessee, 74 I. C. C. 561; International Pulp Co. v. Director General as Agent, 78 I. C. C. 83; Coke from Chicago and St. Louis, 78 I. C. C. 248; Paper and Paper articles from Canada and New England 78 I. C. C. 258.

§15. Standard for Judging Advance.

See Evidence §55, §56; Relative Rates.

CASES 1887-1908

(a) Carriers making an advance in rates should be able to present a satisfactory justification of such advance, particularly when the old rates have been of many years standing and the advance is great and the traffic affected is of large and constantly increasing volume and of vital importance to a large section of country. National Hay Asso. v. L. S. & M. S. R. Co., 9 I. C. C. 264, 305.

(b) The advance in the rate on packing-house products, which was made by withdrawing a lower export rate is not properly an advance. In the Matter of Proposed Advances in Freight Rates, 9 I. C. C. 382.

(c) The legality of the recent advances to 20 cents of the tariff rates on grain and grain products from Chicago to New York, which have not exceeded 17½ cents during the last four years, except for a brief period, while the actual rates have been materially, and sometimes greatly, below that figure, depends upon two considerations: First, whether the increased rate is reasonable, having reference to the cost and value of the service, and as compared with rates on other commodities; and, second, whether it is reasonable in the absolute regarded as essentially a tax upon the people who ultimately pay the transportation charge. In the Matter of Proposed Advances in Freight Rates, 9 I. C. C., 382.

(d) Transportation by rail is a quasi-public service, not to be sold to the highest bidder, and the charges therefor are not controlled by the law of supply and demand. Freight rates do not in fact rise and fall with changes in the market prices of commodities, though they are often affected by commercial conditions; and when reductions have been made on account of commercial depression it is difficult to see why corresponding advances may not properly be made with the return of business prosperity. In the matter of proposed advances in freight rates, 9 I. C. C. 382, 405.

(e) Complaint was made of an advance by defendants of 2 cents per 100 pounds on April 15, 1903 (except as to the L. & N. R. Co., as to which the advance became effective June 22, 1903), in the rates on lumber in carloads from points in lumber producing territories east of the Mississippi River in Louisiana, Mississippi, and part of Alabama served by defendant roads, to Ohio River points, applying both on shipments locally to such Ohio River points and to shipments destined beyond. On September 9, 1899, the rate previously in effect from May 1, 1894, was advanced one cent, making a total advance of 3 cents since May 1, 1894. The rates prior to advance on April 15, 1903, were remunerative to the defendant carriers. HELD, 1. That when a railroad company advances a rate which has been for some time in force, the fact of its continuance is in the nature of an admission against that company which tends to show the unreasonableness of the advance; and in this case the rates in effect for long periods prior to the advance are shown to have been profitable to the defendant carriers. 2. That the test of the reasonableness of a rate is not the amount of profit in the business of the shipper or manufacturer, but whether the rate yields a reasonable compensation for the services performed. Carriers necessarily and justly participate in the prosperity of their patrons in the resultant enlargement of their own business. 3. That the advance in rates by defendants was not justified by increased cost of operating the roads, for while the operating expenses have constantly increased they have been enlarged by the inclusion therein of large expenditures for permanent improvements, and defendants' gross earnings have increased from year to year to such extent as to result in a constant increase of net earnings. 4. That the value of the entire property of a road employed for the public convenience can shed but little, if any, light upon the question whether the rate on one among thousands of articles of traffic yields its proper proportion of a fair return upon that value, and moreover, the voluminous and conflicting testimony in this case on that subject does not enable the Commission to determine the value of defendants' respective properties. 5. That the elements to be considered in determining the reasonableness of an entire system of rates are widely different from those involved in the question of the reasonableness of the rate upon a single commodity. 6. That the advance of rates complained of in this case was the result of concerted action by defendants and other carriers; and while the question whether such concert of action is in violation of the "Anti-Trust Act" is for determination only by the courts, it is the province and duty of this Commission, when the reasonableness of rates is in issue before it, to consider whether the advanced rates resulted from untrammeled competition, or were fixed by concert of action or combination of carriers. 7. That the rates in effect prior to the advance were reasonably high when compared with the rates on other commodities which are at all analogous to lumber in respect to value, volume, and the various conditions affecting the service of transportation. 8. That carriers have no right to advance a rate which is already reasonably high and which yields an adequate return for the services rendered solely because additional revenue is needed. 9. That logging roads, or "tap lines," to which the defendant M. & O. R. Co. grants allowances from its published rates, are not common carriers, but such tap lines are the private properties of mill owners, and the allowances are therefore unlawful. Cent. Yellow Pine Assn. v. V. S. & P. R. R. Co. (10 I. C. C. Rep. 193), cited and applied. 10. That section 3, of the Act to regulate commerce, which prohibits undue preferences as between individuals or localities, is not violated by the failure or refusal of defendants to make "tap line" allowances to mill owners in their territory while such allowances are granted to mill owners by other carriers in the territory west of the Mississippi; but if the rate west of the Mississippi River, minus the allowance, is reasonable, it tends to sup-

port the proposition that a similar reduction east of the River would leave the rate reasonably high; and the M. & O. R. Co., by voluntarily making such allowances east of the River, practically concedes this proposition as to itself. 11. That no rule is more firmly grounded in reason or more universally recognized by carriers, than that the greater the tonnage of an article of traffic, the lower should be the rate, but defendants have made yellow pine lumber an exception to this rule. 12. That lumber rates should be relatively low, in view of the fact that lumber is inexpensive freight and few other commodities furnish to carriers so large a tonnage; that the lumber business is constant, yielding carriers revenue all the year; that no special equipment is constructed or furnished for its carriage; that it is loaded by shippers and unloaded by consignees, and where open cars are furnished the shipper is required, at considerable expense, to equip them so as to protect the lumber and the train; and that there is small risk and in case of accident the damage is insignificant. 13. That the advance on April 15, 1903, of 2 cents per 100 pounds in the rate from the shipping points in question to the Ohio River was not warranted, and that the resultant increased rates are unreasonable and unjust. Central Yellow Pine Asso. v. Illinois C. R. Co., et al, 10 I. C. C. 505.

(f) When a railroad company advances a rate which has been for some time in force, the fact of its continuance is in the nature of an admission against that company which tends to show the unreasonableness of the advance. Central Yellow Pine Asso. v. I. C. R. R. Co., 10 I. C. C. 505, 535.

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(g) In determining the reasonableness of an advance in rates by all the railroads in Official Classification territory the Commission ought not to make the most opulent nor the poorest railroad the standard by which to measure the reasonableness of the rates. In this territory the Pennsylvania system, the New York Central lines and the Baltimore & Ohio may be taken as typical, and whatever rate might reasonably be imposed upon these three systems must be held to be a reasonable charge for that service by all lines. Under rates reasonable for these three systems there may be lines whose earnings will be extravagant, but that is their good fortune. There may be lines which cannot make sufficient earnings, but that is their misfortune. The Commission ought not to impose upon this territory, for the purpose of allowing defendants additional revenues, higher rates than are adequate to these three systems considered as a whole. In Re Advances in Rates—Eastern Case, 20 I. C. C. 243, 274.

(h) In determining whether railroads running west of Chicago should be permitted to increase some 200 commodity rates, the Commission bases its decision upon the profits of those roads which are typical and therefore considers the figures of the Santa Fe, Burlington, C. & N. W., C. M. & St. P., Rock Island and C. & A. R. Rs. In Re Advances in Rates —Western Case, 20 I. C. C. 307, 324.

(i) In the absence of evidence bearing on the specific transaction, a comparison of the rates under consideration with other rates prescribed by the Commission in the same general section of the country is helpful in judging of the propriety of an advance. In re Advances on Fruits and Vegetables, 24 I. C. C. 164, 166.

(j) It is as much an increase of rate to give less service for the same amount as to charge a greater amount for the same service. Consolidation Coal Co. v. C. & O., 60 I. C. C. 763, 767.

(k) Where rates are based on combinations and tariff governing one factor contained provision for the application of a flat increase to the through rate, carriers parties to the tariff governing the other factor which contained no similar provision and who concurred in the tariff containing such provision are bound by the rule which prescribed a specific method for constructing combination rates on through shipments. Indian Refining Co. v. Director General, as Agent, 60 I. C. C. 438, 439.

(l) The essential question to be determined is whether the rate attacked was unreasonable or unduly prejudicial, and not whether it was contrary to the intent of the Director General in applying the increases ordered in G. O. 28. The Pure Oil Co. v. Director General, 64 I. C. C. 688, 689.

(m) It is not alone the line that can handle the traffic with the least cost that determines the question whether proposed rates are justified. Bituminous Coal to C. F. A. Territory, 46 I. C. C. 66, 115.

(n) The controlling fact to be determined is not whether the rate was increased in strict compliance with the terms or the intention of G. O. 28, but whether the resulting rate was unreasonable or otherwise unlawful. Greene Cananea Copper Co. v. Director General, 80 I. C. C. 121, 122.

ALL OTHER CITATIONS

In Re Advances in Rates—Eastern Case, 20 I. C. C. 243, 272, 289; Railroad Commission of Texas v. A. T. & S. F. Ry. Co., 20 I. C. C. 463; Class and Commodity Rates from Stations in Maine, 31 I. C. C. 18, 22; The Five Per Cent Rates Case, 31 I. C. C. 351, 426; Lumber to Nashville, Tenn., 31 I. C. C. 186, 188; Transcontinental Cotton Rates, 34 I. C. C. 248, 252; Lettuce from Texas Points, 36 I. C. C. 511; Coal from Illinois Mines, 36 I. C. C. 549; Colorado Class Rates, 37 I. C. C. 203; Danville, Va., Class and Commodity Rates, 38 I. C. C. 742, 745; Grain from New Orleans, La., 40 I. C. C. 654, 657, 658; Roanoke Railroad & Lumber Co. v. N. S. R. R. Co., 41 I. C. C. 431, 433; Lilly Co. v. N. P. Ry., 41 I. C. C. 737; Fruits from Florida, 43 I. C. C. 595, 601; The Fifteen Per Cent Case, 45 I. C. C. 303, 316; Solvay Process Co. v. D. L. & W. Ry. 55 I. C. C. 280, 288; Ex Parte 74, Application for Increase in Rates, 58 I. C. C. 220, 224, 226, 228; Water Competitive Rates on Lumber 60 I. C. C. 643; Sand and Gravel from Wolcottville, 68 I. C. C. 92; Class and Commodity Rates from Illinois and other States, 73 I. C. C. 59; Rates from northern points to Bristol, Tenn.-Va., 73 I. C. C. 389; Van Dusen Harrington v. Director General, 78 I. C. C. 729, 731.

§15½. Two Line Haul.

See Evidence §59.

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(a) While the Commission has approved in some cases rate increases because of two or more carriers participating in the haul, this fact has not, however, been laid down as a principle generally applicable to two-line hauls. Coal to South Dakota, 47 I. C. C. 750, 755.

ALL OTHER CITATIONS

United States Gypsum Co. v. C. R. I. & P. Ry. Co. Unrep. Op. A-760; Lumber Rates from Points in Arkansas, 34 I. C. C. 102; Coal to South Dakota, 47 I. C. C. 750, 756; Boldt Co. v. Directors General, 57 I. C. C. 259.

§ 16. Uniformity of Advance.

See Supra §9.

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(a) Tariffs publishing a general advance in rates may not be criticized in the absence of testimony showing that specific mistakes or blunders were made because all the rates were not advanced on a fixed percentage, or because carriers in going over schedules selected particular commodities that seemed best able to stand a rate advance and others that seemed likely to move more freely under reduced rates and thus produce larger revenues. R. R. Commission of Texas v. A. T. & S. F. Ry. Co., 20 I. C. C. 463, 482, 483.

ALL OTHER CITATIONS

In Re Advances on Grain, 21 I. C. C. 22, 36, 38, 39; In Re Advances on Locomotives and Tenders, 21 I. C. C. 103, 252; Lumber from Oklahoma, 42 I. C. C. 567.

§16½. Widespread Rate Adjustment.

See Evidence §66.

IMPORTANT CASES SINCE 1908

(a) The fact that a flat increase was authorized as reasonable for general application does not preclude attacks upon particular rates which include that increase upon the ground that the resulting rate was unreasonably high. Lawton Refining Co. v. Director General, 73 I. C. C. 121, 122.

(b) The commission could not deny an otherwise justified increase because it might be used as a lever for increasing other charges. Switching at Mason City, Iowa. 73 I. C. C. 308, 310.

(c) Fact that proposed increased rates are made in accordance with a basis of long standing does not of itself constitute sufficient justification. Especially is this true when it is shown that such higher rates, without a corresponding change in the rate from competing points, would result in undue prejudice. Silica from Southern Illinois, 73 I. C. C. 406, 408, 409.

(d) Increases in individual rates must of necessity occur under any plan of unification where wide disparities and inconsistencies exist, but these are justified only to the extent that they are necessary to secure a harmonious rate structure and to avoid any undue depletion of carriers' revenues. Memphis-Southwestern Investigation, 77 I. C. C. 473, 500.

(e) Rates on coal from Ohio and Crescent districts to Stroh, Ind., found not unreasonable but rate parity with Jackson, Mich., group, disrupted following Bituminous Coal to C. F. A. Territory, 46 I. C. C., 66, and subsequent general increases should be restored. Reparation denied. Ohio-Michigan Coal Cases, 80 I. C. C. 663, 676.

(f) Proposed increased rates on plate and sheet iron and steel from St. Louis, Mo., Peoria and Chicago, Ill., St. Paul, Minn., and points taking same rates, to points in Kansas, Nebraska, and Colorado, found not justified. Protestant urged that proposed rates would disrupt adjustment between points in eastern and western Kansas, that there is no justification for publishing to points in Kansas same rates that apply to Colorado Common points and submitted various comparisons in support of contention that proposed rates are justified. Increased Rates on Iron and Stel Articles, 80 I. C. C. 732.

ALL OTHER CITATIONS

Box Shooks from Southeast to Eastern Points, 64 I. C. C. 389; Trunk Line & Ex Lake Ore Rates, 69 I. C. C. 611; Cement from Ohio and Mississippi River Crossings, 74 I. C. C. 561; Grain and Grain Products from Idaho, 77 I. C. C. 225.

IV. REASONABLENESS OF ADVANCED RATES.

See Through Routes and Joint Rates VI.

§17. In General.

See Evidence §17.

CASES 1887-1908

(a) An advance of 10 cents per box in rates on oranges from Florida to New York made by defendants was without justification, and so far as it exceeded 5 cents per box was unreasonable and contrary to law. Railroad Commission of Florida v. S. F. & W. R. Co., 3 I. C. C. 688.

(b) Upon consideration of all the facts and circumstances in this case,—HELD, that the advance of 10 cents per box in rates on oranges from Florida points to New York and other northeastern markets, made by defendants on November 23, 1890, was without justification, and so far as it exceeded 5 cents per box was unreasonable and contrary to law; that defendants be notified and required to make reparation for injuries occasioned by such unreasonable and unlawful rates to the several persons entitled thereto, and, as such persons are not parties to this proceeding and the amounts wrongfully received from them, respectively, cannot be ascertained from the evidence already taken, that this proceeding be continued for such further action or inquiry in that behalf as may become necessary. R. R. Commission of Florida v. Savannah, F. & W. R. Co., 3 I. C. R. 688.

(cd) The increase of rates for the transportation of oranges from Florida points to northeastern cities over the line of the Savannah, Florida & Western Railway and its connections, which was made Nov. 23, 1890, and amounted to 33 1-3 per cent upon rates previously in effect, is unjust, unreasonable, excessive, and in violation of the Interstate Commerce Act; and it is not justified by the increased facilities which have been afforded by the carriers for handling and preserving the fruit. Florida Fruit Exch. v. Savannah, F. & W. R. Co. (C. C. N. D. Fla.), 4 I. C. R. 400 Aff'd on 589.

(ef) Defendants' rate on uncompressed cotton from stations in Florida on the L. & N. R. R. to Savannah was $2.75 per bale at the time of hearing, when complaint was filed, and for some years prior thereto, but subsequent to the hearing this rate was increased 55 cents to $3.30 per bale. The rates to Mobile and New Orleans were, and still are, respectively, $2.00 and $2.50 per bale. HELD, that the rate of $2.75 per bale to Savannah was not unlawful, but that the whole advance of 55 cents was unlawful, and any higher rate on such cotton to Savannah than the former difference of 25 cents per bale above the rate in force from the same stations to New Orleans violates sections 1 and 3 of the statute. Savannah Bureau of F. & T. v. Louisville & N. R. Co., 8 I. C. C. 377.

(g) Shippers of hay and straw were discriminated against by the act of several carriers in advancing those commodities from sixth to fifth class, and thereafter charging fifth class rates for transportation. National Hay Asso. v. Lake Short & Michigan S. R. Co., 9 I. C. C. 264.

(h) The advances in the domestic rates on grain and grain products from 17½ to 20 cents per 100 pounds from Chicago is not justified. In the Matter of Proposed Advances in Freight Rates, 9 I. C. C. 382.

(i) The rate advances involved in this

investigation are those on iron articles, packing-house products, dressed meats, and grain and grain products. Upon all the facts and conditions now appearing, HELD, that as rates on iron articles were formerly reduced on account of commercial conditions, the advances in those rates may have been proper owing to subsequent change in such conditions; that the advance in the rate on packing-house products, which was made by withdrawing a lower export rate, is not properly an advance; that the advances in rates on dressed meats ought not to be condemned under the peculiar circumstances surrounding that traffic; that the advance in the domestic rate on grain and grain products from 17½ to 20 cents per 100 pounds from Chicago and the other advances made in consequence of the increased rate from Chicago to New York, the same being an advance over the highest published rate in effect for most of the four years previous and a great advance over actual rates received for the last fifteen years, are not justified. Re Proposed Advances in Freight Rates, 9 I. C. C. 382.

(j) The rates in effect for long periods prior to the advance made by defendants of 2 cents per 100 lbs. on April 15, 1903, as well as the rates on lumber in carloads from points in lumber producing territories east of the Mississippi River in Louisiana, Mississippi, and part of Alabama, served by defendant roads, to Ohio River Points, were remunerative to the defendant carriers, and the advance was unreasonable. Central Yellow Pine Asso. v. Illinois C. R. Co., 10 I. C. C., 505.

(kl) The advances in freight rates by defendants were not justified by the increased cost of operating the roads, where, although the operating expenses have constantly increased, they have been enlarged by the inclusion therein of large expenditures for permanent improvements, and defendants' gross earnings have increased from year to year to such extent as to result in a constant increase of net earnings. Central Yellow Pine Asso. v. Illinois C. R. Co., 10 I. C. C. 505; Tift v. Southern R. Co., 10 I. C. C. 548.

(m) The rates on lumber, in force prior to the defendants' advance of 2 cents per 100 lbs. on shipments from Georgia to Ohio River destinations, which advance was made on June 22, 1903, were reasonably high in comparison with the rates on other commodities which are at all analogous to lumber in respect to value, volume, risk, cost of handling, and other circumstances and conditions affecting the transportation of the traffic; and such advance was not warranted, and the increased rates thus in force are unreasonable and unjust. Tift v. Southern R. Co., 10 I. C. C. 548.

(no) Where an advance is made in rates which have been long maintained, and the evidence shows that the traffic affected is large, important, and constantly increasing, the advance will be held unjust unless it is satisfactorily explained. Tift v. Southern R. Co., 10 I. C. C. 548.

(p) In March 1903 carriers leading from St. Louis to Texas common points put into effect a general advance in rates on classes and commodities. Rates in force on freight articles from St. Louis, Mo., to Texas common points prior to March 15, 1903 afforded reasonable compensation to the carriers, and as they had been in effect for a long period, and the material advances of such rates on that date were made through concerted action of the carriers, justification for the advances should be clearly shown; but this is a general investigation, in which no complainant is demanding relief from some particular rate, and no particular rates have been investigated, and it does appear, moreover, that the financial condition of the respondents, especially those operating in Texas, is not favorable. While impressed with the belief that these advances in rates are improper, the Commission does not feel warranted in making an order condemning such advances in this proceeding. In the matter of class and commodity rates from St. Louis to Texas common points. 11 I. C. C. 238.

(q) Complainant attacked as unreasonable advance in commodity rates from points north of the Texas quarantine line to northern ranges in Colorado, Western Nebraska, Wyoming, Montana and North and South Dakota, and to Chicago, St. Louis and Kansas City. After considering cost to the carriers at originating and delivering points, cost and maintenance of equipment, expense of unloading and reloading in transit incident to feeding, watering and resting the stock, character of the movement, number of cars in trains, average loading, volume and desirability of the traffic return of empty cars, liability of damage, cost of carriage, increased cost of producing

live stock, decreased selling price, method of making the advanced rates, disappearance of competition, cost of railroad labor, and supplies, improved methods of operation and increased general traffic mileage revenue per ton per car and per train, HELD, defendants' advances not justified. Present terminal charge of $2 per car for delivery to Union Stock Yards Chicago unreasonable to extent it exceeded $1 per car. Cattle Raisers' Asso. of Texas v. M. K. & T. Ry, 11 I. C. C. 296.

(r) The advances in freight rates upon lumber from Dalton, Ga., to points in Virginia on the Norfolk and Western lines, between Bristol, Tenn., and Roanoke, Va., and between Bluefield, W. Va., and Kenova, W. Va., which were made in 1901 and 1903, are unreasonable and unjust, and the rates should not exceed those in force before the advances were made effective. Farrar v. Southern R. Co., 11 I. C. C. 640.

(st) It appears that the rates to Dallas, Tex., from certain mines on defendants' lines in Indian Territory and southern Arkansas have lately been increased from $1.25 to $1.50 per ton on slack coal and from $1.85 to $2.10 per ton on mine-run coal. Upon complaint that the present rates on such coal are unreasonable, and request that the lower rates be restored: HELD, that, under all the circumstances disclosed by the record and following former decisions of this Commission on the reasonableness of coal rates of these defendants in adjacent territory, the rates from the mines that now take the $2.10 and $1.50 rates to Dallas should not for the future exceed $1.90 on mine-run and lump and $1.40 on slack coal. As to the mines that now take rates of $1.85 and $1.25 to Dallas, there should be some corresponding reduction, but as to these mines no order is now made. Dallas Freight Bur. v. Gulf, Cal & S. F. Ry. Co. et al., 12 I. C. C. 223.

(u) Complainant attacked advanced rates on grain and grain products to Atlanta, Ga., and points beyond, from a group of towns on the I. C., beginning on the north with Henderson and Uniontown, Ky., and including Morganfield, Henshaw, Corydon, Grove Center and other river and inland points in the vicinity and south of Henderson and intermediate to Atlanta as unreasonable. For several years defendants maintained uniform rates on grain and kindred products from and to the points in question but on Dec. 15, 1904, defendants increased the rates by adding 4 cents. This gave to Henderson and Uniontown lower rates than those applicable from the intermediate points. On April 5, 1905, defendant canceled the increased rates from the intermediate points, restoring the former rates, and thus again putting all points in this group upon an equal rate basis. Reparation was agreed to on basis of 3 cents per 100 pounds. HELD, rates attacked unreasonable, reparation awarded on basis of 3 cents. Harth Brothers Grain Co. v. I. C. R. R., 12 I. C. C. 448.

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(v) In considering increased rates, the only issue to be determined is whether such rates are just and reasonable. The carriers, the protesting shippers and the public generally are alike entitled to just and reasonable freight rates. Rates on Crushed Stone, 30 I. C. C. 22, 28.

(w) When the Commission enters upon an investigation of proposed increased rates, the propriety as well as the reasonableness of those rates is in issue. Transcontinental Commodity Rates, 32 I. C. C. 449, 451.

(x) Propriety of proposed increased rates includes the justification of the relative as well as the intrinsic reasonableness of the rates. Oil Barrels to Oklahoma, 41 I. C. C., 557, 559.

(y) A general increase in class rates, which preserves existing relationships, distributes itself more generally and more equitably than would general increases on commodity rates. The Fifteen Per Cent Case, 45 I. C. C. 303, 324.

(z) The subsequent increase in one of the components of a combination rate does not of itself justify a joint rate formerly in excess of the aggregate of the intermediate rates. Fort Smith Commission Co. v. K. C. S. Ry., 50 I. C. C. 135, 136.

(2a) The Commission's decision and permissive orders in the Five Per Cent Case, and the Fifteen Per Cent Case, under which defendants were allowed to increase their rates did not approve any specific rates as reasonable in themselves or as properly adjusted with other rates, and did not justify in advance any rates which might be published as a result thereof. The burden is still upon the carriers. Garrett Lumber Co. v. C. & O. Ry., 55 I. C. C. 637, 640.

(2b) In considering the line haul rates, the test should be their relative level; care should be exercised in giving weight to conditions affecting all freight rates alike. If it should be deemed, for example, that by reason of such conditions the general level of rates is too low, the remedy is a general advance in rates. There is obvious danger of injustice in using such a situation as a reason for increasing charges on a special class of traffic. Perishable Freight Investigation, 56 I. C. C. 449, 467.

(2c) Experience has shown the limitations which surround in actual practice the operation of section 15a of the act. When it became apparent that the general increase of 1920, intended to give carriers a specified return, failed by a considerable margin to reach the desired mark, carriers and shippers alike agreed that it was not the Commission's duty to raise rates to still higher levels. To have done this would clearly have been a vain thing, harmful alike to the country and to the carriers. The rate adjustment can not with advantage be made dependent upon fluctuations in traffic. Rates on Grain, Grain Products, and Hay, 64 I. C. C. 85, 99.

(2d) The mere showing of the fact that in making effective the increases provided in general order No. 28 of the Director General, a slight disturbance was created in the percentage relationship which a specific rate bore to other rates between the same points, and the subsequent voluntary restoration of that relationship, does not warrant a condemnation of the rate in effect during the interim. Ault & Wiborg Co. v. Director General, as Agent, 64 I. C. C. 443.

(2e) It does not follow that rates increased beyond the authority of G. O. 28 are unreasonable; the question is one which must be determined by the ordinary tests of reasonableness, the manner in which the rates were arrived at being only one of the elements to be considered. United Light & Railways Co. v. Director General, 69 I. C. C. 414, 417.

(2f) Increased charges on interstate traffic which will result from a proposed cancellation by the Erie R. R. of transit on grain products stopped at Dayton, Ohio for mixing, blending, drying, grinding, or shelling, found justified. Dayton is unfavorably located from the standpoint of transit over the Erie's lines, the greater part of the traffic handled involves an out of line and back haul, and it is pointed out that such back haul could be avoided if the traffic were handled by other Dayton lines under transit accorded by them. Transit Privileges on Grain and Grain Products, 77 I. C. C. 1.

(2g) Proposal to increase the rate on iron and steel scrap southbound from Cairo and Metropolis, Ill., to St. Louis, Mo., to the basis of the southbound rate from Brookport, and Thebes, Ill., and to increase the rate northbound from St. Louis to all four points to the same basis, found justified. Proposed increases will remove an inconsistent adjustment; the resulting rates will compare favorably with rates on the same commodities in the same general territory and the same rates will apply in both directions. Scrap Iron and Steel between River Crossings, 77 I. C. C. 32.

(2h) Rates on cotton from Arkansas points to and from Memphis, Tenn., to each of which was added increase under General Order No. 28 of director general, found not unreasonable as compared with provision of preexisting tariffs authorizing refund of one such increase. Shipments were not through shipments moving at combination rates but were separate shipments to and from Memphis, and increase added to each of separate rates was in accord with practice as to other cottor rates. Memphis Freight Bureau v. M. P. R. R. Co., 80 I. C. C. 98.

(2i) Contention that rates were unlawful and unreasonable because not made in accord with intention of General Order No. 28 of Director General, not sustained. "Controlling fact to be determined is not whether rate was increased in strict compliance with terms of the general order, but whether resulting rate was unreasonable or otherwise unlawful." Greene Cananea Copper Co. v. Director General, as Agent, 80 I. C. C. 121, 122.

(2j) Terminal charge for movement between line-haul carriers' rails and Union Stock Yards at Chicago, Ill., on live stock from points in western, mountain-Pacific and southern territory found not unreasonable or otherwise unlawful because increased in excess of increase authorized for Chicago territory in supplemental report in Increased Rates, 1920, 58 I. C. C., 302. If regarded as line-haul rate, terminal charge would properly be in excess of the amount collected through application of line-haul increases, and if regarded as switching or transfer charge, it was not affected by the supplemental report, which related to line-haul rates. American Farm

Bureau v. A. & R. R. R. Co., 80 I. C. C., 232.

ALL OTHER CITATIONS

Memphis Cotton Oil Co. v. I. C. C. R. R. Co., 17 I. C. C. 313, 318, 321; Laning-Harris Co. v. C. B. & Q. R. R. Co., 18 I. C. C. 11, 12; Morgan Grain Co. v. A. C. L. R. R. Co., 19 I. C. C. 460, 467; In Re Advances in Rates—Eastern Case, 20 I.C.C. 243, 285, 306; In Re Advances on Coal to Lake Ports, 22 I. C. C. 604, 624; Fairmont Creamery Co. v. C. B. & Q. R. R. Co., 22 I. C. C. 252, 254; Investigation and Suspension of Advances in Rates for the Transportation of Barley, Bran and Wheat, 22 I. C. C. 216, 217; In Re Advances on Potatoes, 23 I. C. C. 69; First Trust & Savings Bank v. Southern Indiana Ry. Co., 195 Fed 330, 334; Arlington Heights Fruit Exchange v. S. P. Co., 24 I. C. C. 671; In Re Advances on Barley from California Points to Minneapolis, 24 I. C. C. 664, 669; Memphis Grain & Hay Assn. v. St. L. & S. F. R. R. Co., 24 I. C. C. 609, 615; Lumbermen's Exchange of St. Louis v. A. & S. R. R. Co., 24 I. C. C. 220, 222; Commercial Club of Superior v. G. N. Ry. Co., 24 I. C. C. 96, 121; Rates on Hay from the Northwest, 25 I. C. C. 680, 681, 684; Rates on Hay from the Northwest to Chicago, 25 I. C. C. 680; In Re Advances on Knitting-factory Products, 25 I. C. C. 634, 639; In Re Advances in Class and Commodity Rates, 25 I. C. C. 401; In Re Advances on Furniture, 25 I. C. C. 299; In Re Advances on Potatoes, 25 I. C. C. 247; In Re Advances on Cottonseed Products, 25 I.C.C. 237; Holcker-Elberg Mfg. Co. v. C. R. I. & P. Co., 25 I. C. C. 212; In Re Rates on Live Stock from Points in Texas, New Mexico and Colorado to Kansas City, Mo., 25 I. C. C. 63; Rates on Sand to Houston, Tex., 26 I. C. C. 677; Advances on Iron Ore, 26 I. C. C. 675; Lake-and-Rail Rates from Central Freight Asso. Territory, 26 I. C. C. 671, 673; Refrigeration Charges on Kansas City Southern Ry., 26 I. C. C. 617; Rates on Asphalt and Asphaltum, 26 I. C. C. 614; Switching Charges at Sheffield, Minn., 26 I. C. C. 475; Transcontinental Commodity Rates West Bound, 26 I. C. C. 456, 464; Memphis Freight Bureau v. L. & N. R. R. Co., 26 I. C. C. 402, 404; Soft Coal Rates from Southern Illinois to Arkansas, 26 I. C. C. 135; Rates on Common Brick to Canada, 26 I. C. C., 129; Rates on Sash, Doors and Blinds into Texas, 26 I. C. C. 116; Rates from Western Points to Stations on the Rhode Island Co., 26 I. C. C. 51; Lumber Rates from Memphis to New Orleans, 27 I. C. C. 471; In Re Advance in Rates in Official Clasification Territory, 27 I. C. C. 384; Washington, D. C. Storedoor Delivery, 27 I. C. C. 347, 348; Rates on Tin Cans and Other Commodities, 27 I. C. C. 298, 300; In Re Breakbulk Rates on Grain, 27 I. C. C. 78, 80; Iowa-Minnesota Cement Rates, 28 I. C. C. 477; Scrap-iron Rates Between Duluth, Chicago, etc., 28 I. C. C. 467; Wausau Advancement Assn. v. C. & N. W. Ry. Co., 28 I. C. C. 459; Omaha-Oklahoma Fresh Meat Rates, 28 I. C. C. 454; Iowa Grain Rates, 28 I. C. C. 354; California-Nevada Lumber Rates, 28 I. C. C. 313; Rates on Potatoes from Oklahoma to Points in Colorado, 28 I. C. C. 298; Brick Rates from Ohio Points to Huntington, W. Va., 28 I. C. C. 292; Kansas-Iowa Brick Rates, 28 I. C. C. 285; Commodity Rates Between Missouri River Points, 28 I. C. C. 265; Straw Rates from Stations in Missouri to Alton, Ill., 29 I. C. C. 562; Lumber Rates from Local Points to Chattanooga, Tenn.; 29 I. C. C. 646; California-Nevada Lumber Rates, 28 I. C. C. 313, 315; Iron and Steel Window Frames and Sash, 28 I. C. C. 500; Grain Rates in C. F. A. Territory, 28 I. C C. 549, 555; Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 581; New Orleans Storage Rules and Regulations, 28 I. C. C. 605, 607; Mary Mac Plantation Co. v. Y. & M. V. R. R. Co., Unrep. Op. A109; Gifford Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A129; Potato Carload Minimum Weights, Unrep. Op. A147; Chattanooga Brewing Co. v. N. C. & St. L. Ry., Unrep. Op. A179; Mansfield Hardwood Lumber Co. v. T. & P. Ry. Co., Unrep. Op. A193; Holverscheld & Co. v. B. & O. R. R. Unrep. Op. A299; Peanut Rates to Oklahoma City, Okla., 30 I. C. C. 346; Break-bulk Rates on Grain, 30 I. C. C. 357; Malt Rates to New Orleans, La., 30 I. C. C. 587; New England and Canadian High Explosive Rates, 29 I. C. C. 697, 698; Acme White Lead & Color Works v. N. P. Ry. Co., Unrep. Op. A418; Lumber to Nashville, Tenn., 31 I. C. C. 186; Lumber Rates from Lake Charles and West Lake, La., 31 I. C. C. 258; Packing-House Products from Iowa Points, 31 I. C. C. 308; Rates on Knitting Factory Products to Texarkana, Ark.-Tex., 31 I. C. C. 669; Cement Rates from Points in Illinois, 32 I. C. C. 369; Rates on Brick and Tile, 32 I. C. C. 497; Northbound Rates on Hardwood, 32 I. C. C. 521; Rates on Coke from Chicago and

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§18. Circumstances and Conditions.
See Evidence II.

(½) In General.

(a) Neither the equities of the shippers nor the intent or motives actuating a carrier or carriers in prescribing an advance in freight rates has any bearing upon the reasonableness of the increased rates. L. & N. R. R. Coal and Coke Rates, 26 I. C. C. 20, 23.

(b) Categorical answers expressed as opinions are not sufficient to sustain the burden of showing that a proposed increase of rates is reasonable. Louisville & Nashville Railroad Coal and Coke Rates, 26 I. C. C. 20, 24.

(c) The reasonableness of increased joint rates cannot be proved by showing that the revenue accruing to the initial line under its divisions of the old rates was insufficient to cover the cost of handling the traffic. L. & N. R. R. Coal and Coke Rates, 26 I. C. C. 20, 31.

(d) Relative rates are not important in determining propriety of advance where transportation conditions are different. Lumber Rates from Memphis and Other Points to New Orleans, 27 I. C. C. 471, 486.

(e) The duty to justify advanced rates includes their relative reasonableness as well as reasonableness per se of the rates. Transcontinental Commodity Rates, 32 I. C. C. 449, 452.

(f) A rate increase uniform in amount necessarily tends to preserve rather than disrupt preexisting relationships. This is not true of a percentage increase. Barnett Oil & Gas Co. v. Director General, as Agent, 61 I. C. C. 568, 570.

(g) Fact that rates paid represent a high percentage of increase over rates formerly charged is not proof that rates are unreasonable. Ault & Wiborg Co., 62 I. C. C. 133. French Battery & Carbon Co. v. C. & N. W. Ry. Co., 80 I. C. C. 346.

ALL OTHER CITATIONS

In Re Advances on Fruits and Vegetables, 24 I. C. C. 164; New England Investigation, 27 I. C. C. 560, 607; Lumber Rates from Memphis and Other Points to New Orleans, 27 I. C. C. 471, 486; Lumber Rates from Memphis and Other Points to New Orleans, 27 I. C. C. 471, 486; People's Fuel & Supply Co. v. G. T. W. Ry. Co., 27 I. C. C. 24, 29; Kansas-Iowa Brick Rates, 28 I. C. C. 285, 287; Atlantic Refining Co. v. Director General, as Agent, 58 I. C. C. 46, 48; Increased Rates, 1920, 58 I. C. C. 220, 246; Boldt Paper Mills v. Director General, as Agent, 62 I. C. C. 471, 472; Ault & Wilborg Co., 62 I. C. C. 133; Southern Appalachian Coal Operators v. L. & N. R. R. Co., 83 I. C. C. 136, 142.

§18. (1) Low Receipts Per Ton Mile.

IMPORTANT CASES SINCE 1908

(a) The fact that a long established rate yields but small receipts per ton mile cannot justify its increase to such an extent or in such a manner as to be unjust to any shipper. Circumstances and conditions may be such that an increase in a particular rate may be unreasonable, although after the increase the rate will yield low receipts per ton mile. Detroit Chemical Works v. N. C. Ry. Co., 13 I. C. C. 357, 362.

(b) A carrier in submitting statistics as to the per-ton-mile earnings for the purpose of justifying an increase of rate, should take into consideration the short line distance, although the short line route involves a line operated separately, but controlled by it through stock ownership. Kansas-Iowa-Brick Rates, 28 I. C. C. 285, 287.

ALL OTHER CITATIONS

In Re Advances on Cement Originating in Central Freight Association Territory, 22 I. C. C. 90, 92; In Re Advances on Bituminous Coal, 22 I. C. C. 341, 345.

§18. (2) Water Competition.

See Water Competition.

IMPORTANT CASES SINCE 1908

(a) Section four provides that when water competition causes a carrier to reduce rates to or from competitive points, such rates shall not be increased unless such proposed increase rests upon changed conditions other than the elimination of water competition. American Insulated Wire & Cable Co. v. C. & N. W Ry. Co., 26 I. C. C. 415, 416.

(b) Proposed cancellation of joint "water competitive" rates on lumber from points in the south to eastern trunk line and New England territories, leaving in effect higher so-called "normal" basis of commodity rates, found not justified. Water Competitive Rates on Lumber, 60 I. C. C. 643.

ALL OTHER CITATIONS

Milwaukee-Waukesha Brewing Co. v. C. & N. W. Ry. Co., 21 I. C. C. 472.

§18. (3) Heavy and Uniform Tonnage.

IMPORTANT CASES SINCE 1908

(a) Minimum increase of 5c per ton on commodities moving at less than $1 per ton would cast upon heavy short-haul traffic a disproportionate burden. Five Per Cent Case, 31 I. C. C. 351, 403.

ALL OTHER CITATIONS

Kiser Co. v. C. of G. Ry. Co., 17 I. C. C. 430, 441.

§18. (4) Low Grade Commodity.

See Evidence §61.

CASES 1887-1908

(a) Complainant attacked as unreasonable advance of 2c per 100 pounds on April 15, 1903, in the rates on lumber in carloads from points in lumber producing territories east of the Mississippi River in Louisiana, Mississippi and parts of Alabama served by defendants, to Ohio River points applying both as to shipments locally to such Ohio River points, and to shipments destined beyond. On September 9, 1899, the rate previously in effect from May 1, 1894, was advanced 1c, making a total adavnce of 3c since May 1, 1894. The rates prior to the advance on April 15, 1903, were remunerative to the carriers. Lumber rates should be relatively low, in view of the fact that lumber is inexpensive freight and few other commodities furnish to carriers so large a tonnage; that the lumber business is constant, yielding carriers revenue all the year; that no special equipment is constructed or furnished for its carriage; that it is loaded by shippers and unloaded by consignees, and where open cars are furnished the shipper is required, at considerable expense, to equip them so as to protect the lumber and the train, and that there is small risk and in case of accident the damage is insignificant. HELD: The advance on April 15, 1903, of 2c per 100 pounds not warranted, and the resultant increase unreasonable and unjust. Central Yellow Pine Asso. v. I. C. R. R., 10 I. C. C. 505.

IMPORTANT CASES SINCE 1908

(b) An increase in rates of 25 per cent upon a low-grade commodity is not justified because of a slight increase in the ratio of expense to earnings. Winters Metallic Paint Co. v. C., M. & St. P. Ry. Co., 18 I. C. C. 596, 598.

(c) Proposed increased rates on coal from points on the Norton & Northern Ry. to Carolina and southeastern territories, found not justified as it is not shown that the situation of these mines from a transportation standpoint is so clearly distinguishable from that of other mines in the same group as to justify the higher charges and deprive them of the benefit of the group rates. Coal from Norton & Northern Ry. Mines, 58 I. C. C. 739.

(d) Proposal of the L. & N. to increase rates on stable manure from New Orleans, La., to points on its line in Mississippi and Alabama, found not justified. Manure is the only fertilizer that meets the peculiar needs of the soil in this territory, increase would tend to curtail or prohibit its transportation to these lands and hinder production resulting in a reduction in volume of the outbound business of the L. & N., and present rates compare favorably with rates to points on other lines in Louisiana and Mississippi. Manure from New Orleans, 73 I. C. C. 400.

(e) Where earnings under proposed rates appear excessive for low-grade traffic, such as ice, the proposed rates will be condemned. Increased Rates on Ice from Wisconsin, 74 I. C. C. 662.

ALL OTHER CITATIONS

In Re Investigation of Advances in Rates on Cement, 20 I. C. C. 588; In Re Advances on Staves and Other Articles, 23 I. C. C. 382; Virginia-Carolina Chemical Co. v. A. C. L. R. R. Co., 27 I. C. C. 234; In Re Advances on Cement, 24 I. C. C. 209; In Re Advances on Sand and Gravel, 24 I. C. C. 249; Rates on Crushed Stone, 30 I. C. C. 22; Scrap Iron Rates Between Chicago and Milwaukee, 28 I. C. C. 525; Second-hand Beer Packages from Arizona, 42 I. C. C. 85; Increased Rates, 1920, 58 I. C. C. 220, 252; Pulpwood to Kingsport, Tenn., from South Carolina, 62 I. C. C. 277; Manure from New Orleans, 73 I. C. C. 400.

§18. (5) Ratio of Rate to Value.

See Classification §11.

IMPORTANT CASES SINCE 1908

(a) Brooms, as a manufactured article, should in accordance with accepted principles pay a rate higher than broom corn, which is a raw material. Broom Rates to Colorado Points, 28 I. C. C. 310, 311.

(b) It would be desirable, if it were possible, to determine definitely the commodities, the sections of the country, and even the individual rates which can best bear the burden of increases, and the relationships of the rates and differentials which will be disturbed by a percentage increase. This is precluded by the necessity of prompt action upon the main issues presented. Ex Parte 74, Application for Increase in Rates, 58 I. C. C. 220, 243.

ALL OTHER CITATIONS

Memphis Cotton Oil Co. v. I. C. R. R. Co., 17 I. C. C. 313, 318, 321; Kaufman & Sons v. N. Y. C. R. R., 51 I. C. C. 551.

§18. (6) To Gain Import Duty.

See Evidence §26.

ALL CITATIONS

Arlington Heights Fruit Exchange v. S. P. Co., 19 I. C. C. 148, 153; Order of Commission Temporarily Enjoined, A., T. & S. F. Ry. Co. v. I. C. C., 182 Fed. 189; Decision of Commission Reversed, A., T. & S. F. Ry. Co. v. U. S., 190 Fed. 591.

§18. (7) Rates in Like Territory.

See Comparative Rates; Evidence §13; Relative Rates.

IMPORTANT CASES SINCE 1908

(a) It cannot be said that merely because a higher intrastate rate exists an increase of an interstate rate to meet the state-made rate is justified, even though transportation conditions as to distance and territory are similar. Rates on Beer and Other Malt Products, 31 I. C. C. 544, 545.

ALL OTHER CITATIONS

In Re Advances on Cement, 20 I. C. C. 588, 597; In Re Advances by the D. & H. Co. on Fluid Milk, 23 I. C. C. 500; Ohio River Hay Rates, 27 I. C. C. 465; Products from Iowa Points, 31 I. C. C. 308, 309; Rates on Blackstrap Molasses, 32 I. C. C. 176; Coal from Norton & Northern Ry. Mines, 58 I. C. C. 739.

§18. (8) Circuitous Route.

See Circuitous Route, Through Routes and Joint Rates §6.

ALL CITATIONS

Winterbotham & Sons v. M. P. Ry. Co., 21 I. C. C. 266; Lumber Rates from Mississippi to Eastern Points, 27 I. C. C. 6; Lumber from Louisiana Points, 40 I. C. C. 268, 271; Lumber Rates from Helena, Ark., and Other Points, 41 I. C. C. 565.

§18. (9) Use of Commodity.

See Classification §10.

IMPORTANT CASES SINCE 1908

(a) Complainants attacked an advance of 33 1-3 per cent in rates on stock cattle and sheep throughout western states to and beyond the Missouri River. For 25 years previously to the advance there had been a rate on stockers and feeders of 75 per cent of the rate on market cattle. HELD: That from the standpoint of value of stockers and feed-

ers as compared with market cattle, the character and cost of the service of the two, the heavy claims to which railroads are subject for shrinkage and fall in price from delays in reaching markets, the fact that carriers are insured a second haul to market on the fat cattle from the point where they are fed, and the value of the service to the shipper, the 75 per cent rate is reasonable compared with the service and rate on market cattle. It is not contrary to the Commission's rulings for defendants to make rates on the use to which cattle are put where there is a substantial dissimilarity in the transportation service and of the value of the service to the shipper. In Re Advances on Stock Cattle and Sheep, 23 I. C. C. 7, 12.

§18. (10) Increased Divisions.

Se Divisions.

IMPORTANT CASES SINCE 1908

(a) The fact that one of the interested carriers is to receive the benefit of a proposed increase is of course not conclusive of the reasonableness of the advanced rate. Lake-and-Rail Rates from C. F. A. Territory, 26 I. C. C. 671, 673.

ALL OTHER CITATIONS

In Re Advances in Class Rates, 22 I. C. C. 338; Lumber from Louisiana to North Atlantic Points, 26 I. C. C. 186, 191; D. & S. L. R. R. v. C., B. & Q. R. R., 51 I. C. C. 679, 682.

§18. (11) Bulk.

See Bulk; Minimums.

ALL CITATIONS

Rates on Tin Cans and Other Commodities, 28 I. C. C. 247, 248; Minimum Weight on Potatoes, 38 I. C. C. 101.

§18. (12) Change in Classification.

See Classification.

ALL CITATIONS

Cancellation of third class rating on fruits and vegetables between Minnesota, the Dakotas, Iowa and Nebraska, 68 I. C. C. 401; Asphalt and Other Petroleum Products to Iowa Points from Missouri, Kansas, Oklahoma and Arkansas, 68 I. C. C. 471; Riprap Between Points in Texas and Louisiana, 68 I. C. C. 475.

V. DISCRIMINATION THROUGH ADVANCE.

§19. In General.

See Discrimination.

CASES 1887-1908

(a) The prohibition of rebates and of unjust discriminations and preferences has resulted in some instances in increased charges to individual shippers, or on some particular traffic; but if such advances are only caused by the discontinuance of abuses, and bear proper relation to the charges on other traffic and to the conditions of transportation, no injustice is done. Myers v. Pennsylvania, 2 I. C. C. 403, 406.

(b) The law requires no increase in rates, but only equality under like conditions so that one shipper shall not have advantages at the expense of another. Obviously the elimination of rebates and preferences to favored individuals or localities, and the payment by all shippers of like charges for like service, would seem to warrant cheaper service for the public at large without loss of revenue to the carriers. Myers v. Pennsylvania Co., 2 I. C. C. 403, 406.

(c) The exaction of $2.76 a ton on freight tendered by a connecting road, for which $2.40 was formerly charged, and is still charged, another connecting road for precisely similar services, will be held an unreasonable and unlawful discrimination. Augusta Southern Ry. Co. v. Wrightsville & Tennille Ry. Co., 7 I. C. C. App. xxxviii.

(d) A rate on uncompressed cotton from stations in Florida on the Louisville & Nashville Railroad to Savannah, of $2.75 per bale, is not unlawful, although the rates to Mobile and New Orleans are respectively $2.00 and $2.50 per bale; but an advance of 55 cents is unlawful and in violation of sections 1 and 2 of the statute. Savannah Bureau of Freight and Transp. v. Louisville & N. R. R. Co., 8 I. C. C. 377.

(e) Hay and straw were discriminated against by the act of several carriers in advancing those commodities from sixth to fifth class, and thereafter charging fifth class rates for transportation. National Hay Asso. v. Lake Shore & Michigan S. Ry. Co., 9 I. C. C. 264.

IMPORTANT CASES SINCE 1908

(f) Where an industry has been required to pay for a long period of time rates of freight on raw material which bear certain relation to rates charged to competitors at other points, a marked change in such relation of rates in favor of competing industries cannot be made

without an attendant presumption of undue discrimination. Detroit Chemical Works v. N. C. Ry. Co., 13 I. C. C. 357, 362.

(g) A carrier does not justify an advance where tariff which contains many reductions will result in unreasonable and discriminatory rates. In Re Advances on Drain Tile and Sewer Pipe, 25 I. C. C. 688, 693.

(h) So the burden is on the carriers to justify not only the intrinsic reasonableness of the increased rate, but to show that it is free from the alleged unjust discrimination. Burson Knitting Co. v. C., M. & G. Ry., 42 I. C. C. 739, 741.

(i) For each rate, a carrier offers and obligates itself to perform a certain amount of service. If the service so offered and for a long time performed in consideration of that rate includes taking the property transported from a given point and delivering it at a given point, the delivery at that point is in no sense a free service. The carrier may increase the rate or it may curtail the service performed for that rate, but if such action is challenged it must bear the burden of showing that the new rate or service is reasonable and free from unjust discrimination. Also citing Rates on Hay to Chicago, 34 I. C. C. 150 and cases cited therein. National Tube Co. v. Lake Terminal Ry., 55 I. C. C. 469, 480.

(j) Where increased rates are proposed not only must the carriers establish the reasonableness of the proposed rates, but it must also appear that no undue prejudice or preference will result. Imported Wool from New York and Boston, 80 I. C. C. 309, 313.

ALL OTHER CITATIONS

Detroit Chemical Works v. N. C. Ry. Co., 13 I. C. C. 357, 362; Kiser Co. v. Central of Georgia Ry. Co., 17 I. C. C. 430, 441; Davenport Commercial Club v. Y. & M. V. R. R. Co., 20 I. C. C. 19; In Re Rates on Cream and Condensed Milk, 21 I. C. C. 522, 527, 528; Wisconsin State Millers' Assn. v. C., M. & St. P. Ry. Co., 23 I. C. C. 494; In Re Transportation of Fresh Meats, 23 I. C. C. 652, 655; Chamber of Commerce of Newport News v. S. Ry. Co., 23 I. C. C. 345; In Re Advances on Cotton and Cotton Linters, 23 I. C. C., 404, 411; In Re Advances on Barley, 24 I. C. C. 664; In Re Advances on Ice, 24 I. C. C. 660, 663; Rates by Carriers for the Transportation of Cement from Union Bridge, Md., to Norfolk, 24 I. C. C. 290; Rates on Knitting Factory Products, 25 I. C. C. 634, 639; In Re Advances on Oil, 25 I. C. C. 349, 351; In Re Advances on Petroleum Oil, 25 I. C. C. 349; Transcontinental Commodity Rates, Westbound, 26 I. C. C. 456, 464; Rates on Phosphate from Tennessee Points, 26 I. C. C. 377; Wichita Falls System Joint Coal Rates Cases, 26 I. C. C. 215; Lumber from Louisiana to North Atlantic Points, 26 I. C. C. 186; Coal Rates on the Stony Fork Branch, 26 I. C. C. 168; Wharton Steel Co. v. C. R. R. Co. of N. J., 26 I. C. C. 166, 167; Hormel & Co. v. C., M. & St. P. Ry. Co., 26 I. C. C. 112; Rates from Walsenburg Coal Field, 26 I. C. C. 85; Grain Rates in Central Freight Association Territory, 28 I. C. C. 549, 557; Rates on Flaxseed, Minneapolis to Fredonia, Kan., 29 I. C. C. 633; Rates on Poultry in Western Trunk Line Territory, 32 I. C. C. 380, 383; Switching Charges on Coke and Coal, 32 I. C. C. 444; Transcontinental Commodity Rates, 32 I. C. C. 449, 452; Interstate Class and Commodity Rates in Louisiana, 33 I. C. C. 626; Interstate Class and Commodity Rates in Louisiana, 33 I. C. C. 626, 631; Soap to Texas Points, 36 I. C. C. 215; Oklahoma Traffic Asso. v. A. & S. Ry., 36 I. C. C. 329; Cast Iron Pipe from North Carolina Points, 38 I. C. C. 183; Grain from Manitowoc, Wis., 37 I. C. C. 549, 551; Danville, Va., Class and Commodity Rates, 38 I. C. C. 742, 745; Hides from Springfield, Ohio, 40 I. C. C. 305; Bancroft & Sons Co. v. N. Y., N. H. & H. R. R., 40 I. C. C. 411; Clay from Florida, 40 I. C. C. 275, 278; Cottonseed Products from Texas, 41 I. C. C. 333; Oil Barrels to Oklahoma, 41 I. C. C. 557; Kaw River Sand & Material Co. v. A., T. & S. F. Ry. Co., 32 I. C. C. 504, 505, 507; Export Grain from Indiana, 42 I. C. C. 527; Lumber from Arkansas City, Ark., 43 I. C. C. 423; Southeastern Cotton Goods, 43 I. C. C. 530; McGowan-Foshee Lumber Co. v. F., A. & G. R. R., 43 I. C. C. 581; Cement-Plaster from Plasterco, Tex., 43 I. C. C. 615; Globe Soap Co. v. A. & S. Ry., 45 I. C. C. 25; Southwestern Glass Case, 48 I. C. C. 379; Pac. Lumber Co. v. N. W. P. R. R., 51 I. C. C. 738, 770; Inman-Poulsen Lumber Co. v. S. P. Ry., 55 I. C. C. 357, 362; State of Idaho ex rel. v. Director General, 58 I. C. C. 342; California Citrus League v. Director General, 58 I. C. C. 373; Silica Sand Producers Asso. v. Director General, as Agent, 58 I. C. C. 549, 554; State of Washington ex rel. v. Director General,

as Agent, 58 I. C. C. 701; Coffee from Galveston, Tex., and Other Gulf Ports, 58 I. C. C. 716; Coal from Norton & Northern Ry. Mines, 58 I. C. C. 739; Wheeler Lumber, Bridge & Supply Co. v. Director General, as Agent, 59 I. C. C. 6; Vaughn's Seed Store v. C., M. & St. P. Ry. Co., 59 I. C. C. 537; Cape Girardeau Portland Cement Co. v. Director General, 60 I. C. C. 269; Acid from Hillsboro, Ill., to Ohio River Points, 60 I. C. C. 583; Fish Oil from St. Marys, 60 I. C. C. 511; Wood Rates Between North Pacific Coast Points, 61 I. C. C. 159; Substitution for Increases in Rates, 61 I. C. C. 518, 525; Edwards & Bradford Lumber Co. v. Director General, as Agent, 64 I. C. C. 503; Horses and Mules from Kansas City, Mo., 69 I. C. C. 97; Potatoes, Carloads, from Minnesota, Wisconsin and Upper Michigan to Central and Trunk Line Territories, 74 I. C. C. 448; Cottonseed Hull, Fiber or Shavings, 77 I. C. C. 727; Grain and Flaxseed from Twin Cities, 78 I. C. C. 575; Class rates from Kansas Points, 78 I. C. C. 741. Class Rates from Points in Kansas, 80 I. C. C. 709 .

§19¼. Legal Rate.

See Demurrage §20; Legal Rate; Through Routes and Joint Rates.

IMPORTANT CASES SINCE 1908

(a) Legal rates on shipments which moved to milling point prior to advance and reshippped within 12 months, one year being transit period allowed, were the rates in effect at time of initial movement of grain. Minneapolis Traffic Asso. v. A. A. R. A. Co., 42 I. C. C. 76, 78.

(b) The fact that there was no notation or symbol of an increase in a tariff supplement, an item of which was amended, and that in a subsequent supplement a further modification of that item with reference to reconsignments bore symbols denoting both increase and reduction, did not affect the validity of the item, as it was allowed to become effective in each instance. New Era Milling Co. v. St. L. S. F. R. R., 50 I. C. C. 207, 210.

(c) The lawfulness of the rates, however, can not be determined entirely by a construction of G. O. 28. National Supply Co. v. C., M. & St. P., 57 I. C. C. 739, 741.

(d) Where one of the tariffs used in making combination rates on through shipments contains a rule that such rates will be subject to the increase but once, there is a holding out to the shipper of the rate so constructed which the carrier should protect. Sligo Iron Store Co. v. W. M., 62 I. C. C. 643, 644.

(e) Where factor of a combination rate applying over a carrier under federal control was increased under the terms of General Order No. 28, and that road was subsequently relinquished from federal control, the filed tariff naming such increased rate remains the lawful tariff after such relinquishment. Maltby v. S. V. Ry. Co., 63 I. C. C. 103, 104.

(f) Rates attacked as unlawful by reason of alleged failure to observe terms of General Order No. 28 were filed with the Commission by the President, through his duly appointed agent, and a failure to adhere strictly to the terms of a preliminary order of the Director General, which is not required by the federal control act, and in the absence of which complainant's contention would be without foundation, can not be construed as defeating the validity of the rates concerned. Maltby v. S. V. R. Co., 63 I. C. C. 103, 105.

(g) Tariff provided that increases were to apply to the entire rates, whether published as specific totals or by use of differentials or arbitraries, but since no through rate was published between points here involved, and the combination rate charged was not made by the use of differentials or arbitraries, the applicable rate was the sum of the prior rates individually increased 25 per cent under General Order No. 28 of the Director General. Doe Lumber Co. v. Director General, as Agent, 63 I. C. C. 354, 355.

(h) Contention that joint rates were inapplicable because in contravention of the fourth section, and that the increase authorized by General Order No. 28 of the director general should have been applied but once to the combination alleged to be applicable. HELD: Argument contrary to the commission's construction of the fourth section and the view repeatedly expressed that the lawfulness of rates can not be determined solely by a construction of the general order. Silica Sand Producers' Asso. v. C., B. & Q. R. R. Co., 73 I. C. C. 588, 589.

(i) Failure to adhere strictly to the terms of General Order 28 can not be construed as defeating the validity of rates filed by the President through his

duly appointed agent. Theo. Marcus & Co. v. Director General, 77 I. C. C. 244, 246.

ALL OTHER CITATIONS

Rath Packing Co. v. I. C. R. R. 56 I. C. C. 303, 306; Anaconda Copper Mining Co., 57 I. C. C. 723, 726; Acme Cement Plaster Co., 59 I. C. C. 411; Consolidated Gas Co. v. Director General, as Agent, 63 I. C. C. 135, 138; Wisconsin Dairy Products Co. v. C. M. & St. P. Ry. Co., 68 I. C. C. 307; Northern Potato Traffic Asso. v. Director General, as Agent, 69 I. C. C. 26; Scrap Iron and Steel Between Ohio and Mississippi River Crossings, 77 I. C. C. 32; Van Dusen Harrington Co. v. Director General, 78 I. C. C. 729; Peninsular Portland Cement Co. v. Director General, as Agent, 83 I. C. C. 10, 11, 12; Greene Cananea Copper Co. v. C. R. & P. Ry. 88 I. C. C. 225.

VI. REMEDIES AND PROCEDURE

See Procedure.

§19½. In General.

CASES 1887-1908

(a) It does not appear that defendants wilfully omitted or failed to notify the Commission and the public of the advance in rates complained of, or that anyone has sustained damage or injury by reason of such failure or omission, and therefore there is no case made out for an application by the Commission to a District Attorney of the United States for the institution of a prosecution, and no ground for a recommendation of reparation for such injury. R. R. Comm. of Fla. v. Savannah, F. & W. R. Co., 3 I. C. R. 688.

(b) Where a general investigation of proposed advances in freight charges was in a manner ex parte, although the respondent carriers were fully heard through their traffic representatives, and in some instances through their attorneys, and facts not brought out in the inquiry, with further discussion of the subject, might lead to a different conclusion, no order was made; but it was determined that, unless the rates be readjusted in accordance with the views expressed by the Commission, proceedings would be begun against the several lines, which would put directly in issue the rates involved. In the Matter of Proposed Advances in Freight Rates, 7 I. C. C. 382.

IMPORTANT CASES SINCE 1908

(c) When an increased rate which has gone into effect is subsequently attacked by complainant, the complaint, as well as the act, must be considered to fix the issues. Wickwire Steel Co. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 415, 421.

(d) Where a suspended tariff proposes an increase in the rate itself and carries provisions as to the carload minimum weight the same as in the tariff already in effect, the Commission will not consider in the I. & S. proceedings any question as to this carload minimum. Rates on Blackstrap Molasses, 32 I. C. C., 176, 177.

(e) The filing and serving of a formal complaint against proposed increased rates does not relieve carriers of the burden of proof imposed upon them by law. Transcontinental Commodity Rates, 32 I. C. C., 449, 452.

(f) If rates authorized to be increased are held by unexpired orders of the Commission, parties to such orders must, before filing such increased rates, apply for and secure specific modification of such orders. The Fifteen Per Cent Case, 45 I. C. C. 303, 325.

ALL OTHER CITATIONS

Proportional Rates on Grain Products from Omaha, 33 I. C. C. 621, 624; Rates on Iron and Steel Articles to Spokane, 38 I. C. C. 669; Swift & Co. v. U. P. R. R. Co., 39 I. C. C. 665, 669.

§20. Injunctions.

IMPORTANT CASES SINCE 1908

(a) Under the act, as amended in 1906, a United States Circuit Court may enjoin a carrier from putting a proposed advance into effect, and restrain such advance, until the Commission shall have an opportunity to pass on the reasonableness of the rates involved. Kiser Co. v. Central of Ga. Ry. Elec., 158 Fed. 193, 198.

(b) Under the Interstate Commerce Act, as amended June 29, 1906, the courts have no jurisdiction to enjoin the filing and posting of a rate or to enjoin the enforcement of a rate after it has been filed and posted, but before it has ever been enforced. Houston Coal & Coke Co. v. N. & W. Ry. Co., 171 Fed. 723, 724, 725.

(c) In determining whether it should temporarily enjoin a proposed increase of interstate rates the court must take into account the balance of equity between the shippers and the car-

riers. If the balance of detriment or inconvenience in the event the temporary injunction is refused is against the shippers, then the injunction will be granted. But if, on the other hand, the balance of detriment or inconvenience is against the carriers, in the event the temporary injunction should be issued, then it should be refused. Arlington Heights Fruit Co. v. S. P. Co., 175 Fed. 141, 142.

(d) The United States courts have no original jurisdiction to enjoin the putting into effect of a proposed schedule of rates alleged to be unreasonable, in advance of a determination of that question by the Interstate Commerce Commission, since under the Interstate Commerce Act as amended June 29, 1906, the question of the unreasonableness or discrimination of a rate is, in the first instance, vested solely in that Commission. Columbus Iron Steel Co. v. Kanawha & M. Ry. Co., 178 Fed. 261, 263.

(e) Where the case in which a temporary writ of injunction is asked presents questions of grave importance and difficulty, and it appears from the pleadings and affidavits presented upon the hearing for the temporary writ that great damage will result to the complainant if the writ is not granted and he shall be finally successful in the litigation, and, on the other hand, that the granting of the writ will not cause serious damage to the defendant as compared with the damage which would result to the complainant if the same were not granted, a court of equity will unhesitatingly, in order to maintain the present status, issue a temporary writ of injunction. Nashville Grain Exch. v. U. S., 191 Fed. 37, 40.

(f) Aside from the question of power, under the Interstate Commerce Act, since its amendment by act June 18, 1910, authorizing the Interstate Commerce Commission to suspend a proposed new rate pending a hearing as to its reasonableness, a court will not interfere by injunction to restrain the enforcement of such a new rate, where the Commission, on application and after being fully advised, has refused to suspend it. M. C. Kiser Co. v. Cent. of Georgia Ry. Co., 236 Fed. 573.

(g) In an action to enjoin certain advanced rates it was urged before the court that the shippers had made large investments, and made contracts for the purchase and sale of goods on the basis of existing rates, and that they would suffer serious loss if the new rates are put into effect. HELD: On that question the court is of the opinion that these shippers made such contracts with their eyes open; they knew that there was a chance of the rates being raised, and therefore they took the chances in the matter; and the fact that a hardship might be imposed upon them when they took the chances in this way, should not be considered by the court, especially in view of the fact that, if the Interstate Commerce Commission should subsequently determine that the new rates were excessive, the shippers would have the right to obtain reparation. Besides, the courts have no right to suspend a rate which is reasonable and lawful so far as the carrier is concerned on the sole ground that it would be burdensome to the shipper. M. C. Kiser Co. v. Central of Georgia Ry. Co., 236 Fed. 573, 578.

(h) A state equity court has no jurisdiction to enjoin the filing of a schedule of increased interstate rates with the Interstate Commerce Commission, as by the Act the Commission has exclusive original jurisdiction to determine the reasonableness of such rates. Thacker Coal & Coke Co. v. N. & W. Ry. Co., 67 W. Va. 448, 454, 68 S. E. 107.

ALL OTHER CITATIONS

Wickwire Steel Co. v. N. Y. C. & H. R. R. R. Co. 181 Fed. 316, 318; Columbus Iron & Steel Co. v. Kanawha & M. Ry. Co., 178 Fed. 261, 263; Arlington Heights Fruit Co. v. S. P. Co., 175 Fed. 141, 143, 144; Columbus Iron & Steel Co. v. Kanawha & M. Ry. Co., 171 Fed. 713, 719; A. C. L. R. R. Co. v. Macon Grocery Co., 166 Fed. 206, 218; N. P. Ry. Co. v. Pacific Coast Lumber Mfrs. Assn., 165 Fed. 1, 8; G. N. Ry. Co. v. Kalispell Lumber Co., 165 Fed. 25, 28.

§21. Investigations.

IMPORTANT CASES SINCE 1908

(a) Where the advance of an individual rate has been attacked in a general inquiry before the Commission, it is not necessary or proper to inquire into it, pending the general investigation. Hydraulic Press Brick Co. v. Vandalia R. R. Co., 15 I. C. C. 175, 176.

(b) Where the Commission is charged with the duty of determining generally whether the railroads in a certain classification territory are in need of additional revenues,, and, if so, how this shall be secured, and whether in-

creased freight rates proposed are just and reasonable, the questions involve the exercise of quasi-judicial functions, and the law requires the Commission to afford all parties an ample opportunity to introduce evidence and to be heard in support of their objections to the additional burdens upon their traffic proposed by the carriers. The law also requires the Commission to supplement the evidence so introduced by such further investigations as the importance and complexity of the questions may suggest. The Five Per Cent Rate Case, 31 I. C. C. 351, 425.

(c) The Commission is under the express statutory obligation of affording a full hearing where increased rates are proposed, to all who desire to be heard and have reasonable grounds for a hearing. The Five Per Cent Case, 31 I. C. C. 351, 426.

ALL OTHER CITATIONS

Rates on Blackstrap Molasses, 32 I. C. C. 176, 177.

§21½. Orders.

See Interstate Commerce Commission §5; Procedure IV.

IMPORTANT CASES SINCE 1908

(a) In a proceeding involving the suspension of advanced rates, the Commission cannot undertake to adjust relative rates from different groups. Coal Rates to Davenport, Ia., 26 I. C. C. 140, 142.

(b) After tariffs publishing rates to Missouri River cities were filed, respondents applied to Commission for permission to make corresponding increases to Des Moines; but as order had not expired application was denied. Western Trunk Line Rate Increases, 43 I. C. C. 481, 490.

VII. REPARATION.

See Reparation.

§22. In General.

See Claims.

CASES 1887-1908

(a) Decree affirming a decree enjoining the violation of an order of the Interstate Commerce Commission passed November 29, 1891, which prohibited the exaction of a rate for the transportation of oranges from Florida to northeastern markets which should exceed the rates in force prior to November 3, 1890, by more than five cents per box, allowing complainant a counsel fee of $5,000, and directing defendant to pay costs of the suit, including the master's charges of $870.50. Savannah, F. & W. R. Co. v. Florida Fruit Exchange, 4 I. C. R. 589.

(b) The effect of an advance in through rates after the Supreme Court had dismissed a proceeding to have certain terminal charges declared unjust and unlawful, which dismissal was upon the ground that there had been a reduction in the through rate greater than the terminal charge, cannot be determined, in a proceeding in the same suit for reparation, as regards territory to which the reduction in the through rate did not apply, but is also a matter for independent inquiry in a new proceeding. Cattle Raisers' Asso. v. Chicago, B. & Q. R. Co., 10 I. C. C. 83.

IMPORTANT CASES SINCE 1908

(cd) Carriers who concur in establishing an unlawful advance in rates are not thereby rendered jointly and severally liable for damages resulting therefrom, where they did not participate in the particular rate or receive any part of the overcharge in question. Nicola, Stone & Myers Co. v. L. & N. R. R. Co., 14 I. C. C., 199, 209.

(e) When a rate is advanced and the increased rate is condemned by the amount of the advance a much more satisfactory basis for an award of reparation is afforded than in the present case, where so far as changes have occurred they have been at least for the most part reductions in a territory where changes in conditions have taken place which contribute in greater or less degree to a present showing of unreasonableness in existing rates. Anadarko Cotton Oil Co. v. A., T. & S. F. R. R. Co., 20 I. C. C. 43, 50.

(f) Rate on lumber, cypress, increased 1 per cent following Fifteen Per Cent Case, 45 I. C. C. 303, but order in that case did not authorize any increase and joint rate subsequently reduced 1 per cent. Reparation awarded on basis of rate subsequently established. Pine Plume Lumber Co. v. Director General, as Agent, 57 I. C. C. 501.

(g) In the absence of any further proof in support of the allegations the Commission thinks that the Director General should not be at peril of liability for reparation merely because a reduction in rates followed in the course of readjustments resulting from the original in-

creases made under authority of G. O. 28. Woodbury Lumber Co. v. Director General, 62 I. C. C. 293, 294.

(h) The fact that the director general subsequently revised the increases under General Order 28 in the rates attacked on the basis of a specific advance, in place of the original 25% advance, would not, in the absence of further proof of the allegations, warrant an award of reparation. West Coast Lumbermen's Asso. v. Director General, 77 I. C. C. 669, 673.

(i) Fact that the director general, in lieu of the original advance of 25 per cent under General Order No. 28, subsequently revised the increases on basis of a specific advance, will not, in and of itself, warrant an award of reparation. West Coast Lumbermen's Asso. v. Director General, as Agent, 77 I. C. C. 669, 673.

ALL OTHER CITATIONS

Thompson Lumber Co. v. I. C. R. R. Co., 13 I. C. C. 657, 667; Burgess v. Transcontinental Freight Bureau, 13 I. C. C. 668, 680; Wyman, Partridge & Co. v. B. & M. R. R., 19 I. C. C. 551; Arlington Heights Fruit Exch. v. S. P. Co., 19 I. C. C. 148, 155; Canadian Valley Grain Co. v. C., R. I. & P. Ry. Co., 19 I. C. C. 108; Kaul Lumber Co. v. C. of Ga. Ry. Co., 20 I. C. C. 450; Gosline & Co. v. Director General, 55 I. C. C. 220; Boehmer Coal Co. v. P., C., C. & St. L. Ry., 58 I. C. C. 133; Hord Alkali Products Co. v. Director General, as Agent, 59 I. C. C. 574, 575; Crucible Steel Co. of America v. Director General, as Agent, 61 I. C. C. 753; Nagase & Co. v. Director General, as Agent, 62 I. C. C. 422, 425, 426; Lawton Refining Co. v. Director General, as Agent, 62 I. C. C. 480; American Sugar Refining Co. v. Director General, as Agent, 83 I. C. C. 560, 561.

VIII. TARIFFS AND PUBLICATION.

§23. In General.

See Application of Rates.

CASES 1887-1908

(a) If carriers are to any extent relieved from giving the notice now required, of advances and reductions in rates upon foreign commerce, they should in all cases file with the Commission the rates actually made, and give such further notice to the public as may be possible. Re Publication & Filing of Tariffs, 10 I. C. C. 55.

IMPORTANT CASES SINCE 1908

(b) Rule for disposition of fractions under General Order No. 28 of the director general applied only to rates quoted in dollars and cents per ton. Such rules did not and could not, by any reasonable interpretation, qualify another rule, which was complete in itself and specifically provided for the application of rates stated per ton or their unit. Shipments found overcharged and reparation awarded. Hercules Mining Co. v. Director General, as Agent, 66 I. C. C. 140.

(c) Rates named in a tariff published after the issuance of General Order No. 28 of the Director General, but not to become effective until after the effective date of that order, found to be subject to the increase of 25 per cent provided thereunder. Growers' Rice Milling Co. v. Director General, as Agent, 66 I. C. C. 165.

(d) Prior to General Order No. 28 of the director general, rates on brick and sewer pipe, chimney pipe, hollow building tile, fire clay, and terra cotta, were the same. Under that order, a flat increase of 2 cents was applied on brick and 25 per cent on the other commodities. Subsequently the brick tariffs carrying the 2 cent increase were amended to include "articles listed as taking brick rates" and a succeeding tariff restored the parity formerly existing. HELD: When tariffs were amended, inference was that 2 cent increase would apply on commodities listed in same item with brick. Charges assessed on commodities other than brick found illegal and reparation awarded. Clark & Sons v. Director General, as Agent, 74 I. C. C. 396.

ALL OTHER CITATIONS

Charleston Milling Co. v. Director General, as Agent, 68 I. C. C. 525; Northern Potato Traffic Asso. v. Director General, as Agent, 69 I. C. C. 26; Lehigh Valley Coal Co. v. Director General, as Agent, 69 I. C. C. 535, 539.

§24. Construction.

ALL CITATIONS

Clarke & Sons v. Director General, as Agent, 74 I. C. C. 396; Peninsular Portland Cement Co. v. Director General, as Agent, 83 I. C. C. 10.

ADVERTISING.

I. OF EXCURSION TICKETS.
II. AS REBATES.
III. PREMIUMS IN SHIPMENTS.

1. OF EXCURSION TICKETS.

IMPORTANT CASES SINCE 1908

(a) Good faith to the public requires carriers to state in their advertisements of their excursions the total amount which will be exacted for the transportation privilege, of which validation is a part and for which a fee of 50 cents is charged, but it is difficult to see how it can be held to be a violation of the act to exact a part of the tariff rate at the ticket office when the ticket is sold, and the balance of that rate at the validating agency when the ticket is validated. Riter v. O. S. L. R. R. Co., 19 I. C. C. 443, 444.

II. AS REBATES.

IMPORTANT CASES SINCE 1908

(a) Under the act a passenger has no right to buy tickets with services, advertising, releases or property, nor can the railroad company buy services, advertising, releases or property with transportation. The statute manifestly means that the purchase of a transportation ticket by a passenger and its sale by the company shall be consummated only by the former paying cash and by the latter receiving cash of the amount specified in the published tariffs. L. & N. R. R. v. Mottley, 219 U. S. 467, 477; 31 Sup. Ct. 265, 55 L. Ed. 297.

(b) A contract by which a carrier agrees to furnish transportation to a publisher and his employes in exchange for advertising space at the regular advertising rates of the publisher, violates the provisions of the act forbidding the furnishing and transportation of rates "less and different" from those exacted from the general public. Chi., Ind. & L. Ry. Co. v. U. S., 219 U. S. 486, 494, 31 Sup. Ct. 272; U. S. v. C. I. & L. Ry. Co., 163 Fed 114, 115, 55 L. Ed. 305.

ALL OTHER CITATIONS

U. S. v. C., I. & L. Ry. Co., 163 Fed. 114, 115.

III. PREMIUMS IN SHIPMENTS.

IMPORTANT CASES SINCE 1908

(a) To be able to ship premiums in packages is a privilege of value to the shipper. Minneapolis Cereal Co. v. C. & N. W. Ry. Co., 28 I. C. C. 415, 417.

AGENCY

See Crimes §15; Passenger Fares and Facilities §15; Tariffs §3 (2); Terminal Facilities §3½.

CASES 1887-1908

(a) Unauthorized declarations of a depot agent, implying that a tank car, which has just returned from one long journey, is in a safe condition to be loaded and started on another long run, are not binding upon the railway company. Michigan Congress Water Co. v. C. & G. T. R., 2 I. C. C. 428, 431.

(b) The Western Classification Committee in the making of classification and rates represents about seventy-five railroad companies, but the classification and rates made by this Committee are merely recommendatory to the carriers in the Association and it is not obligatory upon the carriers to accept and operate them; some of the carriers upon such articles, for example, salted hides and pelts in less than carloads, make commodity rates of their own upon the classification and rates different from those prepared and recommended by the Classification Committee, while other carriers do not; upon a complaint by a shipper against the Classification Committee alone, upon this statement of facts, it is evident that no investigation or order that the Commission could make would have any binding effect whatever upon the carriers. McMillan & Co. v. W. Classification Committee, 3 I. C. R. 282.

(c) Where corporate agents are intrusted with the transaction of business requiring continuous negotiations the authority of the agent to bind the principal by his statement does not terminate until the negotiations are at an end. But narrations of an agent of past transactions are not evidence. Cleveland, C., C. & I. R. Co. v. Closser, 3 I. C. R. 387.

(d) Reconsignment for shipper may not be made by carriers' agent. Morgan v. M., K. & T. Ry. Co., 12 I. C. C. 525.

IMPORTANT CASES SINCE 1908

(e) There is no reason why carriers at a common terminal may not intrust to a joint agent work allotted elsewhere to the carriers' immediate employees. New York Mercantile Exchange v. B. & O. R. R. Co., 36 I. C. C. 156, 162.

(f) There can be no valid objection to carriers doing by an agent what they may do themselves, where such agent is not a shipper or otherwise interested in transportation of the articles with respect to which the service is rendered. In Re Private Cars, 50 I. C. C. 652, 705.

(g) Where shipper employs a steamship company to take delivery of a ship-

ment on board a rail carrier's lighter or barge he thereby makes the steamship company his agent, and becomes responsible for any delay on its part to same extent that he would be if he took delivery personally. Acts and omissions of agent are in such cases acts and omissions of the principal. New York Board of Trade v. Director General, 59 I. C. C. 205, 208.

(h) Tidewater coal exchanges are not shippers, but they are intermediate agencies created by carriers and shippers for the purpose of facilitating the handling of coal destined for transshipment at the ports, and, while they pay transportation rates and charges, they do so only as the agents of their shipper members. Regulations for Payment of Rates and Charges, 59 I. C. C. 456, 457.

(i) Contention that as carriers during federal control were being operated as a unified system by the Director General, that the agent of a carrier was the agent of the Director General, and as such it was his duty to telegraph request for diversion to the last gateway through which he knew the traffic would pass. HELD: Not sustained as it was not the purpose of the federal act or of the orders of the Director General in operating under that act to alter or nullify the rates and other provisions of the lawful tariffs. Du Pont de Nemours Co. v. Director General, as Agent, 64 I. C. C. 67, 670.

(j) Carrier's agent billed shipments to wrong destination, and teamster, employed by complainant to load cars only, accepted and signed the bills of lading. HELD: As authority not delegated to teamster to direct the movement of the cars, the acceptance and signing of the bills of lading by him did not bind complainant. Shipments found misrouted and reparation awarded. Phoenix Refining Co. v. A., T. & S. F. Ry. Co., 66 I. C. C. 303.

(k) Proposed rule under which shipper is required to execute agreement for stoppage of goods in transit, and where shipper is unknown or irresponsible, the agent must require one or more sureties to sign with him, found not justified. Such rule indefinite as to number of sureties required, reposes too much arbitrary power in agents to decide who is or is not "responsible," compliance therewith might require considerable time and result in loss of right to stop because of delivery at destination, and terms of agreement are inconsistent with recognition by respondent of any duty to obey the order to stop. Stoppage of Goods in Transit, 66 I. C. C. 423.

(l) Congress authorized the Commission to inquire into and report to the Senate the affairs of the Trans-Continental Freight Bureau. The Bureau comprises all the trunk lines reaching the Pacific Coast engaged in transcontinental traffic in the United States and Canada, and also most of those engaged in that traffic and having all or a substantial portion of their mileage west of the Missouri River. Shippers have never been members of the bureau or represented on any of its committees. The bureau conducts so-called weighing and inspection departments in the Pacific Coast territory. The general administration of the bureau's affairs is exclusively in the hands of the committee of executive traffic officers of Pacific Coast terminal lines. The conditions most strongly affecting transcontinental traffic to and from Pacific territory, such as water competition, are particularly within the knowledge of the Pacific lines, because their location naturally keeps them in close touch with those conditions. All proposed changes in transcontinental rates to and from Pacific territory directly affect one or more of the Pacific lines. No joint rates to and from Pacific territory can be made without participation by them. The obvious advantages which would accrue to carriers from the compilation of transcontinental rates in a common tariff or set of tariffs constituted a compelling reason for the establishment of the bureau. Multiplication of tariffs was thus avoided. The resulting economy becomes apparent when the expense of tariff compilation and printing is considered. Another purpose for which the bureau was established was to maintain and supervise departments in Pacific territory, to weigh and inspect shipments of transcontinental traffic in order to insure application of correct weights and the lawful tariff rates thereon. The freight traffic managers of the Pacific lines, upon whom devolves the duty of passing upon the recommendations of the standing rate committee, have no direct connection with the bureau nor any control over it. They act solely for their individual lines and the lines respectively connecting with them and thus forming through routes for transcontinental

traffic. It is the duty of Agent Countiss to compile and publish transcontinental tariffs, in accordance with the act, to file such tariffs with the Commission, and to distribute them to carriers and shippers. The printing of bureau publications is done, under contract, by five printing companies at Chicago, and is paid for by the bureau. WEIGHING AND INSPECTION SERVICE. The inspection service is intended to protect carriers from losses in revenues due to intentional or unintentional misdescription of shipments by shippers. These departments also police transit services accorded in their respective territories by bureau member lines and by the lines holding so-called memberships in the weighing service. The bureau's strongest influence in the publication of freight rates, rules and charges as between carriers is probably that flowing from the functioning of the standing rate committee. The members of the standing rate committee are men of wide experience in matters relating to transcontinental freight traffic, and their judgment is given weight. The assessments for maintenance of the bureau, made monthly, are based upon the ratio of the main line rail haul on transcontinental traffic of the respective members to the total of all members, except that the Canadian National Railways and the Grand Trunk Pacific each pays $250 monthly toward the general expenses. The salaries of the chairman, members of the standing rate committee, superintendent of the weighing and inspection departments, and all other bureau employes, are paid by the bureau. Shippers are a unit in indorsing the bureau's method of combining in one set of tariffs the principal transcontinental rates of practically all rail carriers. It affords shippers a ready method of ascertaining the rates available to their competitors; makes rate changes effective for all on the same date, and maintains established relationships between competing points, which is generally of greater importance to them than the measure of the rates. It would be impracticable for every shipper engaged in transcontinental business to have a complete file if each line published a separate set of tariffs. It is of advantage to shippers to be able, through the bureau, to have applications for tariff changes considered by all member lines at the same time, instead of being compelled to file them with the individual lines and then carry on the necessary correspondence with each. Changes are generally published in shorter time than if handled through individual lines. To the member lines the bureau offers distinct advantages. It is a clearing house for the interchange of views on matters of common concern, and affords a point of contact with all shippers engaged in transcontinental traffic and not merely with those on the individual members line. By reason of uniformity in effective dates all rail carriers can participate in the traffic on equal terms with respect to rates. It is manifest that the bureau as at present organized and operated serves many useful purposes, promotes economy and efficiency, and is of advantage to shippers as well as carriers. The need for some organization of this character in the transcontinental traffic field is demonstrated upon the record. It is abundantly shown that operation of the bureau tends to obviate or remove the discriminations as between persons and localities which the law condemns. HELD, the maintenance and operation of the Transcontinental Freight Bureau are not in violation of any provision of the act. In Re Trans-Continental Freight Bureau, 77 I. C. C. 252.

(m) The question of a consigneee's liability for freight and demurrage on army wagons, refused by him, because shipped in an automobile car, increasing the charges, instead of knocked down, was a question of agency, and if the depot quartermaster shipping them had authority from him to engage an automobile car for their shipment, the consignee was liable, and if he had no authority, actual or ostensible, the consignee was not liable. Virginian Ry. Co. v. Stoke, (Va. 1922), 113 S. E. 704.

ALL OTHER CITATIONS

New York Mercantile Exchange v. B. & O. R. R. Co., 36 I. C. C. 156, 162; Famechon Co. v. C. B. & Q. R. R., 45 I. C. C. 598, 600; Emery & Co. v. B. & M. R. R., 47 I. C. C. 200, 202; In Re Private Cars, 50 I. C. C. 652, 705; Ross v. Indiana Natural Gas & Oil Co. (Ind. 1921), 130 N. E. 440; New York Board of Trade v. Director General, 59 I. C. C. 205, 209; Regulations for Payment of Rates and Charges, 59 I. C. C. 456, 457; Phoenix Refining Co. v. A. T. & S. F. Ry. Co., 66 I. C. C. 303; Stoppage of Goods in Transit, 66 I. C. C. 423; Hyre-Price Live Stock Commission Co. v. M. K. & T. Ry. Co., 66 I. C. C. 591; Joyce-Watkins Co. v. P. R. Walsh Tie & Timber Co. (Mo. 1922), 236 S. W. 1105.

AGGREGATED SHIPMENTS

See Express Companies §13½.

IMPORTANT CASES SINCE 1908

(a) A rule permitting the concentrating at the point of shipment of numerous small shipments belonging to different shippers into one large shipment for the transportation to one consignee by a steamship line may or may not be proper. There appeared no justification for applying a special rate on small shipments aggregated at destination after transportation service had been completed. S. P. Co. Ownership of Atlantic S. S. Lines, 43 I. C. C. 168, 178.

(b) A shipper making shipments in carload lots has the right to bill a single consignee though the contents of the car may be intended for different individuals. I. C. C. v. D. L. & W. R. R., 220 U. S. 236, 31 Sup. Ct., 392, 55 L. Ed. 448; Swift & Co. v. United States, 255 Fed. 291, 294.

ALL OTHER CITATIONS

I. C. C. v. D. L. & W. R. R., 220 U. S. 236, 31 Sup. Ct. 392, 55 L. Ed. 448; Swift & Co. v. United States, 255 Fed. 291, 294.

AGREEMENTS

See Admissions; Evidence §3; Loss and Damage §9; Divisions III; Special Contracts.

ALASKA

See Adjacent Foreign Country; Control and Regulation; Foreign Commerce.

IMPORTANT CASES SINCE 1908

(a) The Commission has no jurisdiction over all-water traffic between points on Puget Sound and points in Alaska. The Alaska Investigation, 44 I. C. C. 680, 682.

(b) And it has no power to adjust controversy between the town of Valdez and the steamship companies concerning the use of the municipal wharf. The Alaska Investigation, 44 I. C. C. 680, 711.

(c) Percentage increases herein approved not to apply to railroads in Alaska. Increased Rates, 1920, 58 I. C. C. 220, 247.

(d) Alaska has been incorporated into and is part of the United States, and the Constitution, so far as applicable, is controlling on Congress in legislating with respect thereto. Territory of Alaska v. Troy, 42 Sup. Ct. 241.

ALL OTHER CITATIONS

I. C. C. v. H. S. S. Co., 224 U. S., 474, 484, 32 Sup. Ct. 556, 56 L. Ed. 849; Humboldt S. S. Co. v. I. C. C., 37 App. Cas., D. C., 266, 267, 274, 275; In Re Jurisdiction in Alaska, 19 I. C. C. 81, 92, 94; Humboldt S. S. Co. v. White Pass & Yukon Route, 19 I. C. C. 105; Humboldt S. S. Co. v. White Pass & Yukon Route, 25 I. C. C. 136; Fleischner, Mayer & Co. v. N. P. Ry. Co., Unrep. Op. A-889; The Alaska Investigation, 44 I. C. C. 680, 681, 682, 711; Territory of Alaska v. Troy, 42 Sup. Ct. 241.

ALLOWANCES

I. CONTROL AND REGULATION.
- §1. Commission's right to investigate.
- §2. Power to prescribe.
- §3. Effect of order.

II. PUBLICATION AND TARIFFS.
- §4. Obligation to file.
- §5. Effect of publication.
- §6. Construction.

III. DISCRIMINATION.
- §7. Obligation to treat all alike.
- §8. Particular allowances.
  - (½) Car ferry and cars.
  - (1) Compressing cotton.
  - (2) Cooperage and grain doors.
  - (2½) Dunnage.
  - (3) Elevation of grain.
  - (3⅛) Furnace allowances.
  - (3⅛a) Icing.
  - (3¼) Lateral allowances.
  - (3½) Leakage.
  - (4) Lighterage.
  - (4¼) Outage on tank cars.
  - (4½) Lining and padding.
  - (4¾) Scaleage shrinkage
  - (4⅞) Loading and unloading.
  - (5) Spotting cars.
  - (6) Staking.
  - (7) Transfer.
  - (8) Yardage, drayage and wharfage.
  - (9) Insurance.
  - (10) Weighing.

IV. LEGALITY OF ALLOWANCES.
- §9. In general.
- §10. Transportation service performed by shipper.
- §11. Transportation facility.

§12. What is not transportation service.
(1) Accessorial or incidental service.
(2) Operation of plant facility.
V. REASONABLENESS OF ALLOWANCES.
§13. In general.
(1) Competition.
§13½. Retroactive Applications.
VI. DAMAGES AND REPARATION.
§14. In general.
§14½. Court proceedings.
VII. AS REBATES.
§15. In general.
VIII. CRIMINAL LIABILITY.
§16. In general.

CROSS REFERENCES

See Common Carrier §9;Divisions; Facilities and Privileges; Ferry Charges; Industrial Lines; Lighterage §3; Mails; Tap Lines §4, §6½; §9; Terminal Facilities §9; Transfer; Weights and Weighing §8.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Commission's Right to Investigate.

IMPORTANT CASES SINCE 1908

(a) By section 15 of the Commission is authorized to determine what is a reasonable maximum allowance to be paid by a carrier to the owner of property who furnishes any instrumentality used therein. New Orleans Terminal Allowances, 42 I. C. C. 748, 754.

(b) It is not the commission's function under the act to enforce specific compliance of contracts for allowances between shippers and carriers where the tariffs on file do not include allowances claimed. But where carriers under their tariffs offer for a given rate to render a certain specified service, and after a certain date withhold a part of that service, there has been an increase in the rate, no less than if a higher charge had been made for the identical service previously performed for the original charge. United Chem. & Org. Products Co. v. Director General, as Agent, 73 I. C. C. 100, 103.

(c) By paragraph (14), section 1 of the Act the commission is given jurisdiction to establish reasonable rules, regulations, and practices with respect to car service, including compensation to be paid for use of any car not owned by carrier using it. Assigned Cars for Bituminous Coal Mines, 80 I. C. C., 520, 557.

(d) Under section 15, paragraph (13), of the Act the commission is not authorized to increase an allowance merely because it is inadequate to cover cost to shipper whom carrier has employed to perform the service. Cambria Steel Co., 64 I. C. C., 737, 740. Swift & Co. v. Director General as Agent, 81 I. C. C. 677.

(e) Section 15 paragraph 13 of the Act, empowers the Commission only to determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for services rendered. Under this provision the Commission is not authorized to increase an allowance merely because it is inadequate to cover the cost to the shipper whom the carrier has employed to perform the service. Swift & Company v. Director General, 81 I. C. C. 677, 678.

(f) Section 15 of the Act authorizes the commission, if owner of property transported in interstate commerce directly or indirectly renders any service connected with the transportation, to determine what is a reasonable charge as maximum to be paid by carrier for service so rendered. This section, however, does not authorize the commission to require payment, but only to prevent excessive payments, by prescribing maximum which carrier may pay. Cambria Steel Co., 64 I. C. C., 737. National League of Commission Merchants v. P. R. R. Co., 83 I. C. C. 723, 730.

(g) Under Interstate Commerce Act, §15 (8), as amended (Comp. St. §8583), authorizing the Commission to determine a reasonable charge to be paid by a carrier for services rendered by the shipper, the determination of what is a reasonable allowance to a shipper, who was required to haul his goods to the express company's office after the express company failed to call for them and pick them up, as it was required to do under its tariffs on file, is a question which must be first submitted to the Commission, since to permit the shipper and the carrier to agree on the amount paid for such services would open the door to rebating, and the court will not require the carrier to do what it cannot voluntarily do. Fulton Bag & Cotton Mills v. American Ry. Express Co., 288 Fed. 854.

ALL OTHER CITATIONS

In Re Allowances for Transfer of Sugar, 14 I. C. C. 619, 625, 627; Mitchell Coal & Coke Co. v. P. R. R. Co., 38 I. C. C. 40, 43; Prusia Hardware Co. v. C. H. & D. Ry. Co., 40 I. C. C. 747, 748; Sanford, Day Iron Works v. L. & N. R. R. Co., 41 I. C. C. 10, 12; New Orleans Terminal Allowances, 42 I. C. C. 748, 754; Buckeye Steel Castings Co. v. H. V. Ry. Co., 58 I. C. C. 500; Wharton Steel Co. v. Director General, 59 I. C. C. 11, 22; Whitaker-Glessner Co. v. B. & O. R. R. Co., 63 I. C. C. 47, 56; Cambria Steel Co. v. Director General, 64 I. C. C. 734, 737, 741.

§2. Power to Prescribe.

See Jurisdiction of Commission.

IMPORTANT CASES SINCE 1908

(a) Section 15 of the Act provides the Commission may determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished and fix the same by appropriate order. The Commission's power thereunder is to fix the maximum to be paid as an allowance. In exercise of this power the Commission may not require a carrier to make an allowance or fix the precise amount, and it is doubtful whether it can award damages for failure to pay except in cases where the allowance is published in the carrier's tariffs and is not more than reasonable for the service. The Commission thinks the amount here claimed is reasonable, but any redress to which they may be entitled would seem to rest with the courts. Rutherford Brede v. Director General, 61 I. C. C. 515, 517.

(b) The Commission can require the carriers to perform the interchange switching if it finds it to be a reasonable transportation service incident to the line haul, but it can not compel them to act as a unit, or to do the work at the convenience and to the satisfaction of complainant. The Commission can not order carriers to make an allowance. Whether a shipper shall receive an allowance in lieu of such switching service is optional with the carriers. Whitaker-Glessner v. B. & O., 63 I. C. C. 47, 56.

ALL OTHER CITATIONS

Traffic Bureau, Merchants' Exchange v. C. B. & Q. R. R. Co., 14 I. C. C. 317, 330; General Electric Co. v. N. Y. C. & H. R. R. Co., 14 I. C. C. 237, 242; Merchants Dispatch Storage Co. v. I. C. R. R. Co., 17 I. C. C. 98, 106; Sterling & Son v. M. C. R. R. Co., 21 I. C. C. 451, 454; Peavey & Co. v. U. P. R. Co., 176 Fed. 409, 419; Mitchell Coal & Coke Co. v. Pennsylvania R. R. Co., 181 Fed. 403, 410; U. P. R. R. Co. v. Updike Grain Co., 222 U. S. 215, 218, 32 Sup. Ct. 39, 56 L. Ed. 171; Industrial Railways Case, 29 I. C. C. 212, 243; Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 93, 101; Milwaukee Malsters' Traffic Assn. v. G. T. W. Ry. Co., 28 I. C. C. 489, 491; Farmers' Co-operative Asso. v. C. B. & Q. R. R., 34 I. C. C. 60, 65; Prusia Hardware Co. v. C. H. & D. Ry. Co., 40 I. C. C. 747, 748; Sanford-Day Iron Works v. L. & N. R. R. Co., 41 I. C. C. 10, 12; New Orleans Terminal Allowances, 42 I. C. C. 748, 754; In Re Private Cars, 50 I. C. C. 652, 671; Buckeye Steel Castings Co. v. H. V. Ry. Co., 58 I. C. C. 500; Carey Mfg. Co. v. Director General, 59 I. C. C. 640, 642, 643; U. S. Cast Iron Pipe & Foundry Co. v. Director General, 62 I. C. C. 339, 343.

§3. Effect of Order.

See Interstate Commerce Commission.

IMPORTANT CASES SINCE 1908

(a) Where the principle of a decision prohibiting elevator allowances applies everywhere, the Commission expects that all interests, though not parties to the proceeding, will conform to the ruling of the Commission. Traffic Bureau, Merchants' Exchange v. C. B. & Q. R. R. Co., 14 I. C. C. 510.

ALL OTHER CITATIONS

Buckeye Steel Castings Co. v. H. V. Ry. Co., 58 I. C. C. 500.

II. PUBLICATION AND TARIFFS.

See Tariffs II.

§4. Obligation to File.

IMPORTANT CASES SINCE 1908

(a) Whatever charges are made, whatever services are performed, and whatever privileges are allowed by carriers, must be stated separately in the schedules filed with the Commission. Anderson, Clayton & Co. v. C. R. I. & P. Ry. Co., 18 I. C. C. 340, 350.

(b) While section 6 does not in express terms require the publication of allowances made to shippers under section 15, yet the courts have held that, in view of the broad prohibitions of the Elkins act and the broad requirements of section 6, allowances made to a ship-

per, even though reasonable in amount, are unlawful rebates unless published. Rates on Railroad Fuel and Other Coal, 36 I. C. C. 1, 3.

(c) Deviation from the legally applicable rate is not permitted by the act under any pretext; an allowance can not be made except under the provisions of a lawfully filed tariff. Lay Fish Co. v. Director General, 80 I. C. C. 4, 5.

(d) A railroad company engaged in interstate commerce can recover for its services in towing a shipper's car floats, which service was not a part of the interstate carriage, though it has not filed with the Interstate Commerce Commission a tariff showing the charges for such services as required for charges for interstate carriage by Interstate Commerce Act. §6, as amended by Act June 29, 1906, §2 (Comp. St. §8569). Pennsylvania R. Co. v. M. McGirr's Sons Co., 287 Fed. 334.

(e) Due to strike, complainants obliged to cart express shipments from freight station to place of business. Contention that shipments overcharged to extent of cartage charges, not sustained. Carrier's tariffs did not authorize allowance or deduction from legally applicable rate for services performed; and since question whether or not complainants may recover for such services can not be determined from tariff, amounts paid for cartage are not overcharges. Tariff rate itself and rules and regulations connected therewith are standards to determine an overcharge. Lay Fish Co. v. Director General, as Agent, 80 I. C. C. 4.

ALL OTHER CITATIONS

In Re Allowances for the Transfer of Sugar, 14 I. C. C. 619, 630; Anderson, Clayton & Co. v. C. R. I. & P. Ry. Co., 18 I. C. C. 340, 350; Best Co. v. G. N. Ry. Co., 33 I. C. C. 1, 3; Transportation of Potatoes, 34 I. C. C. 256; Second Industrial Railways Case, 34 I. C. C. 596, 603; Rates on Railroad Fuel and Other Coal, 36 I. C. C. 1 13; Powell Grain Co. v. St. L. I. M. & S. Ry. Co. Unrep. Op. 1876; Omaha Elevator Co. v. Union Pac. R. R., 249 Fed 827; Railway Co. v. Kirby, 225 U. S. 155, 32 Sup. Ct. 648, 56 L. Ed. 1033, Ann. Cas. 1914A. 501; Railroad Co. v. Mottley, 219 U. S. 467, 31 Sup. Ct. 265, 55 L. Ed. 297, 34 L. R. A. (N. S.) 671; Elwood Grain Co. v. Railway Co., 202 Fed 845, 121 C. C. A. 153; Omaha Elevator Co. v. Union Pac. R. R., 249 Fed. 827, 832; Waste Merchants Asso. v. Director General, 57 I. C. C. 686, 689.

§5. Effect of Publication.

IMPORTANT CASES SINCE 1908

(a) Where an industry has continuously for years performed the terminal or spotting services and apparently has preferred to do so, it can not now be heard in a demand for compensation from the carriers for such past services. Empire Steel & Iron Co. v. Director General, 56 I. C. C. 158, 180.

(b) A carrier cannot pay a shipper for the shipper's services in the wharfage and handling of goods, unless the charges therefor are specified in a duly published schedule or tariff. Southern Cotton Oil Co. v. Central of Ga. Ry. Co., 228 Fed. 335.

ALL OTHER CITATIONS

General Electric Co. v. N. Y. C. & H. R. R. R. Co., 14 I. C. C. 237, 242; Ames, Brooks Co. v. Rutland R. R. Co., 16 I. C. C. 479, 480, 481; Crosby & Meyers v. Goodrich Transit Co., 17 I. C. C. 175, 176; Lay Fish Co. v. Director General, as Agent, 80 I. C. C. 4.

§6. Construction.

IMPORTANT CASES SINCE 1908

(a) Where the service, when rendered by a line-haul carrier, is merely a substitute for team track delivery and involves no additional service beyond what such a delivery would involve, the line-haul rate is presumed to cover it. Huron Milling Co. v. P. M. R. R., 49 I. C. C. 558, 560.

(b) Line-haul rates of carriers in this country have been made to include compensation for delivery and placement of freight upon the tracks of private industries and if this long-established usage were to be changed and separate charges imposed for the accessorial services which are merely incidental to the line haul, even-handed justice would seem to require that these line-haul rates should be proportionately reduced and such a change would involve sweeping revisions of many thousands of tariffs. Huron Milling Co. v. P. M. R. R., 49 I. C. C. 558, 560, 561.

ALL OTHER CITATIONS

Victor Fuel Co. v. A. T. & S. F. Ry. Co., 14 I. C. C. 119, 120; Huron Milling Co. v. P. M. R. R., 49 I. C. C. 558, 560, 561.

III. DISCRIMINATION.

See Discrimination.

§7. Obligation to Treat All Alike.

CASES 1887-1908

(a) A carrier cannot pay the larger expense of the transportation of a remote shipper's merchandise to the station, and not pay the less expense of such transportation of the nearer shipper's merchandise. Hezel Milling Co. v. St. Louis, A. & T. H. R. Co. (Com.), 3 I. C. R. 701.

(b) Upon investigation had in a proceeding instituted by the Commission on its own motion, it appeared that the respondent had in force over its line to Nashville, Tenn., a special rate on coal when used for manufacturing purposes by persons named upon the manufacturers lists prepared by the railroad company. These lists were furnished to dealers who, on selling coal to such manufacturers, issued certificates which entitled them to obtain a refund from the railroad company amounting to the difference between the regular and special rates. Pending investigation the respondent discontinued the manufacturers rate and put in force a new coal tariff to Nashville whereby coal, run of mine, nut and slack, is given a rate of $1.00 per ton the year round, and screened coal a rate of $1.15 per ton, April to September, and for the remainder of the year a rate of $1.40 per ton. The rate from the same mines to Memphis, a point affected by water competition for coal traffic, is $1.40 per ton on all coal the year round, and respondent buys coal at the mines and sells it in the Memphis market. HELD, that the practice abandoned by the respondent of arbitrarily determining what persons should receive the so-called manufacturers rate was a clear violation of the act. The rate charged under the new tariff is not unreasonably low but the rate to Nashville should change at the time any change is made in the rate to Memphis. Re Louisville & Nashville R. R. Co., 4 I. C. C. 157.

IMPORTANT CASES SINCE 1908

(c) Whatever allowances are made must be just, reasonable and non-discriminatory. Suffern Grain Co. v. I. C. R. R. Co., 22 I. C. C. 178, 183; Federal Sugar Refining Co. v. B. & O. R. R. Co., 20 I. C. C. 200, 212; Anderson, Clayton & Co. v. C. R. I. & P. Ry. Co., 18 I. C. C. 340, 350; Brook-Rauch Mill & Elevator Co. v. M. P. Ry. Co., 17 I. C. C. 158, 161, 163.

(d) A carrier is not warranted under section 15 of the Act in making an allowance to a shipper who provides a facility and performs a service in the transportation of his own property while refusing a similar allowance to another shipper competing in the same markets in the same line of business who provides a similar facility and performs the same service in the transportation of his property. Federal Sugar Refining Co. v. B. & O. R. R. Co., 20 I. C. C. 200, 212.

(e) To pay an elevation allowance to one shipper or at one place while declining to pay it elsewhere is undue discrimination unless justified by circumstances. Suffern Grain Co. v. I. C. R. R. Co., 22 I. C. C. 178, 183.

(f) Though there may be no affirmative obligation upon defendants to perform the spotting services under the line haul rates, they may not practice unjust discrimination or undue prejudice by making allowances to other shippers who are competitors of complainant provided substantially similar circumstances and conditions at competitors' plants are shown to exist. Pittsburgh Forge & Iron Co. v. Director General, 59 I. C. C. 29, 33.

(g) The fact that complainant competes with some industries, and that defendants make allowances to these industries for spotting service does not of itself establish unjust discrimination or undue prejudice. Pittsburgh Force & Iron Co. v. Director General, 59 I. C. C. 29, 34.

(h) Aside from any question of the extent of a carrier's legal obligation as to the delivery of carload traffic without charge in addition to the line haul rates, if unjust discrimination or undue prejudice is found to result from the failure or refusal of the carrier to perform the spotting service for one shipper or to make that shipper a proper allowance therefor while it renders a like spotting service for other and competing shippers, the Commission may require by order the removal of the unjust discrimination or undue prejudice. Philip Carey Mfg. Co. v. Director General, 59 I. C. C. 640, 642.

(i) If the service is a transportation duty the carriers may elect either to do it themselves or to hire the shipper to do it for them; but their practices in this respect must be free from undue prejudice. United Chemical & Organic Prod-

ucts Co. v. Director General, 60 I. C. C. 523, 524.

(j) It is well established that, in the absence of undue prejudice, a carrier can not be required to compensate a shipper for services that it is not the duty of the carrier to perform under its contract of transportation, or for services which, because of conditions at the shippers plant, it can not reasonably be required to perform. Gulf States Steel Co. v. Director General, 66 I. C. C. 225, 258.

(k) Fact that a complainant at whose plant a carrier fails to perform a spotting service or make an allowance therefor is in competition with other industries at which such service is performed or allowances are made does not of itself establish unjust discrimination or undue prejudice. In addition, a showing of similarity of circumstances and conditions is necessary. Jackson Iron & Steel Co. v. Director General, as Agent, 77 I. C. C. 114.

ALL OTHER CITATIONS

Merchants' Cotton Press & Storage Co. v. I. C. R. R. Co., 17 I. C. C. 98, 104; Federal Sugar Refining Co. v. B. & O. R. R. Co., 20 I. C. C. 200, 212; Suffern Grain Co. v. I. C. R. R. Co., 22 I. C. C. 178, 183; Brook-Rauch Mill & Elevator Co. v. M. P. Ry. Co., 17 I. C. C. 158, 161, 163; Anderson, Clayton & Co. v. C. R. I. & P. Ry. Co., 18 I. C. C. 340, 350; Southwestern Missouri Millers' Club v. St. L. & S. F. R. R. Co., 26 I. C. C. 245, 252, 253; Rates on Bananas from Gulf Ports, 30 I. C. C. 510, 523; Grain Elevation Allowance at Kansas City, 34 I. C. C. 447; Small & Co. v. E. C. R. R. Co. Unrep. Op. 2045; Ennis Brown & Co. v. S. P. Co. Unrep. Op. 2078; Mitchell Coal & Coke Co. v. P. R. R. Co., 38 I. C. C. 40, 44; Pittsburgh Steel Co. v. P. & L. E. R. R. Co., 39 I. C. C. 312, 315; Emery & Co. v. B. & M. R. R., 47 I. C. C. 200, 203; Stewart Iron Co. v. P. Co., 47 I. C. C. 512, 516; Lexington Flouring Mills v. M. P. Ry., 49 I. C. C. 379; Sharon Steel Hoop Co. v. P. Co., 51 I. C. C. 545; United States Cast Iron and Pipe Foundry Co. (Inc.) v. Director General, 57 I. C. C. 442; Donner Steel Co. v. D. L. & W. R. R. Co., 57 I. C. C. 745; Pittsburgh Plate Glass Co. v. Director General, 58 I. C. C. 81; Riter-Conley Mfg. Co. v. Director General, 58 I. C. C. 327; Buckeye Steel Castings Co. v. H. V. Ry. Co., 58 I. C. C. 500; Western Meat Co. v. Director General, as Agent, 58 I. C. C. 743; Standard Oil Co. v. Director General, 59 I. C. C. 620; Central Iron & Steel Co. v. P. R. R. Co., 59 I. C. C. 385; Standard Oil Co. v. Director General, as Agent, 59 I. C. C. 620; Carey Mfg. Co. v. Director General, as Agent, 59 I. C. C. 640, 648; Allegheny Steel Co. v. Director General, 60 I. C. C. 575; United Chemical & Organic Products Co. v. Director General as Agent, 60 I. C. C. 523, 525, 526; Downey Ship Building Corp. v S. I. R. T. Ry. Co., 60 I. C. C. 543; Merchant Shipbuilding Corp. v. P. R. R. Co., 61 I. C. C. 214, 217, 218; Edge Moor Iron Co. v. Director General, as Agent, 61 I. C. C. 537; U. S. Cast Iron Pipe & Foundry Co. v. Director General, as Agent, 62 I. C. C. 339; Whitaker-Glessner Co. v. B. & O. R. R. Co., 63 I. C. C. 47; Oliver Iron and Steel Co. v. P. & I. E. R. R. Co., 64 I. C. C. 447; Gulf States Steel Co. v. Director General, 66 I. C. C. 225, 258; Stewart Furnace Co. v. P. R. R. Co., 68 I. C. C. 528, 533, 539; St. Louis Merchants Exchange v. Director General, as Agent, 69 I. C. C. 465, 468.

§8. Particular Allowances.

§8 (½). Car Ferry and Cars.

See Car Ferries.

IMPORTANT CASES SINCE 1908

(a) The Commission investigated the cancellation via the D. & M. Ry. and the M. C. R. R. of certain car ferry allowances to the protestant, who, for nine years, had been manufacturing lumber and forest products at Cheyboygan, and for six years receiving such allowances. His plant is on the east side of the Cheboygan River and the respondent lines run to the west bank. The carrier provided allowances of $5 a car on lumber and $3.75 a car on forest products, including bark, cooperage stock (staves, headings and hoops), hoop poles, hop poles, lath, paving blocks, pivots, piles, posts, shingles, trap-net stakes and railroad ties, loaded in or on cars and delivered by car ferry to the respondents either for carriage to Bay City, in the same state, or to points beyond. These allowances were meant to be payable to the protestant only, as he alone was so situated as to be able to receive them. In the beginning the protestant used a lighter for moving his mill products across the river; later he equipped himself, in compliance with the changes in the tariffs above described, with a car ferry having capacity for two cars. This boat is pulled back and forth across the

river, a distance of 350 feet, by means of a cable lying on the bed of the river and a steam engine on the boat. The protestant owns the equipment, and in its erection and maintenance he has expended approximately $5,000. At his expense he built the approaches and connections with the rails of the respondents. The maintenance and operation of the car ferry have cost him more than the amount of the allowances received by him. The tracks on his own side of the river are owned by the protestant and are on his land; the cars are handled on that side by horses; the tracks on the west side of the river are owned jointly by the carriers, although they are on land owned by the protestant and by him leased to the carriers; on that side the cars are handled by a steam hoist. Besides the use made of the latters tracks for the protestant's traffic, they are put to other uses by the respondents. The protestant publishes no tariff and makes no report to any public officer respecting the operation of this car ferry. He has a competitor operating a sawmill on the west side of the river with a plant reached directly by the railroads; the allowances do not put the protestant on a shipping equality with this mill. Ninety-five per cent of his traffic moves by water, and he uses the railroads chiefly for shipments to inland points, to which the shipments must necessarily move by rail or not at all. Since 1909 some 2,763 carloads of lumber and forest products of the kind designated in the tariffs, 651 carloads of forest products not specifically named in tariffs, and 46 carloads of steel rails and hay have been transported across the river by the protestant. HELD, considered most favorably to protestant's contentions, upon the assumption that such payment may lawfully be made, these allowances would still at best be nothing more than a venture by respondents in traffic policy or expediency to meet water competition and increase their business. They were voluntarily paid by respondents to effect a business gain for them; they resulted, so far as protestant is concerned, relieving him of an expense which otherwise he would have been compelled to meet as a part of the cost of carrying his products to the point where rail facilities were available. Accordingly, the payment of these allowances was subject to be discontinued within the desire and discretion of the carriers in contemplation of their own interests and profits. Car Ferry Allowance at Cheboygan, Mich., 32 I. C. C. 578, 581.

(b) Shipper entitled to an allowance for use of his own refrigerator car where carrier fails to furnish one. Rules Governing Transportation of Potatoes, 34 I. C. C. 255, 256.

ALL OTHER CITATIONS

Car Ferry Allowance at Cheboygan, Mich., 32 I. C. C. 578, 581; Tap Line Case, 31 I. C. C. 490, 493, 494; Rules Governing Transportation of Potatoes, 34 I. C. C. 255, 256.

§8. (1) Compressing Cotton.

See Facilities and Privileges.

IMPORTANT CASES SINCE 1908

(a) Carriers have the right to compress cotton in transit. They also have the right to grant or allow to shippers or owners of cotton the privilege to concentrate uncompressed cotton at designated compresses on their lines for such treatment as the shippers or owners may desire to give it with the right of the shippers or owners for transportation to interstate or foreign destination at the through rates from point of origin. Whatever charges are made must, however, be just, reasonable and non-discriminatory. They may not pay to compress companies any unjust or reasonable charge. Anderson, Clayton & Co. v. C., R. I. & P. Ry. Co., 18 I. C. C. 340, 350.

ALL OTHER CITATIONS

Anderson, Clayton & Co. v. C., R. I. & P. Ry. Co., 18 I. C. C. 340, 350; Merchants' Storage Co. v. I. C. R. R. Co., 17 I. C. C. 98, 103; Merchants' Cotton Press & Storage Co. v. I. C. R. R. Co., 17 I. C. C. 98, 104, 106; Brook-Rauch Mill & Elevator Co. v. M. P. Ry. Co., 17 I. C. C. 158, 161, 163; Keystone Elevator & Warehouse Co. v. Director General, as Agent, 73 I. C. C. 273.

§8. (2) Cooperage and Grain Doors.

IMPORTANT CASES SINCE 1908

(a) Where special reasons have induced railroads to furnish, upon certain terms, certain car fittings for winter transportation, the presumption is that the rates are maintained with respect thereto. New York Shippers' Protective Asso. v. N. Y. C. & H. R. R. Co., 30 I. C. C. 437, 438.

(b) The Commission may not with propriety fix by order a maximum

amount that should be paid the shipper by a carrier for labor performed and for materials furnished by him in installing grain doors or doing other incidental repair work on cars furnished for shipments of grain in bulk. If, however, a carrier makes any allowance to shippers at country stations for work done, or materials furnished, the conditions and purposes as well as the maximum allowance must be stated in its tariff and must be applied without discrimination. Farmers' Cooperative Asso. v. C., B. & Q. R. R., 34 I. C. C. 60, 65.

(c) Ever since grain has been shipped in bulk shippers have been required to place the grain doors. Such a requirement is not unreasonable. It is an incident of loading and should properly be performed by the shipper. Farmers' Cooperative Asso. v. C., B. & Q. R. R., 34 I. C. C. 60, 65.

ALL OTHER CITATIONS

Balfour, Guthrie & Co. v. O. W. R. R. & N. Co., 21 I. C. C. 539, 540; Northern Malt Co. v. C., M. & St. P. Ry. Co., Unrep. Op. A-123; New York Shippers' Protective Asso v. N. Y., C. & H. R. R. Co., 30 I. C. C. 437, 438; Farmers' Cooperative Asso. v. C., B. & Q. R. R., 34 I. C. C. 60, 65; Rock Milling & Elevator Co. v. Atchison, T. & S. F. Ry. Co. (Kans. 1916), 154 Pac. 254, 255; Keystone Wood Co. v. P. R. R. Co., 37 I. C. C. 622, 624; Continental Can Co. v. B. & O. R. R. Co., 38 I. C. C. 618; Stockton Elevator & Shipping Asso. v. Missouri Pac. Ry. Co. (Kans. 1916), 154 Pac. 1126; Rock Milling & Elevator Co. v. Atchison, T. & S. F. Ry. Co., 158 Pac. (Kans. 1916), 859; Sterling Salt Co. v. P. R. R. Co., 43 I. C. C. 276, 278, 279, 280; Fruit Dispatch Co. v. P. & R. Ry., 48 I. C. C. 634; Morgan County S. P. Assn. v. B. & O. R. R., 51 I. C. C. 475.

§8. (2½) Dunnage.

See Dunnage.

IMPORTANT CASES SINCE 1908

(a) For loading and unloading and for all other special services performed by it apart from conveyance, the carrier may properly make a reasonable charge, since they are not accessorial parts of the transportation which section 1 requires the carrier to furnish. If the placing of blocks, braces, supports, and like materials in lieu of packing, crating, or boxing of individual units of carload shipment is essential for the safe transportation of the loads, the materials should be furnished and placed by the shipper. And since the substitution of dunnage for the more expensive boxes and crates is of advantage to the shipper and reduces the gross weight upon which freight charges must be paid, the carrier should receive freight for the total weight hauled. Dunnage Allowances, 30 I. C. C. 538.

(b) If shippers elect to dispense with the use of boxes, crates, and other packing which might be available for further use, and upon the full weight of which the carriers would receive freight charges, the carrier offering equipment which would otherwise adequately take care of the shipment is entitled to revenue for the gross weight transported. Dunnage Allowances, 30 I. C. C. 538, 545.

(c) In Dunnage Allowances, 30 I. C. C. 538, the Commission said at pages 542 and 543: "Standard box, stock, ventilated, and refrigerator cars in good repair will accommodate all af the ordinary and usual needs of shippers, and if more than this demanded because of the form, nature, or peculiar characteristics of goods tendered for conveyance some obligation must attach to the shipper in connection with the additional demand. There can be no doubt on this record that the primary and most important purpose of the dunnage (specifically stated to include double-decking) used in varying forms by the shipping interests here represented is to make the load safe for transportation and to obviate injury to the goods, the prevention of damage to the carrier's equipment or property being a minor consideration. Under these circumstances, and in view of the fact that the substitution of dunnage for the more expensive boxes and crates and other packing material in respect of most of the commodities discussed is of advantage to the shipper and reduces the gross weight upon which freight charges must be paid, we think it not inconsistent that the carriers should receive revenue for the total weight hauled." California Wholesale Potato Dealers Asso. v. Arizona Eastern R. R. Co. et al., 52 I. C. C. 334, 335.

ALL OTHER CITATIONS

S. W. Missouri Millers' Club v. St. L. & S. F. R. R. Co., 26 I. C. C. 245, 252; In Re Suspension of Western Classification No. 51, 25 I. C. C. 442, 495; Dun-

nage Allowances, 30 I. C. C. 538, 543, 545, 546; Berry Lumber & Stave Co. v. M. & O. R. R. Co., Unrep. Op. A-771; Leavitt & Co. v. L. S. & M. S. Ry. Co., Unrep. Ops. A-121, A-951, A-953; Lusby v. S. P. Co., Unrep. Op. 1922; Continental Can Co. v. B. & O. R. R., 38 I. C. C. 618; Bulkley & Co. v. P. Co., Unrep. Op. 2112; Thomas Motor Car Co. v. C., R. I. & P. Ry. Co., Unrep. Op. 2169; Stone Producers' Sales Co. v. C., I. & L. Ry. Co., 38 I. C. C. 485, 486; Sewer Pipe from Jacksonville, Fla., 40 I. C. C. 568, 571; Nashville Lumbermen's Club v. L. & N. R. R., 42 I. C. C. 157; Aetna Explosive Co. v. Penna. R. R., et al., 52 I. C. C. 173; California Wholesale Potato Dealers' Asso. v. Arizona Eastern R. R., 52 I. C. C. 334, 335.

§8. (3) Elevation of Grain.

See Infra §15; Transit.

CASES 1887-1908

(a) The construction of grain elevators by a shipper, and the allowance by the carrier of 1¼ cents per 100 pounds for elevator or transfer services to the corporations controlled by the shipper and which conduct the elevators, does not amount to a rebate. Re Allowance to Elevators, 10 I. C. C. 309.

(b) A carrier cannot complain because of a reasonable allowance made by a rival carrier for elevator or transfer service. Matter of Allowances to Elevators, 10 I. C. C. 309.

(c) One and one-fourth cents per 100 pounds of grain, paid by a carrier for elevator or transfer service, is not unreasonable. Matter of Allowances to Elevator, 10 I. C. C. 309.

(d) The allowance by a carrier to an elevator company which it has procured to construct elevators, of 1¼ cents per 100 pounds, as an elevation or transfer charge, does not amount to a discrimination in favor of grain shippers who own and control the elevator company. Matter of Allowances to Elevators, 10 I. C. C. 309.

(e) Commission instituted an investigation as to elevator allowances paid by the Union Pacific Railroad Company at the Missouri River. The U. P. entered into contracts with Peavey & Co. under which the latter erected grain elevators at Council Bluffs, Ia., and Kansas City, Mo., for the transfer of grain at those terminals, and for the service of transferring grain by elevator at said points the U. P. agreed to pay Peavey & Co. 1¼c per 100 pounds. Corporations controlled by Peavey & Co. were formed to conduct the elevators at each point. Peavey & Co. are large buyers and shippers of grain in the northern and western grain producing states and control a large number of country elevators. In making this arrangement the U. P. acted in good faith, and the facts indicate that the charge paid is not an excessive charge for the service as conducted by the elevator companies. The real complainants are carriers competing with the U. P., who claim that if this arrangement is not declared illegal they will be compelled to make similar allowances at transfer points on their lines, and no shipper nor any dealer in competition with Peavey & Co. has appeared to complain or protest in any manner against this arrangement. HELD: That the compensation paid for the elevator or transfer service is not unreasonable. That the U. P. is entitled to perform the work itself or hire it done by others and is not legally at fault or guilty of wrong doing because incidentally those employed by the carrier to transfer the grain are aided more or less in another line of business in which they are engaged. That any injury or detriment resulting to rival carriers under the arrangement is something which the law does not seek to prevent. In the Matter of Allowances to Elevators by the U. P. R. R., 10 I. C. C. 309.

(f) The construction of grain elevators by a shipper, and the allowance by the carrier of 1¼ cents per 100 pounds for elevator or transfer service to the corporations controlled by the shipper and which conduct the elevator, does not amount to a rebate. Matter of Allowances to Elevators, 10 I. C. C. 309.

(g) Elevator allowance rebate after it exceeds cost. Re Allowances to Elevators by U. P. R. R. Co., 12 I. C. C. 85.

(h) An allowance made to a shipper of grain, who furnishes elevation service under an arrangement with a carrier, is a rebate and an unlawful discrimination when it involves a profit over and above the actual cost to such shipper of the service rendered. It is not a rebate when the allowance does not so exceed the actual cost. The arrangement between the Union Pacific Railroad Company and the Peavey elevators at Council Bluffs and

Kansas City is not in itself unlawful. But the allowance of 1¼ cents per 100 pounds paid by the railroad company to these elevators, controlled by the Peavy interests, who are large shippers of grain and own practically all the grain going into the elevators, is in excess of the actual cost of the service, and is a rebate and therefore unlawful. Ordered: That such allowances be reduced and shall not exceed three-fourths of a cent per 100 pounds. Allowance to Elevators By U. P. R. R. Co., 12 I. C. C. 86.

(ij) The elevation of grain and arrangement between the U. P. R. R. and the Peavy elevators at Council Bluffs and Kansas City is not in itself unlawful. But the allowance of 1½ cents per 100 pounds paid by the railroad to these elevators, controlled by the Peavy interests, who are large shippers of grain and own practically all the grain going into the elevators, is in excess of the actual cost of the service, and is a rebate and therefore unlawful. HELD: Such allowance be reduced and shall not exceed ¾c per 100 pounds. In the Matter of Allowances to Elevator by the U. P. R. R., 12 I. C. C. 86.

(k) Since a carrier subject to the act is entitled to provide elevation for grain shipments, such carrier may either construct and operate the elevator itself or furnish elevation by arrangement with the owner of an elevator; and the amount of compensation paid by the carrier to the owner of an elevator rendering the service is of no concern to shippers or to other carriers, unless it operates to affect the rates charged by the carrier upon the grain traffic or by some device a portion of the allowance is returned to shippers and thus becomes a rebate. In the Matter of Allowances to Elevators by the U. P. R. R., 12 I. C. C. 86, 88.

(lm) The amount of the compensation or allowance that may be made to the owner of an elevator for rendering elevation is not a matter of concern either to shippers or to other carriers, unless in some way it enters into the rates charged on grain traffic and thus makes the rates excessive, or unless by some device a portion of the allowance is returned to shippers and thus becomes a rebate. Allowances to Elevators by U. P. R. R. Co., 12 I. C. C. 87, 88.

(n) While the Commission has no power under the statute to forbid a railroad company from contracting with an elevator owner for elevation, yet if the owner is also a shipper the Commission has the authority to so regulate and control the relations between them as to protect the rights of others and to enforce the observance of the law. Allowances to Elevators by U. P. R. R. Co., 12 I. C. C. 87, 90.

(o) Atchison entitled to same allowance on grain as sister cities. City Council of Atchison v. Mo. Pacific Ry. Co., 12 I. C. C. 111.

(p) Defendants grant certain allowances or free services in the elevation, transfer, mixing, cleaning and other handling of grain at Kansas City, Mo., Argentine, Leavenworth and Kansas City, Kan., which are withheld by them at Atchison, Kan., to which point they have established the same rates as those in force at said other cities. HELD: That such practice is unlawful and that defendants should not furnish at Kansas City, Mo., Kansas City, Leavenworth or Argentine, Kan., elevator allowances or other free services in connection with the elevation, transfer, mixing, cleaning, clipping, drying, weighing, storage loading out of shipments of grain which are not at the same time granted or furnished in like or equivalent service or allowance to the same degree and extent at Atchison. City Council of Atchison, Kan., v. M. P. Ry. Co. et al., 12 I. C. C. 112.

(q) Complainant attacked allowances given to elevators at Kansas City, Mo., Argentine, Leavenworth, Kan., and Coffeyville, Kan., as unjustly discriminatory in that no allowance was made to complainant of the same character. Complainant is located at Atchison, Kan. Defendants have placed Atchison on a parity and equality with Kansas City and other points named as to inbound and outbound rates, and have made it, for rate making purposes, a common point with Kansas City. None of the defendants own elevators at Atchison, although they do at the other points mentioned. HELD: The practice of making an elevator allowance at Kansas City, Argentine, Leavenworth and Coffeyville without making similar allowances to elevators at Atchison is unlawful. City Council of Atchison, Kan., v. M. P. Ry., 12 I. C. C. 112.

IMPORTANT CASES SINCE 1908

(r) In the decisions by the Supreme Court of the United States in the Dif-

fenbaugh Case, 222 U. S. 42, and the Updike Case, 222 U. S. 215, relating to the legality of the allowances paid for the elevation of grain by the Union Pacific at Council Bluffs, Ia., it was the intention of the court to hold that, whatever might be the case if a railroad saw fit to confine its payment to elevation actually required in the conduct of its business, it must, when it makes an allowance to one elevator under such circumstances as to give that elevator payment for commercial elevation, extend the same privilege to all other elevators similarly situated at that point. Defendant carriers ordered not to exceed ¾c in the payment of elevation or transfer allowances on grain at the Missouri River and to confine that payment to grain actually passing through the elevators in ten days. Traffic Bureau, Merchants' Exchange v. C., B. & Q. R. R. Co., 22 I. C. C. 496, 505, 506.

(s) There are two kinds of elevation, one of which may be termed transportation elevation, consisting of the passing of the grain through an elevator for the purpose of transferring it from car to car and obtaining its weight, and commercial elevation, which involves various processes in the treatment of the grain itself, like cleaning, mixing, clipping, drying, etc. The first sort of elevation is an incident to the transportation of the grain; the second, to the merchandising of the grain. In Re Elevation Allowances, 24 I. C. C. 197, 199.

(t) It is extremely difficult to separate transportation elevation from commercial elevation. Both things are part of the same general process. It is impossible to separate the different items of expense and to say with confidence what belongs to transportation and what to commercial elevation. In Re Elevation Allowances, 24 I. C. C. 197, 202.

(u) The Commission believes that the payment of all elevation allowances and the giving of all free elevation should be prohibited, for in no other way can discrimination be prevented. Every service of benefit to a shipper should be charged for at a reasonable sum, and no charge should be allowed one shipper over another. The Supreme Court of the United States has, however, decided that under the Interstate Commerce Act some sort of an elevation allowance may be made. This decision the Commission fully accepts. In Re Elevation Allowances, 24 I. C. C. 197, 204.

(v) The duty of the carrier to provide elevation is a necessary incident to the transportation of any shipment, can not be withdrawn from the public, for it is a part of the carrier's obligation under the law. That there are no tariffs on file which provide for elevation by carriers upon shipments of grain or seeds to a certain territory does not, of course, preclude the requirement that such tariffs be filed if it should be established that elevation is a necessary incident to transportation upon a particular movement. Grain Elevator Allowances at Kansas City, 34 I. C. C. 442, 447.

(w) Complainant, a corporation operating a grain elevator, and performing a transportation service, not as an independent entity, but as agent of a railroad, under contract, which service such railroad holds itself out to perform by the publication of charges in its tariffs, alleges that allowances made to it were unreasonably low. HELD: Since complainant has no interest in traffic handled through the elevator, it can not be considered a shipper or "owner of property transported." It stands in much the same position as an employee of the railroad and can not be considered a common carrier whose compensation is to be derived from divisions of joint rates. Keystone Elevator & Warehouse Co. v. Director General, as Agent, 73 I. C. C. 273.

ALL OTHER CITATIONS

I. C. C. v. Diffenbaugh, 222 U. S. 42, 45, 32 Sup. Ct. 22, 56 L. Ed. 83; Traffic Bureau of St. Louis v. C., B. & Q. R. R. Co., 14 I. C. C. 317, 510, 551; Traffic Bureau, Merchants' Exchange v. C., B. & Q. R. R. Co., 14 I. C. C. 317, 328, 331; In the Matter of Allowances to Elevators by the Union Pacific R. R. Co., 14 I. C. C. 315, 316; Washer Grain Co. v. M. P. Ry. Co., 15 I. C. C. 147, 158; U. P. R. R. v. Updike Grain Co., 178 Fed. 223, affirmed 222 U. S. 215, 32 Sup. Ct. 39, 56 L. Ed. 171; Duncan & Co. v. N., C. & St. L. Ry. Co., 16 I. C. C. 590, 592; Gund & Co. v. C., B. & Q. R. R. Co., 18 I. C. C. 364, 366; Traffic Bureau, Merchants' Exchange, v. C., B. & Q. R. R. Co., 22 I. C. C. 496, 503, 505, 506; Suffern Grain Co. v. I. C. R. R. Co., 22 I. C. C. 178, 182; Louisville & N. R. Co. v. U. S., 197 Fed. 58, 63; Milwaukee Maltsters' Traffic Assn. v. G. T. W. Ry. Co., 28 I. C. C. 489, 493; Wabash R. R. Ryley v. Wabash R. R. Co., 25 I.

C. C. 210; Kamm & Co. v. Pennsylvania Co., 25 I. C. C. 198, 200, 201; In Re Keystone Elevator Co., 25 I. C. C. 618; In Re Elevation Allowances, 24 I. C. C. 197, 199, 200, 202, 203, 204; Transit Case, 24 I. C. C. 340, 343; Gund & Co. v. C., B. & Q. R. R. Co., 25 I. C. C. 326, 329; Milwaukee Maltsters' Traffic Assn. v. G. T. W. Ry. Co., 28 I. C. C. 489, 493; Elevation Allowances at St. Louis and E. St. Louis, 30 I. C. C. 696, 697; Grain Elevator Allowances to Kansas City, 34 I. C. C. 442, 447; Small & Co. v. I. C. R. R. Co., Unrep. Op. 2045; Lexington Flouring Mills v. M. P. Ry., 49 I. C. C. 379; Omaha Elevator Co. v. Union Pac. R. R., 249 Fed. 827; Keystone Elevator and Warehouse Co. v. Director General, 73 I. C. C. 273; Spencer Kellogg & Sons, Inc., v. Delaware, L. & W. R. Co., 197 N. Y. S. 380.

§8. (3⅛) Furnace Allowances.

IMPORTANT CASES SINCE 1908

(a) And the failure of a carrier to pay a furnace allowance to certain operators when such allowances were paid to their competitors results in unlawful prejudice and disadvantage against those who do not receive such allowances. Pittsburgh Steel Co. v. P. & L. E. R. R. Co., 39 I. C. C. 312, 315.

(b) Complainant attacked refrigeration charges collected by defendants on certain interstate carload shipments of fresh meat and packing house products from San Francisco, as unjust, unreasonable and unduly prejudicial. The shipments moved in refrigerator cars over the lines of the S. P. and connections. During the period covered by the complainant defendant's tariffs named stated refrigeration charges which were in addition to the freight charges and which covered the total cost of refrigeration of the commodities shipped by complainant to destination, including initial icing. The case was submitted upon an agreed statement of facts, which shows that prior to federal control it was agreed between the S. P. and complainant that complainant should provide the initial icing for its shipments and be reimbursed by the S. P., for all reasonable and necessary expense incurred in so doing. Pursuant to this agreement, complainant both before and during federal control, furnished at its own expense the initial icing for its interstate shipments, for which it was offered compensation in an amount equal to the cost of the ice and salt used. As there was no tariff provision authorizing such payment, this offer was declined on advice of counsel. Under the circumstances an allowance under section 5 of the Interstate Commerce Act might properly have been made to complainant for rendering a service connected with the transportation and furnishing an instrumentality or facility used therein in the initial icing which defendants were under obligation to supply. HELD: A charge of allowance therefore based on $4 per ton for ice and $7 per ton for salt furnished is no more than is just and reasonable, and, as it appears that the failure of defendants to make reimbursement on that basis has been occasioned solely by their neglect to provide therefor in the tariff, the Commission sees no objection to the carrying into effect of the adjustment agreed upon between the parties. No order authorizing reimbursement is necessary. If such allowance is to be made in the future, it should be duly provided for by tariff in accordance with section 6 of the Interstate Commerce Act. Complaint dismissed. Western Meat Co. v. Director General, 58 I. C. C. 743.

ALL OTHER CITATIONS

Pittsburgh Steel Co. v. P. & L. E. R. R. Co., 39 I. C. C. 312, 313, 314, 315; Iron Ore Rate Cases, 44 I. C. C. 368.

§8. (3⅛a) Icing.

See Refrigeration.

IMPORTANT CASES SINCE 1908

(a) Rule 210, clause A, governing allowances for icing by shippers at loading stations, should be revised to provide that carriers at its option and for its own convenience may permit shipper or owner to perform icing at its loading station, and make allowance therefor. Perishable Freight Investigation, 56 I. C. C. 449, 557.

§8. (3¼) Lateral Allowances.

See Lateral Allowances.

IMPORTANT CASES SINCE 1908

(a) In the Anthracite Coal Case (35 I. C. C. 220, 241), the Commission discovered a new variety of allowance, given by the Central Railroad of New Jersey to a favored coal shipper. This consisted of a reduction below the tariff rate, ranging from 11 to 23 cents per ton, depending on the destination, to which the shipments were transported and the sizes of the coal shipped and were termed "lateral allowances." Perhaps in sardonic

humor in originating an oblique method of evading the act.

ALL OTHER CITATIONS

Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 241, 243.

§8. (3½) Leakage.

IMPORTANT CASES SINCE 1908

(a) Under a tariff provision providing for reimbursement made to shippers for repairs of grain cars against "leakage in transit," the "leakage" which the tariff aimed to prevent was leakage of grain or other commodities from the car, and of moisture into the car. It was not intended to cover leakage from a package in the car to the floor of the car. S. W. Missouri Millers' Club v. St. L. & S. F. R. R. Co., 26 I. C. C. 245, 246.

(b) To pay leakage claims to some shippers and not to others similarly situated is an unjust discrimination. S. W. Missouri Millers' Club v. St. L. & S. F. R. R. Co., 26 I. C. C. 245, 249.

ALL OTHER CITATIONS

S. W. Missouri Millers' Club v. St. L. & S. F. R. R. Co., 26 I. C. C. 245, 246, 249; Lysle Commission Co. v. C., B. & Q. R. R. Co., Unrep. Op. A-265; Goldfield Consolidated Mines Co. v. S. P. Co., Unrep. Op. A-266; Rock Milling & Elevator Co. v. Atchison, T. & S. F. Ry. Co. (Kan. 1916), 154 Pac. 254; Western Meat Co. v. Director General, 58 I. C. C. 743.

§8. (4) Lighterage.

See Lighterage §4.

IMPORTANT CASES SINCE 1908

(a) The practice of petitioning carriers of granting allowances to Arbuckle Bros. at their Jay St. Terminal, New York City, for lightering their own sugar, condemned in Federal Sugar Refining Co. v. B. & O. R. R. Co., 20 I. C. C. 200, as unlawful and discriminatory against a competitor at Yonkers, N. Y., is not illegal as constituting the giving of a rebate in violation of the act, nor is it unjustly discriminatory under section 3, nor did the fact that said competitor shipped the sugar by boat from its refineries at Yonkers, consigned to its office at New York, within the lighterage limits, and had it transported to the pier of the boat company within such limits, and then rebilled and carried to the terminals of petitioners, entitle it to the lighterage allowance. Order in Federal Sugar Refining Co. v. B. & O. R. R. Co., 20 I. C. C. 200, enjoined (Mack, J., dissenting). B. & O. R. R. Co. v. U. S., 200 Fed. 779, 791.

(b) Complainants attacked the carrier's rule restricting the time within which allowance for lighterage to outside lighters might be made on shipments of hay and straw moving to points within the New York lighterage limits as unreasonable and prejudicial. The rule required that traffic must be called for by outside lighters the day of arrival at pier 29, E. R., or the next working day thereafter. The purpose of the rule was to compel the prompt removal of hay and straw from the pier; and it appeared that the storage charge of $1.50 per car per day was not sufficient to bring about this result. Although complainants had storage facilities their shipments often remained on the pier from 2 to 15 days. HELD That the rule attacked was not shown to have been unreasonable or prejudicial. Complaint dismissed. Schaefer & Son v. C. V. Ry., 42 I. C. C. 146.

(c) Carriers embargoed traffic to New York Harbor points. Complainant's shipments were permitted to go forward under permits which contained an agreement that they would perform their own lighterage service. Refusal of carriers to make an allowance, as provided in tariffs, for lighterage service to Shooters Island, in New York Harbor, found not unreasonable or otherwise unlawful following American Mfg. Co., 77 I. C. C., 52, and Compagnie Auxiliare, 77 I. C. C., 60. Permits were only for movement to Jersey City and Elizabethport and the contracts of transportation were terminated at those points by the express agreement of the parties. Standard Shipbuilding Corp. v. Director General, as Agent, 77 I. C. C. 64.

ALL OTHER CITATIONS

Federal Sugar Refining Co. v. B. & O. R. R. Co., 20 I. C. C. 214, 217; Federal Sugar Refining Co. v. B. & O. R. R., 17 I. C. C. 40, 45, 47; B. & O. R. R. Co. v. U. S., 200 Fed. 779, 791; Swift & Co. v. B. & O. R. R., 50 I. C. C. 103; Lehigh Coal & Navigation Co. v. P. R. R., 50 I. C. C. 543.

§8. (4¼) Outage On Tank Cars.

CASES 1887-1908

(a) The practice of allowing a tank shipper of oil an arbitrary deduction of 42 gallons per tank car is wholly indefensible when no corresponding allowance is made for leakage and evaporation

from shipments in barrels. Rice v. Cincinnati, W. & B. R. Co. (Com.), 3 I. C. R. 841; Rice v. Western N. Y. & P. R. Co. (Com.), 3 I. C. R. 162.

(b) The allowance by a carrier to a shipper of oil in tanks, of 42 gallons, or any number of gallons from the actual quantity put in a tank, for alleged leakage or waste in transportation, is, in the absence of a corresponding allowance to shippers in barrels, unjust discrimination and unlawful. Rice, Robinson & Witherop v. W. N. Y. & P. R. R. Co., 3 I. C. C. 162, 172.

(c) The practice of allowing the tank shipper an arbitrary deduction of 42 gallons per tank car is wholly indefensible. Losses from leakage and evaporation are not less proporotionately when the shipment is made in barrels, and no circumstance is discovered or reason advanced which justifies a concession of that nature to the shipper who furnishes his own conveyance, when no corresponding allowance is made to a rival shipper using the means of transportation provided by the carrier. Rice v. C., W. & B. R. Co., 3 I. C. C. 842, 855.

ALL OTHER CITATIONS

Consolidated Classification Case, 54 I. C. C. 65, 66.

§8. (4½) Lining and Padding.

See Supra §3½, §8.

IMPORTANT CASES SINCE 1908

(a) The Commission has jurisdiction over rules and regulations of carriers concerning the lining and bedding of cars for flour shipments. S. W. Missouri Millers' Club v. St. L. & S. F. R. R. Co., 26 I. C. C. 245, 250.

(b) Complainant asked reparation for expenses incurred in lining cars for the shipment of potatoes in winter from points in Wisconsin, Minnesota, and the Dakotas to points in Illinois, Iowa, Ohio, Indiana, and various other states, and in equipping such cars with stoves and fuel to protect such shipments from cold. Western classification rules required that shippers must line cars at their own expense and that rates for freight in carloads should not obligate carriers to furnish heated cars; and rates were constructed upon the theory that the shippers would provide such service. HELD: That, since it appeared that the rate was not intended to include the heating or lining of cars and that the established practice had been for the shippers, at their own expense, to line and heat the cars, the complaint must be dismissed. Reparation denied. Best Co. v. G. N. Ry. Co., 33 I. C. C. 1.

(c) Shippers may not shift the expense of affording protection against excessive absorption of moisture to the carriers. Straw Rates from St. Louis to Anderson, Ind., 36 I. C. C. 30, 32.

(d) Failure of carriers to equip refrigerator cars with temporary false floors for transportation of potatoes, under carriers' protective service against freezing, and refusal to pay shipper an allowance to reimburse them for cost of supplying the same, found not in violation of the Act to Regulate Commerce or the Federal Control Act. Any redress to which shipper may be entitled found to rest with the courts. Rutherford-Brede Co. v. Director General, as Agent, 61 I. C. C. 515.

(e) Reparation awarded for failure to make allowance for stoves and car linings used in the protection of shipments of potatoes in accordance with tariff provision. Miller & Co. v. C. & N. W. Ry. Co., Unrep. Op. A-137.

ALL OTHER CITATIONS

S. W. Millers' Club v. St. L. & S. F. R. R. Co., 26 I. C. C. 245, 250; Miller & Co. v. C., St. P., M. & O. Ry. Co., Unrep. Op. A-133; Miller & Co. v. C. & N. W. Ry. Co., Unrep. Op. A-137; Lysle Commission Co. v. C., B. & Q. R. R. Co., Unrep. Op. A-265; New York Shippers' Protective Asso. v. N. Y. C. & H. R. R. R., 30 I. C. C. 437, 440; Best Co. v. G. N. Ry. Co., 33 I. C. C. 1, 4; Boldt Co. v. C., R. I. & P. Co., 33 I. C. C. 8, 10; Straw Rates from St. Louis to Anderson, Ind., 36 I. C. C. 30, 32; Morgan County Sand Producers' Asso. v. B. & O. R. R., 51 I. C. C. 475, 476; Perishable Freight Investigation, 56 I. C. C. 449, 555, 557.

§8. (4¾) Scaleage and Shrinkage.

See Scaleage and Shrinkage.

CASES 1887-1908

(a) Complainant charged that the respondents were common carriers subject to the act, were accustomed to make deductions of from five to ten pounds of wheat per load from the true weight when delivered by the farmer to the buyer at the elevators of the respondents, and gave receipt to the farmer for the

amount as thus diminished, upon which the latter was paid by the buyer, thereby suffering a loss to the extent of such reduction, but failed to charge that the wheat was delivered for interstate transportation, or, indeed, for transportation anywhere. HELD: That the complaint was insufficient in substance to show violation of the act and that the respondents were entitled to have it dismissed on their motions to that effect, but that the dismissal should be without prejudice. White v. M. C. R. Co., 2 I. C. C. 641.

IMPORTANT CASES SINCE 1908

(b) Upon reconsideration, tariff rule providing for deductions of certain percentages of loading weights, generally ⅛ of 1 per cent on wheat, flax seed, rye, oats and barley, and ¼ of 1 per cent on corn, as representing natural shrinkage of grain in transit, not found unreasonable. Crouch Grain Co. v. A., T. & S. F. Ry. Co., 41 I. C. C. 717.

ALL OTHER CITATIONS

N. Y. Produce Exchange v. N. Y. C. & H. R. R. R. Co., 32 I. C. C. 212, 215; Miller & Co. v. C. & N. W. Ry. Co., Unrep. Op. A-746.

§8. (4⅞) Loading and Unloading.

See Loading and Unloading; Transportation §10.

IMPORTANT CASES SINCE 1908

(a) Following Omaha Packing Co., 66 I. C. C. 44, refusal of carriers to unload ordinary live stock from their cars into stock pens adjacent to packing plant of complainant, situated at Cactus, Ariz., or to make an allowance for unloading such shipments, while, pursuant to section 15, paragraph (5) of the act, performing the service of loading at point of origin or unloading at destination, such live stock shipped from or to public stockyards, without charge in addition to line-haul charges, not shown to violate the act. Arizona Packing Co. v. A. E. R. R. Co., 74 I. C. C. 223.

(b) Under the amendment to Interstate Commerce Act, § 15, by Act June 29, 1906, § 4, providing for compensation to the owner of property transported for services rendered by such owner, the owner of the goods, who loaded them into the cars, though the loading was included in the services for which the tariff rate was fixed is entitled to reasonable compensation for such services, even though the agreement it should load the goods was for the mutual benefit of the owner and the carrier, and the statue requires the Commission to fix a reasonable allowance for such services, and was not intended merely to prohibit an excessive allowance. United States v. Interstate Commerce Commission, 277 Fed. 538.

ALL OTHER CITATIONS

Swift & Co. v. A. C. L. R. R. Co., 42 I. C. C. 83; Cuneo Importing Co. v. New York Cent. R. R., 170 N. Y. S. 940; Swift & Co. v. B. & O. R. R., 50 I. C. C. 103; Waste Merchants' Asso. v. Director General, 57 I. C. C. 686.

§8. (5) Spotting Cars.

See Facilities and Privileges §12½; Spotting.

IMPORTANT CASES SINCE 1908

(a) Spotting cars is a special service of value to shipper. Industrial Railways Case, 29 I. C. C. 212, 226.

(b) Performance by line carriers of plant industry service and the payment by them of allowances for the performance of such services by the industries, held to constitute an illegal rebate. Industrial Railways Case, 29 I. C. C. 212, 237.

(c) Whatever transportation service or facility the law requires the carriers to supply they have the right to furnish, and it does not follow, therefore, that because the line-haul rate covers the movement of cars incident to the receipt and delivery of carload freight on industry spurs, or on the interior tracks of industrial plants, that the owner of the property transported may in every case receive an allowance from the carrier when he performs that service. Car Spotting Charges, 34 I. C. C. 609, 617.

(d) There may be cases in which the spots at which cars are placed for loading and unloading in complex industries are so located that the request for the receipt and delivery of carload freight at such spots could not, in view of general usage, be regarded as reasonable, and where a charge for the spotting service in addition to the line-haul rate might therefore be justified. But the mere fact that an industry is complex, or that it requires an interplant service in addition to the receipt and delivery of carload freight is not sufficient to justify an additional charge for the placing of cars at the door of the industrial plant for the receipt or delivery of carload freight.

The line-haul rate, however, covers only one placement of the car for loading or unloading, and an additional charge should be made for each additional placement of the car for that purpose. Car Spotting Charges, 34 I. C. C. 609, 618.

(e) The mere size or complexity of the industry is not controlling in determining whether or not the line-haul rate covers the receipt or delivery of freight at the door of the plant. The service involved in the placement of cars for loading or unloading at an isolated industry to which a single spur leads may be as great as that rendered in the placement of cars for loading or unloading in a large plant having an intricate system of interior tracks. At the large industries the trunk line may render interplant services in the movement of cars from place to place within the plant during the processes of manufacture which it has no occasion to render at smaller industries, and for such services an additional charge should be made; but where the service rendered is merely a substitute for the service which would be required if the movement were to or from a team track, an industry spur, or a private siding, nothing should be added to the charge for the line haul. Car Spotting Charges, 34 I. C. C. 609, 616.

(f) It has long been the custom of carriers in this country to receive and deliver carload freight upon spur tracks leading to private industries at convenient points for loading and unloading without imposing any charge for that service in addition to the line-haul rate, and where this service is merely a substitute for team-track receipt and delivery of carload freight the line haul rate covers the service for the reason that rates generally in this country have been constructed upon that basis. Car Spotting Charges, 34 I. C. C. 609, 616.

(g) Where an industry has continuously for years performed the terminal or spotting charges and apparently has preferred to do so, it can not now be heard in a demand for compensation from the carriers for such past services. Empire Steel & Iron Co. v. Director General, 56 I. C. C. 158, 180.

(h) And a carrier is ordinarily under a legal obligation to effect delivery under a transportation rate. The nature and extent of delivery of carload traffic has differentiated with the increasing complexity in the development of industrial enterprise. Perhaps the most common, if not the standard, form of delivery for carload freight is the setting of a car on the so-called team tracks of the carrier, where it may be conveniently unloaded, usually by the consignee. Another common form and a substitute for team track delivery is the switching of a car to the private siding of a consignee whose place of business is contiguous to the trunk line, clear of the main track. It is indisputable that the trunk line carrier may be required to perform these or equivalent services of delivery without charge in addition to the transportation rate; or, if it choose, may employ an agent to render the service for it. This agent may be the shipper or owner of the property transported, with the limitation that the charge or allowance for the service may be no more than just and reasonable. With the rapid growth of many industries and their extension over large areas, the places for the discharge of inbound freight and the loading of outbound goods have receded farther and farther within the plants and from the rails of the trunk lines. Facilities became necessary to transport materials or partly manufactured articles from one point within the plant to another and there grew up, primarily for the convenience of operation of the industries, a system of tracks on their private property over which, in many instances, they employed their own cars and motive power. Where the trunk line attempted with its motive power to continue the carriage to the designated point of unloading, increasingly distant from the trunk line, and involving greater and greater service, it became less and less practical for its engines to operate within the plant. The next step was a natural consequence of the physical situation. The increase in the service, particularly in the great industrial centers, was rarely attended by an increase in the transportation rate of the carrier by reason of the larger spotting service. Frequently the industry, finding that the operation of the carriers' locomotives embarrassed intraplant activities, and the carrier no longer wishing to continue with its own engines a service which had become so complex, mutually agreed that the motive power of the industry should be employed in the accomplishment of the spotting and in certain cases that reimbursement should be made for this equipment. U. S. Cast Iron Pipe & Foundry Co. v. Director General, 57 I. C. C. 677, 681.

(i) Giving an allowance in lieu of performing spotting service is optional with the carriers. United Chemical & Organic Products Co. v. Director General, as Agent, 60 I. C. C. 523, 524.

(j) Where complainant, in undertaking to perform spotting service, relied upon an agreement that it would be granted an allowance therefore, carrier can not be heard to say that it has always been ready and willing to perform the spotting, and that complainant voluntarily relieved it from performing the service. United Chemical & Organic Products Co. v. Director General, as Agent, 60 I. C. C. 523, 525.

(k) If defendants continue to do the spotting for complainants' competitors at the convenience of their industries, complainant is entitled to like accommodation. Any unjust discrimination or undue prejudice which may exist might be removed by according complainant the same spotting service as defendants performed for its competitors. Its refusal to permit defendants to perform such service would absolve them from the obligation to do so. Stewart Furnace Co. v. P. R. R. Co., 68 I. C. C. 528, 530.

(l) No legal obligation rests upon a carrier to perform switching and spotting services solely at a shipper's convenience, and a shipper is not entitled to an allowance for these services if the carrier is ready and willing to perform them but is not permitted to do so by shipper. Stewart Furnace Co. v. P. R. R. Co., 68 I. C. C. 528, 530.

(m) Nonallowance of reasonable compensation for spotting and switching service performed by complainant at its plant at Jackson, Ohio, within the plant area, not shown unreasonable or otherwise unlawful. Complainant has not established as a matter of reasonableness that the line-haul rates include any greater service than that now rendered, and testimony falls short of establishing similarity of circumstances and conditions with competing industries located at other points at which the service is performed or allowances therefor are made by carriers. Jackson Iron & Steel Co. v. Director General, as Agent, 77 I. C. C. 110.

(n) Where shipper did not demand either the restoration of a former allowance for switching and spotting, discontinued following Industrial Railways case, 29 I. C. C., 212, or a performance of the service by the carrier, except during a stated period and for a special reason of its own, and has not established as a matter of reasonableness that the line-haul rates include any greater service than now rendered, it is not in position to demand reparation for the past on the ground that carrier has not justified the increased rates resulting from such discontinued allowance. Jackson Iron & Steel Co. v. Director General, as Agent, 77 I. C. C. 110.

(o) Fact that a complainant at whose plant a carrier fails to perform a spotting service or make an allowance therefor is in competition with other industries at which such service is performed or allowances are made does not of itself establish unjust discrimination or undue prejudice. In addition, a showing of similarity of circumstances and conditions is necessary. Jackson Iron & Steel Co. v. Director General, as Agent, 77 I. C. C. 110, 114.

(p) Where receivers of a railway company opposed an allowance to a shipper of switching charges for switching done by him as agreed to by the carrier, on the ground that no tariff covering the same had been filed with the Interstate Commerce Commission, the burden is on the receivers to show that the tariff with respect to which the charge was claimed was interstate commerce. Texas & P. Ry. Co. v. Thompson, 288 Fed. 167.

(q) An allowance by a railway company to a shipper of a switching charge for switching done by the shipper, which barely covered the cost of the service rendered, was legitimate and proper, and the fact that the shipper, in rendering such service, used the track of another railroad company, which he had acquired the right to use instead of building a spur track of his own, does not affect the legitimacy of the charge. Tex. & P. Ry. Co. v. Thompson, 288 Fed. 167.

ALL OTHER CITATIONS

Buffalo Union Furnace Co. v. L. S. & M. S. Ry. Co., 21 I. C. C. 620, 627, 630; Wood, Iron & Steel Co. v. Penn. R. R. Co., 22 I. C. C. 540, 545; Industrial Railways Case, 29 I. C. C. 212, 226, 237; Car Spotting Charges, 34 I. C. C. 609, 616, 617, 618, 619; N. Y. C. & H. R. R. Co. v. Gen. Electric Co., 153 N. Y. S. 478, 483, 484; Newport Mining Co. v. C. & N. W. Ry. Co., 33 I. C. C. 645, 651; Car Spotting Charges, 34 I. C. C. 609, 614, 616, 618,

620; Iron Ore Rate Cases, 41 I. C. C. 181, 200; New York Central & H. R. R. v. General Electric Co., 114 N. E. (N. Y. 1916), 115, 219 N. Y. 227; Buffalo Union Furnace Co. v. L. S. & M. S. Ry. Co., 44 I. C. C. 367, 372; Stewart Iron Co. v. P. Co., 47 I. C. C. 512, 516; Masting Iron & Steel Co. Case, 48 I. C. C. 620, 622; Finkbine Lumber Co. v. G. & S. I. R. R., 48 I. C. C. 705, 707; Virginia Portland Ry., 49 I. C. C. 332, 335; National Malleable Castings Co. v. Pittsburgh & Lake Erie Railroad Co., 51 I. C. C. 537, 542; Sharon Steel Hoop Co. v. Penn. Co., 51 I. C. C. 545; National Tube Co. v. B. & O. R. R., 50 I. C. C. 489; Morgan County Sand Producers' Asso. v. B. & O. R. R., 51 I. C. C. 475; Pittsburgh Plate Glass Co. v. Director General, as Agent, 58 I. C. C. 81; American International Shipbuilding Corp. v. P. R. R. Co., 57 I. C. C. 90; U. S. Cast Iron Pipe & Foundry Co. v. Director General, 57 I. C. C. 677, 681, 682, 683, 684; Donner Steel Co. v. D., L. & W. R. R. Co., 57 I. C. C. 745; Buckeye Steel Castings Co. v. H. V., 58 I. C. C. 500; Pittsburgh Plate Glass Co. v. Director General, 58 I. C. C. 81; Pittsburgh Forge & Iron Co. v. Director General, 59 I. C. C. 29, 31, 32, 33; Standard Oil Co. v. Director General, 59 I. C. C. 620, 622, 623; Wharton Steel Co. v. Director General, 59 I. C. C. 11, 32, 33; Pittsburgh Forge & Iron Co. v. Director General, 59 I. C. C. 29, 32; U. S. Cast Iron Pipe & Foundry Co. v. Director General, as Agent, 59 I. C. C. 59; Geisel Mfg. Co., 59 I. C. C. 193; Sharon Steel Hoop Co. v. P. Co., 59 I. C. C. 378, 381; Central Iron & Steel Co. v. P. R. R. Co., 59 I. C. C. 385; Carey Mfg. Co. v. Director General, 59 I. C. C. 640, 642, 643, 648; U. S. Cast Iron Pipe v. Director General, 62 I. C. C. 339; United Chemical & Organic Products Co. v. Director General, as Agent, 60 I. C. C. 526; Downey Ship Building Corp. v. S. I. R. T. Ry. Co., 60 I. C. C. 543; Allegheny Steel Co. v. Director General, as Agent, 60 I. C. C. 575; United States Gypsum Co. v. C., V. & P. R. R. Co., 61 I. C. C. 117; Merchant Shipbuilding Corp. v. P. R. R. Co., 61 I. C. C. 214; Edge Moor Iron Co. v. Director General, as Agent, 61 I. C. C. 537; Lehigh Portland Cement Co. v. Director General, as Agent, 62 I. C. C. 231; Oliver Iron & Steel Co. v. P. & L. E. R. R., 64 I. C. C. 447; Cambria Steel Co. v. Director General, 64 I. C. C. 737, 741; Gulf States Steel Co. v. Director General, as Agent, 66 I. C. C. 255, 257; Sun Co. v. Director General, as Agent, 68 I. C. C. 11. New England Paper & Pulp Asso. v. H., T. & W. R. R. Co., 77 I. C. C. 115; Tidewater Paper Mills Co. v. B., T. R. R. Co., 80 I. C. C. 493.

§8. (6) Staking.

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(a) It is not incumbent upon the carrier to provide car stakes. Frequently, however, the carriers provide by tariff for the granting of such allowances. Southwestern Millers' Club v. St. L. & S. F. R. R. Co., 26 I. C. C. 245, 251.

(b) Generally, when it is necessary to secure upon the car freight which the shipper loads, it is the duty of the shipper to provide the necessary material and do the work. Shands v. S. A. L. Ry., 34 I. C. C. 214, 215.

ALL OTHER CITATIONS

Duluth Log Co. v. M. & I. Ry. Co., 15 I. C. C. 627, 629; Southwestern Millers' Club v. St. L. & S. F. R. R. Co., 26 I. C. C. 245, 251; H., T. & W. R. R. Co. v. D. & H. Co., Unrep. Op. A-639; Frost Mfg. Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-881; Dean & Co., Inc., v. B. & S. R. R. Co., Unrep. Op. A-903; Brown & Sons Lumber Co. v. C., R. I. & P. Ry., 51 I. C. C. 549.

§8. (7) Transfer.

See Transfer.

CASES 1887-1908

(a) Carriers operating lines to points west of the Mississippi River make rates to such points, which are the same from East St. Louis, Ill., as from St. Louis, Mo. Most of the freight is carried from East St. Louis to the St. Louis depots by transfer companies, who receive from the carriers 5 cents per 100 pounds for such transfer. The Grant Chemical Company, a shipper, receives a like sum for a similar transfer by it of its shipments to East St. Louis, which payment is refused to other shippers. The Eclipse Transfer Company was organized for the sole purpose of obtaining this payment; it uses teams owned by the Simmons Hardware Company, and uses the storehouse of the latter for a receiving depot. These payments to the Grant Chemical Company and the Eclipse Transfer Company are illegal. Re Division of Joint Rates, Etc., 10 I. C. C. 661.

(b) In holding that an allowance of compensation to a shipper by the carrier for transferring his shipment from East

St. Louis to the carrier's St. Louis depot, where similar compensation was denied other carriers, was illegal, no opinion was expressed as to whether lines leading west from St. Louis may properly apply the St. Louis rate to the station of a bona fide transfer company in East St. Louis and absorb the cost of transfer to St. Louis; neither was any opinion expressed as to whether the rail carriers may, by proper schedules, allow all shippers from East St. Louis a fixed sum per 100 pounds for transporting their merchandise to the carrier's depots in St. Louis, those questions not being presented by the record in the same proceeding. Re Division of Joint Rates, Etc., 10 I. C. C. 661.

(cdefg) Carriers operating lines to points west of Mississippi River make rates to such points which are the same from East St. Louis, Ill., as from St. Louis, Mo. A large portion of less than carload traffic is hauled by team from E. St. Louis to depots of the rail carriers in St. Louis, mostly by regularly organized transfer companies, but to some extent by teams owned by shippers. The rail carriers accept delivery at depots of the transfer companies in East St. Louis, pay the transfer companies 5 cents per 100 pounds for such transfer to St. Louis, and also pay a like sum to the Grant Chemical Company, a shipper, for a similar transfer of that company's shipments from East St. Louis, but refuse to make such payments to other shippers. The Eclipse Transfer Company was organized for the sole purpose of obtaining these payments; it uses teams owned by the Simmons Hardware Company, and uses the storehouse of the latter for a receiving depot. Under the circumstances, HELD: That the payments to the Grant Chemical Company and the Eclipse Transfer Company are illegal. No opinion is expressed as to whether lines leading west from St. Louis may properly apply the St. Louis rate to the station of a bona fide transfer company in East St. Louis and absorb the cost of transfer to St. Louis; nor whether the rail carriers may, by proper schedules, allow all shippers from East St. Louis a fixed sum per 100 pounds for transporting their merchandise to the carriers' depots in St. Louis, those questions not being presented by the record in this proceeding. Matter of Division of Joint Rates, 10 I. C. C. 661.

(h) The Commission instituted an investigation as to divisions allowed transfer companies by common carriers. Carriers operating lines to points west of the Missippi River make rates to such points which are the same from East St. Louis, Ill., as from St. Louis, Mo. A large portion of the less carload traffic is hauled by team from East St. Louis to the depots of the rail carriers at St. Louis, mostly by regularly organized transfer companies, but to some extent by teams owned by shippers. The rail carriers pay the transfer companies 5c per 100 pounds for such transfer to St. Louis, and also pay a like sum to the Grant Chemical Company, a shipper for a similar transfer of that companys shipments from East St. Louis, but refuse to make such payments to other shippers. The Eclipse Transfer Company was organized for the sole purpose of obtaining these payments; it uses teams owned by the Simmons Hardware Company, and uses the storehouse of the latter as a receiving depot. HELD: That the payments to the Grant Chemical Company and the Eclipse Transfer Company are illegal. In the matter of divisions of joint rates and other allowances to terminal railroad. 10 I. C. C. 661.

(i) Allowances of free services in the transfer, cleaning and other handling of grain at Kansas City, Mo., Argentine, Leavenworth and Kansas City, Kan., are withheld by defendants at Atchison, Kan., to which point they have established the same rates as those in force at said other cities. HELD: That defendants should not furnish at such points allowances or services which are not at the same time granted or furnished to the same degree and extent at Atchison. City Council of Atchison v. Mo. Pac. Ry. Co., 12 I. C. C. 111.

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(j) Reasonable compensation may be allowed for the transfer of a car. Cotton Oil Co. v. St. L., I. M. & S. Ry. Co., 27 I. C. C. 117, 120.

(k) Transfer of coal from coal cars to box cars not found to be a service of transportation for the performance of which by the owner, the carrier, could lawfuyy pay an ollowance. Lehigh Valley Coal Sales Co. v. L. V. R. R. Co., 39 I. C. C. 339, 340.

(l) Complainant attacked the refusal of carriers to make an allowance to complainant for transferring imported fresh

meats from vessels into cars on car floats at the port of New York. A tariff rule provided an allowance of 12c per ton to consignors or consignees loading or unloading cars, except on fresh meat in bulk which consignees were to unload at their own expense; but complainant contended that this exception could apply only to the unloading of cars. Certain carriers had entered into an arrangement whereby the Hoboken Mfrs. R. R. was to act as their agent in distributing carloads of fresh meats from shipside to their lines, shippers to pay for this service 2c or 3c in addition to the freight rate. HELD: (1) That the tariff rule did not forbid an allowance for loading fresh meat into cars; that under the tariff rule the complainant was entitled to an allowance of 12c per ton, minimum $2 per car, on all fresh meats in bulk loaded by it into car floats at the port of New York; (2) subsequent tariff provision requiring shippers to load into cars on car floats for forwarding via the H. M. R. R., without allowance for such loading, found not justified. Swift & Co. v. A. C. L. R. R., 42 I. C. C. 83.

ALL OTHER CITATIONS

In Re Allowances for Transfer of Sugar, 14 I. C. C. 619, 626, 630; Kamm & Co. v. P. Co., 25 I. C. C. 198; Cotton Oil Co. v. St. L., I. M. & S. Ry. Co., 27 I. C. C. 117, 120; New Orleans Terminal Allowances, 42 I C. C. 748, 755.

§8. (8) Yardage, Drayage and Wharfage.

See Drayage; Wharfage; Yarding-in-Transit.

CASES 1887-1908

(a) The defendant railway company had for some time paid the cost of hauling coal shipped by the complainant, from complainant's wharf to defendant's freight station in Providence, without any contract obligation to that effect, but now refuses so to do. HELD: That defendant can not be compelled to contine paying for such hauling; that what defendant did for a time as a favor or by way of encouragement, it might discontinue at pleasure, and that there is nothing in the nature of a binding usage about it. Providence Coal Co. v. Providence & W. R. Co., 1 I. C. R. 363.

IMPORTANT CASES SINCE 1908

(b) Carrier not bound to make allowances merely because other carriers make allowances for yardage services at points on their lines. Felin & Co. (Inc.) v. P. & R. Ry. Co., 37 I. C. C. 231, 233.

(c) Where shippers chose for its own convenience to take delivery at team tracks of carriers, rather than at its plant, which delivery carriers would have effected without additional cost, the transportation contract terminated when the goods were given into complainant's possession. Failure of carriers to make an allowance for draying from team tracks to the plant not found unjust or unreasonable. Geisel Mfg. Co. v. B. & O. R. R. Co., 59 I. C. C. 193.

(d) A carrier can not pay a shipper for wharfage services unless charges therefor are specified in a duly published schedule tariff. Southern Cotton Oil Co. v. Central of Georgia Ry. Co., 228 Fed. 335.

§8. (9) Insurance.

See Insurance.

IMPORTANT CASES SINCE 1908

(a) Complainants attacked the failure of the Pennsylvania R. R. to reimburse them to the amount which the insurance charges on grain stored in elevator B at Girard Point, Philadelphia, Pa., exceeded the charges which would have accrued had the grain been stored in the new concrete elevator at the same point, as unreasonable and illegal. The insurance rate on grain stored in elevator B, which was not fireproof, was $1.85 per $100; on grain stored in the concrete elevator, 25c. Congestion of traffic necessitating the reopening of elevator B, the carrier provided that it would "equalize" the fire insurance on grain stored in elevator B with the rate charged on grain stored in the concrete elevator, but did not state the rate. HELD: That the failure of the carrier to properly provide for equalization subjected complainant to undue prejudice and unduly preferred shippers whose grain was stored in the new elevator. Reparation awarded. Graff & Son v. Pennsylvania R. R. Co., 43 I. C. C. 200.

§8. (10) Weighing.

See Allowances §7 (ff), (gg).

IMPORTANT CASES SINCE 1908

(a) Complainant alleged that since two years prior to Federal control it has rendered a valuable service in connection with the interstate transportation of grain by weighing inbound shipments at industries, warehouses and mills at St. Louis, Mo., and East St. Louis, Ill., and

that by reason of defendants' failure to make compensation for such service while providing allowances to the Chicago Board of Trade for a similar service at Chicago, Ill., it has been subjected to unfair practices and undue preferences in violations of sections 1, 3 and 15 of the act. Complainant in addition to weighing exercises a general supervision over the loading and unloading of grain, including the taking of seal records, inspection of cars for leakage, inspection and testing of scales, examination and sweeping of empty cars before loading, advising the carriers of the improper condition of cars, and certain policing. These services are performed for the owners of the grain shipped outbound from St. Louis, and commission firms at this point acting as agents for country shippers of the inbound grain, which owners and commission firms are included among complainants' members. The weights as ascertained by complainant are accepted generally by the defendants in the adjustment of overcharge claims, and most of the defendants assess their freight charges upon such weights, sending a messenger each day to this department, which furnishes a duplicate copy of the original weight certified. There is no showing that defendants are unable to render such weighing service on grain at St. Louis or East St. Louis as is incumbent upon them under their tariffs or the provisions of the act, while the record strongly suggests that because of the demand of shippers to this market, rather than accept defendants' track scale weights complainants would prefer to continue the existing arrangements without an allowance. HELD: Defendants, in the absence of unlawful discrimination, were and are under no obligation to make complainant an allowance for the service in question. C. & A. publishes tariff authority for an allowance of 5c per car to the weighmaster at Chicago and likewise to complainant at St. Louis and East St. Louis for furnishing weights on grain unloaded in elevators, while the C., P. & St. L., which serves St. Louis, East St. Louis and Peoria, Ill., makes a similar allowance to the board of trade at Peoria. With these exceptions no allowance or compensation of any character is made by any of the defendants at any point on their lines, although it appears that a number of the defendants have innumerable weight agreements in effect under which they accept the weights furnished by the shippers on carload traffic for which no payments are made. Complainants prejudice, if any, could hardly be undue by reason of the small allowance of 5c or 7c per car. There is no appreciable difference between the general plan of weighing operations at St. Louis and at Chicago, nor is it shown that there is substantial similarity in the transportation conditions attendant upon delivery of grain at these respective markets. HELD: Refusal of defendants to make an allowance for weighing services at St. Louis can not be made a basis for a finding of undue prejudice against that point and undue preference of Chicago. Complaint dismissed. Merchants Exchange of St. Louis v. Director General, 69 I. C. C. 465.

ALL OTHER CITATIONS

Merchants Exchange of St. Louis v. Director General, 69 I. C. C. 465, 468.

IV. LEGALITY OF ALLOWANCES.

See Common Carrier; Legality; Tap Lines §9, §10.

§9. In General.

See Terminal Facilities §9.

IMPORTANT CASES SINCE 1908

(a) In determining whether a shipper is entitled to an allowance from a railroad for services performed by the shipper in moving cars between the storage tracks and the shipper's buildings and factories, no special weight is to be given to the fact that for a number of years the railroad actually paid the complainant for such service, since the question is one of general application and must be determined not by the practice of partacular shippers, but by considerations applicable to all carriers. General Electric Co. v. N. Y. C. & H. R. R. R., 14 I. C. C. 237, 242.

(b) Allowances under section 15 must not be above reasonable cost of service performed by shipper. Mfrs. Ry. Co. v. St. L., I. M. & S., 28 I. C. C. 93, 101.

(c) Allowances, under section 15, can only be made to "the owner of property transported." Mfrs. Ry. Co. v. St. L., I. M. & S. Ry. Co., 28 I. C. C. 93, 102.

(d) Allowances cannot be made, under section 15, to industrial line which is a common carrier, as railway is no longer "the owner of property trans-

ported." Mfrs. Ry. Co. v. St. L., I. M. & S., 28 I. C. C. 93, 102, 108.

(e) That provision of section 15 under which shippers may be compensated by the trunk lines for their facilities used in the handling of their own shipments was enacted to give the Commission a means of eliminating certain unjust discriminations. The gradual elimination of discriminatory practices by other processes leaves this provision of the law to be used as a cloak for various payments which but for it would be looked upon as rebates. Second Industrial Railways Cases, 34 I. C. C. 596, 608.

(f) That a carrier may by contract employ the owner of property transported to perform a portion of the section 15 of the act. The effect of transportation service is recognized by such a contract is to determine the amount to be paid for the service rendered. The Commission's duty is to take care lest the sum paid becomes so large as to amount to an unlawful concession from the transportation rate; and it may determine what is a reasonable charge as the maximum to be paid by the carrier and fix the same by appropriate order. Cambria Steel Co. v. Director General, 64 I. C. C. 737, 740, 741.

(g) An allowance in excess of the cost of the trunk line of switching to and from the plant would be unlawful. By granting more the trunk lines would in that measure be depleting their revenues. The allowances is further limited in that it may not exceed the reasonable cost to the industry of performing the service. Stewart Furnace Co. v. P. R. R. Co., 68 I. C. C. 528, 532.

(h) Tap lines connecting timber districts and lumber mills with trunk lines are common carriers of proprietary as well as non-proprietary lumber, and as such entitled to participate in joint rates, where the fact that the tap lines are owned by persons who also own the timber and mills which they principally serve, is not shown to be inconsistent with the laws of the state in which they are organized and operated, lumber being excepted from the "commodities" clause. United States v. L. & P. Ry. Co., 34 Sup. Ct. 741, 748; 234 U. S. 1; 58 L. Ed. —.

(i) Lumber being excepted from the "commodities" clause, it was HELD, affirming the decision of the Commerce Court in 209 Fed. 260, reversing 23 I. C. C. 277, 549, that a "tap line" railroad is entitled to the same allowance from a trunk line out of the joint through rate for logs and lumber offered the tap line by its proprietary company as it receives out of the rate for non-proprietary logs and lumber. United States v. Butler County R. R. Co., 34 Sup. Ct. 748, 750; 234 U. S. 29, 58 L. Ed. —.

(j) The test of the right of a shipper to compensation for services rendered is whether there was a reasonable and proper basis for the performance of the services, and there was such basis when the shipper loaded goods which it was the carrier's duty to load under its published tariff, on the carrier's suggestion that, because of labor shortage due to the war, there would otherwise occur delay in loading. United States v. Interstate Commerce Commission, 277 Fed. 538.

(k) And since reasonable compensation by a carrier to a shipper for legitimate services rendered by the shipper is not a rebate or discrimination, the Interstate Commerce Commission may not allow compensation for such services in one case, and withhold it in another case, where similar services have been performed, for such a course would constitute discrimination. United States v. Interstate Commerce Commission, 277 Fed. 538.

IMPORTANT CASES SINCE 1908

Rosenbaum Grain Co. v. C. & E. I. R. R. Co., Unrep. Op. 298; General Electric Co. v. N. Y. C. & H. R. R. R., 14 I. C. C. 237, 242; In the Matter of Allowances for the Transfer of Sugar, 14 I. C. C. 619, 627; Crane R. R. Co. v. P. & R. Ry. Co., 15 I. C. C. 248, 253; Nebraska-Iowa Grain Co. v. U. P. R. R. Co., 15 I. C. C. 90; Federal Sugar Refining Co. v. B. & O. R. R. Co., 17 I. C. C. 40, 48; In Re Divisions of Joint Rates on Coal, 22 I. C. C. 51, 55; The Tap-line Case, 23 I. C. C. 277; 295; Alan Wood Iron & Steel Co. v. P. R. R. Co., 24 I. C. C. 27, 30; In Re Keystone Elevator Co., 25 I. C. C. 618; Southwestern Missouri Millers' Club v. St. L. & S. F. R. R. Co., 26 I. C. C. 245, 249, 252, 253; Industrial Railways Case, 29 I. C. C. 212, 313, 266; In Re Weighing of Freight By Carriers, 28 I. C. C. 7, 25; Mfrs. Ry. Co. v. St. L., I. M. & S., 28 I. C. C. 93, 101, 102, 108; United States v. Butler County R. R. Co., 34 Sup. Ct. 748, 750, 234 U. S. 29, 58 L. Ed. —; United States v. L. & P. Ry. Co., 344 Sup. Ct. 741, 748, 234 U. S. 1, 58 L. Ed. —;

Colonial Salt Co. v. C., B. & Q. R. R. Co., 31 I. C. C. 559, 562; Atchison, Topeka & Santa Fe Railway Co. v. Kansas City Stock Yards, 33 I. C. C. 92, 98; Second Industrial Railways Case, 34 I. C. C. 596, 608; Car Spotting Charges, 34 I. C. C. 609, 617; Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 243; Allowances on Anthracite Coal, 36 I. C. C. 164, 169; Mitchell Coal & Coke Co. v. P. R. R. Co., 38 I. C. C. 40, 43; Andrews Bros. o. v. P. R. R. Co., 38 I. C. C. 165, 167; Divisions of Joint Rates for Transportation of Stone, 41 I. C. C. 321, 330; New York Cent. & H. R. R. Co. v. General Electric Co., 114 N. E. (N. Y. 1916), 115; Napanee Lumber & Mfg. Co. v. B. & O. S. R. R. Co., 43 I. C. C. 236, 239; Lehigh Valley R. R. Co. v. U. S., 37 Sup. Ct. 434; 243 U. S. 444, 61 L. Ed. 839; New Haven R. R. Co. v. Interstate Commerce Commission, 200 U. S. 361, 398, 26 Sup. Ct. 272, 50 L. Ed. 515; Louisville & Nashville Ry. Co. v. Mottley, 219 U. S. 467, 31 Sup. Ct. 265, 55 L. Ed. 297, 34 L. R. A. (N. S.), 671; Philadelphia, Baltimore & Washington R. R. Co. v. Schubert, 224 U. S. 603, 32 Sup. Ct. 589, 56 L. Ed. 911; Elwood Grain Co. v. St. Joseph & G. R. Ry. Co., 202 Fed 845, 12 I. C. C. A153; Cudahy Packing Co. v. Ry. Co., 215 Fed. 93, 131 C. C. A. 401; Omaha Elevator Co. v. Union Pac. R. R., 249 Fed. 827, 832; National Tube Co. v. B. & O. R. R., 50 I. C. C. 489, 500; In Re Private Cars, 50 I. C. C. 652, 704; Empire Steel & Iron Co. v. Director General, 56 I. C. C. 158, 180; U. S. Cast Iron Pipe & Foundry Co. v. Director General, 57 I. C. C. 677, 684; Anaconda Copper Mining Co. v. Director General, 57 I. C. C. 723, 738; Buckeye Steel Castings Co. v. H. V., 58 I. C. C. 500; Wharton Steel Co. v. Director General, 59 I. C. C. 11, 23; Pittsburgh Forge & Iron Co. v. Director General, as Agent, 59 I. C. C. 29, 33; Sharon Steel Hoop Co. v. P. Co., 59 I. C. C. 378, 380; Carey Mfg. Co. v. Director, as Agent, 59 I. C. C. 640, 642; Downey Shipbuilding Corp. v. S. I. R. T. R., 60 I. C. C. 543; United States Gypsum Co. v. C. P. C., 61 I. C. C. 117, 119; United Chemical & Organic Products Co. v. Director General, as Agent, 60 I. C. C. 523, 524, 525, 526; Merchant Shipbuilding Corp. v. P. R. R. Co., 61 I. C. C. 214, 217; Edge Moor Iron Co. v. Director General, as Agent, 61 I. C. C. 537, 539; National Tube Co. v. P., C., C. & St. L. R. R. Co., 61 I. C. C. 590, 599; Wyandotte Terminal R. R. Co., 62 I. C. C. 1, 5; U. S. Cast Iron Pipe & Foundry Co. v. Director General, as Agent, 62 I. C. C. 339, 343, 344; Oliver Iron & Steel Co. v. P. & L. E. R. R., 64 I. C. C. 447, 450; Cambria Steel Co. v. Director General, 64 I. C. C. 737, 740, 741, 742; Gulf States Steel Co. v. Director General, as Agent, 66 I. C. C. 255, 258; United States v. Interstate Commerce Commission, 277 Fed. 538; Stewart Furnace Co. v. P. R. R. Co., 68 I. C. C. 528, 532, 533; Keystone Elevator & Warehouse Co. v. Director General, as Agent, 73 I. C. C. 273; Lay Fish Co. v. Director General, as Agent, 80 I. C. C. 45.

§10. Transportation Service Performed By Shipper.

See Tap Lines §3 (1); Transportation §1, §11.

IMPORTANT CASES SINCE 1908

(a) To comply with the legal obligation of delivery, a carrier may employ the owner of the property transported and pay an allowance not more than is just and reasonable. Any service performed by a shipper in excess of the carrier's legal obligation as to delivery is a voluntary service for the shipper's own convenience and for which it is entitled to receive no compensation. Hence, a proper switching or spotting allowance represents payment for the difference between the service in delivery which a carrier actually performs and the service which the carrier is legally obligated to render. United States Cast Iron Pipe & Foundry Co. v. Director General, 57 I. C. C., 677, 683.

(b) And a common carrier can not be compelled to delegate to a shipper the performance of any part of the service of transportation required of it under the law and its tariffs and to make an allownce under section 15 of the Interstate Commerce Act for such performance; it has the right, if it so elects, to perform the full transportation service itself. Sharon Steel Hoop Co. v. Pa. Co., 59 I. C. C. 378, 380.

(c) The Commission can require the carriers to perform the interchange switching if it finds it to be a reasonable transportation service incident to the line haul, but it can not compel them to act as a unit, or to do the work at the convenience and to the satisfaction of complainant. It can not order defendants to make an allowance. Whether a shipper shall receive an allowance in lieu of such

switching service is optional with the carriers. Sun Co. v. Director General, 63 I. C. C. 11, 16.

(d) Under section 15 of the act provision is made for payment to the owner of property transported for any service he may render directly or indirectly connected with such transportation. American Manufacturing Co. v. Director General, 77 I. C. C. 52, 58.

(e) Congress has provided that if shipper furnishes an instrumentality used in transportation of property owned by him, charge and allowance therefor shall be no more than is just and reasonable and has authorized the commission to fix maximum reasonable charge to be paid by carrier for use of instrumentality so furnished. Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 520, 556.

ALL OTHER CITATIONS

The Tap-line Case, 23 I. C. C. 277, 292, 298; American Sugar Refining Co. v. D., L. & W. Ry. Co., 200 Fed. 652, 656; Mfrs. Ry. Co. v. St. L., I. M. & S. Ry. Co., 28 I. C. C. 93, 101; Best Co. v. G. N. Ry. Co., 33 I. C. C. 1, 4; Mitchell Coal & Coke Co. v. Penn. R. R., 38 I. C. C. 40, 45; Knapp v. Minneapolis, St. P. & S. S. M. Ry. Co. (N. Dak. 1916), 156 N. W. 1019, 1020, 1023; National Tube Co. v. B. & O. R. R., 50 I. C. C. 489, 495; Lehigh Coal & Nav. Co. v. P. R. R., 50 I. C. C. 543, 544; Loretz, Pegram & Co. v. S. P. Co., 51 I. C. C. 158, 159, 160; National Malleable Castings Co. v. P. & L. E. R. R., 51 I. C. C. 537, 542, 543; Pn. Scales Corp. v. A. & R. R. R., 51 I. C. C. 686, 695, 696; Armour & Company v. El Paso & Southwestern R. R., 52 I. C. C. 240; Pittsburgh Plate Glass Co. v. Director General, 58 I. C. C. 81, 84; Empire Steel & Iron Co. v. Director General, 56 I. C. C. 158, 180; U. S. Cast Iron Pipe & Foundry Co. v. Director General, 57 I. C. C. 677, 681, 682, 683; Waste Merchants Asso. v. Director General, 57 I. C. C. 686, 689; Buckeye Steel Castings Co. v. H. V. Ry. Co., 58 I. C. C. 500; Western Meat Co. v. Director General, as Agent, 58 I. C. C. 743; Pittsburgh Forge & Iron Co. v. Director General, 59 I. C. C. 29, 31; Central Iron & Steel Co. v. Pa. R. R. Co., 58 I. C. C. 385; Wharton Steel Co. v. Director General, as Agent, 59 I. C. C. 11, 23; Sharon Steel Hoop Co. v. P. Co., 59 I. C. C. 378, 380; United Chemical and Organic Products Co. v. Director General, as Agent, 60 I. C. C. 523, 524; Downey Shipbuilding Corp. v. S. I. R. F. Ry. Co., 60 I. C. C. 543, 548; Carey Mfg. Co. v. Director General, as Agent, 59 I. C. C. 640, 642; Edge Moor Iron Co. v. Director General, as Agent, 61 I. C. C. 537, 539; Cambria Steel Co. v. Director General, 64 I. C. C. 737, 740, 741; Gulf States Steel Co. v. Director General, as Agent, 66 I. C. C. 255, 258; U. S. v. Interstate Commerce Commission, 277 Fed. 538, 542; Verde Extension Mining Co. v. Director General, as Agent, 68 I. C. C. 271, 272; Stewart Furnace Co. v. P. R. R. Co., 68 I. C. C. 528, 532, 533; American Manufacturing Co. v. Director General, 77 I. C. C. 52, 58; Ragone & Son v. Director General, as Agent, 80 I. C. C. 491; Geisel Mfg. Co., 59 I. C. C., 193; Tidewater Paper Mills Co. v. B. T. R. R. Co., 80 I. C. C. 493.

§11. Transportation Facility.

See Supra §10; Tap Lines §3 (1), §4; Transportation §1.

IMPORTANT CASES SINCE 1908

(a) Under their tariffs the public carriers interpret the lumber rate as applying from mills west of the Mississippi River, as far as three miles from their own lines. If a lumber company having a mill within that distance of a trunk line undertakes by arrangement with the trunk line to use its own power to set the empty car at the mill and to deliver it when loaded to the trunk line, it is doing for itself what the trunk line under its tariffs offers to do under the rate. In such a case the lumber company may therefore fairly be said to furnish a facility of transportation for which it may reasonably be compensated under section 15, whether its tap line is incorporated or unincorporated. But an allowance under such circumstances is lawful only when the trunk line prefers for reasons of its own and without discrimination to have the lumber company perform the service. It is not lawful when the lumber company refuses to permit the trunk line to do the work. No allowance, however, ought to be made by a trunk line to a lumber company where the mill is within 1,000 feet of the trunk line. An allowance under such circumstances would be a mere device to effect an unlawful payment to the lumber company. The same rule would apply where a short switch track to the mill has been torn out or is still available, but not used, in order to give the appearance of a longer haul to the mill over a spur or switch

track constructed by the lumber company or by its tap line, to secure an allowance. The Tap Line Case, 23 I. C. C. 277, 294.

(b) Where a mill is distant more than three miles from a trunk line, and is connected with the latter by a tap line not recognized by the Commission as a common carrier, no allowance or division may lawfully be made by a trunk line either to the lumber company or to its tap line. Such a lumber company, although using rails, stands in no better position under the law with respect to its lumber than does a lumber company that uses other means of delivering its lumber to a public carrier. Where a mill is more than three miles distant from a trunk line and is connected with it by a tap line organized as a common carrier and so recognized by the Commission, the mill is to be regarded as a shipping point equally with all other mill points in its rate group; and the lumber rate is to be regarded as in effect from the mill, the tap line being entitled to a division thereof, according to the extent of its participation in the through service under the through rate. The Tap Line Case, 23 I. C. C. 277, 295.

(c) The lumber rate west of the Mississippi River applies from the mill. In those cases where the mill is situated a reasonable distance of not less than 1,000 feet from the trunk line, that carrier may arrange with the lumber company to perform the service for it of transporting the loaded cars from the mill to the trunk line and may make a reasonable allowance to the lumber company for such service under section 15. The Tap Line Case, 23 I. C. C. 549, 552, 553, 559, 568, 596, 599, 603, 605, 607, 608, 611.

(d) No service can lawfully be required of a line carrier beyond the point of interchange with an industry, and therefore a line carrier cannot be required to make an allowance to the industry out of the rates for doing the service for itself with its own facilities. Industrial Railways Case, 29 I. C. C. 212, 230.

(e) Under Section 15 of the act the Commission is authorized to fix a reasonable maximum charge or allowance for any service rendered by the owner of property transported in connection with such transportation or for furnishing any instrumentality used therein. But it must be shown that the service is rendered in connection with transportation or is an instrumentality used therein. Inman, Akers & Inman v. A. C. L. R. R. Co., 32 I. C. C. 146, 148.

(f) If the service is public transportation, defendant may be compensated, even though it be not a common carrier. Atchison, Topeka & Santa Fe Ry. Co. v. Kansas City Stock Yards Co., 33 I. C. C. 92, 98.

(g) The fact that the several carriers could not perform the spotting service individually is convincing that said service is greater than the equivalent of team track or simple switching delivery, and, in fact, beyond the scope of the carrier's legal obligation. Standard Oil Co. v. Director General, 59 I. C. C. 620, 623.

(h) Whether the spotting at complainant's plant is a duty required of defendant under its line haul rates must be determined by the the controlling facts. In determining that question two circumstances are entitled to primary consideration: One is the extent of the service involved in a typical team track delivery; the other, the extent of the service rendered in the typical switching of a car upon the siding of a shipper clear of the main track—the substitute for team track delivery. Philip Carey Mfg. Co. v. Director General, 59 I. C. C. 640, 643.

(i) It is the right of carriers to perform any transportation service which it is their duty to perform, and in the absence of undue prejudice the Commission is without power to require them to make an allowance. U. S. Cast Iron Pipe & Foundry Co. v. Director General, as Agent, 62 I. C. C. 339, 343, 344.

(j) Due to harbor strike at New York City, cars could not be floated to destination in Brooklyn. To expediate movement, complainant accepted delivery at points where held and carted them to destination. HELD: Defendants' obligation to perform further transportation, after complainant's accepting delivery short of billed destination, was terminated by complainant's waiver of the complete service. Defendants' failure to make allowance for cost of cartage was not unjust or unreasonable. Geisel Mfg. Co., 59 I. C. C., 193. Tidewater Paper Mills Co. v. B. T. R. R. Co., 80 I. C. C. 493.

ALL OTHER CITATIONS

The Tap Line Case, 23 I. C. C. 277,

294, 295, 549, 552, 553, 559, 568, 596, 599, 603, 605, 607, 608, 611, 650; Industrial Railways Case, 29 I. C. C. 212, 230; Dow Chem. Co. v. P. M. R. R., 51 I. C. C. 1, 2; Riter Conley Mfg. Co. v Director General, 58 I. C. C. 327, 330; Geisel Mfg. Co., 59 I. C. C. 193.

§12. What Is Not Transportation Service.

(1) Accessorial or Incidental Service.

IMPORTANT CASES SINCE 1908

(a) Arbuckle Bros. operate their own property under a contract for the carriers, as the carriers' Jay St. terminal in Brooklyn. Under their contract, Arbuckle Bros. carry their sugar to this terminal in their own lighters, receiving an allowance therefor. The carriers are under no liability until the tonnage is delivered to them in New Jersey. Two-thirds of the traffic handled through the Jay St. terminal by Arbuckle Bros. as agent for the carriers is for the public generally. HELD: That in lightering their sugar to the Jersey shore and there delivering it to the carriers, Arbuckle Bros. perform a purely accessorial service towards their own shipments and merely incident thereto and do not perform a transportation service as agents of the carriers. It therefore may not be paid for by them under section 15 of the act, while refusing a similar allowance to another shipper providing a similar facility and performing the same service in the transportation of his property. Federal Sugar Refining Co. v. B. & O. R. R. Co., 20 I. C. C. 200, 209, 212.

(b) Plant service is private service. Its distinguishing characteristic is that it it performed in the interest of particular shippers. Atchison, Topeka & Santa Fe Ry. Co. v. Kansas City Stock Yards Co., 33 I. C. C. 92, 99.

(c) Where complainant for its own convenience has provided private facilities of its own which are mere plant facilities they do not entitle complainant to compensation for its service performed by means of them. Felin & Co. (Inc.) v. P. & R. Ry. Co., 37 I. C. C. 231, 233.

(d) Service of loading waste paper stock, provided for in tariffs, was not rendered, due to congestion and labor shortage growing out of the world war. Under an arrangement, complainants furnished such service. HELD: Complainants would not have been able to ship as much as they did had they insisted on their rights under the tariffs, and expense incident to delays of trucks standing waiting to unload, outweighed expense of loading with their own employes, for which service there was no obligation on the part of the carriers to make an allowance. Waste Merchants' Asso. v. Director General, 57 I. C. C. 686.

(e) Complainant, a corporation operating a grain elevator, and performing a transportation service, not as an independent entity, but as agent of a railroad, under contract, which service such railroad holds itself out to perform by the publication of charges in its tariffs, alleges that allowances made to it were unreasonably low. HELD: Since complainant has no interest in traffic handled through the elevator, it can not be considered a shipper or "owner of property transported." It stands in much the same position as an employee of the railroad and can not be considered a common carrier whose compensation is to be derived from divisions of joint rates. Keystone Elevator & Warehouse Co. v. Director General, as Agent, 73 I. C. C. 273.

ALL OTHER CITATIONS

In the Matter of Allowances to Elevators by the U. P. R. R. Co., 14 I. C. C. 315, 316; Barrett Mfg. Co. v. C. R. R. Etc. Co., 17 I. C. C. 464, 466; Gund & Co. v. C., B. & Q. R. R. Co., 18 I. C. C. 364, 367; Federal Sugar Refining Co. v. B. & O. R. R. Co., 20 I. C. C. 200, 209, 212; Pittsburgh Forge & Iron Co. v. Director General, as Agent, 59 I. C. C. 29; Geisel Mfg. Co., 59 I. C. C. 193; Tidewater Paper Mills Co. v. B. T. R. R. Co., 80 I. C. C. 493.

§12. (2) Operation of Plant Facility.

See Common Carrier §9; Industrial Railroads; Tap Lines §4; Transportation III.

IMPORTANT CASES SINCE 1908

(a) An allowance to an industrial line acting only in capacity of a plant facility in excess of cost to trunk line of switching to and from the plant would be unlawful. Chicago, West Pullman & Southern R. R. Co. Case, 37 I. C. C. 408, 414.

(b) Complainant having engine with which it pulls truck loads of material into and out of creosoting tanks and over an incline to and from its wharf adjacent to the plant, held to be an industry per-

forming its own switching. American Creosote Works v. I. C. R. R. Co., 41 I. C. C., 751.

(c) Obligation of a common carrier service does not extend through the network of interior switching tracks, and any service by line carriers within the plant, without charge in addition to line-haul rate or any compensation to complainant or its industrial railway for performing the service, is unduly preferential of complainant and unlawful. National Tube Co. v. B. & O. R. R., 50 I. C. C. 489, 500.

(d) Where service of spotting cars within a plant is private in character and is performed by the shipper over a network of intra-plant tracks for its own convenience and in its own interest, the trunk lines are under no obligation to perform that service under the line-haul rate or to make an allowance therefor. Pittsburg Forge & Iron Co. v. Director General, as Agent, 59 I. C. C. 29, 32.

(e) Complainant alleged refusal of defendant to switch and spot cars moving to and from its plant, or to make it an allowance for such service, was unreasonable, unjustly discriminatory and unduly prejudicial. Fordwick, Va., is a local station on the C. & O. Complainant constructed a system of tracks extending from a point of connection with the C. & O. to the various points of loading and unloading within the plant. Complainant operates 2.96 miles of standard gauge track in and about its plant. Inbound cars are placed by the C. & O. on the interchange tracks, from which they are switched to the points of unloading by complainant's power. Outbound loaded and empty cars are switched by complainant from the points of loading and unloading to the interchange tracks. The C. & O. spots no cars at complainant's plant, although the sack house and bag house are reached only by that carrier's rails. In 29 I. C. C. 212, the Commission found the Virginia Portland Ry. Co. to be a private facility and not a common carrier. If the C. & O. were to undertake the spotting service the present methods would probably be adhered to, and as complainant can do the work more cheaply than can defendant, an order requiring the C. & O. to extend its transportation service to the several loading and unloading points would doubtless result in the retention of the present manner of handling the traffic and in the payment of an allowance to complainant. It appears that there are no cement manufacturing plants other than that of complainant which are served directly by defendant. There appears to be no general practice on the part of carriers in this territory to perform or pay for the switching and spotting service at plants similar to that of complainant. HELD: Defendants' refusal to perform the service of switching and spotting or to compensate complainant for the service is not unreasonable, unjustly discriminatory or unduly prejudicial, complainant dismissed. Lehigh Portland Cement Co. v. Director General, 62 I. C. C.231.

ALL OTHER CITATIONS

Solvay Process Co. v. D., L. & W. R. R. Co., 14 I. C. C. 246, 249; General Electric Co. v. N. Y. C. & H. R. R. R. Co., 14 I. C. C. 237, 242, 243, 244; Crane Iron Works v. Central R. R. Co., 17 I. C. C. 514, 518, 520; Star Grain & Lumber Co. v. A., T. & S. F. Ry. Co., 17 I. C. C. 338, 345; Kaul Lumber Co. v. C. of Ga. Ry. Co., 20 I. C. C. 450; Colonial Salt Co. v. M. I. & I. L., 23 I. C. C. 358; The Tap Line Case, 23 I. C. C. 549, 552, 555, 569, 587, 594, 597, 599, 601, 602, 606, 608, 611, 613, 618, 632, 635, 641, 642, 645, 646, 649, 650; N. Y. C. & H. R. R. Co. v. Gen. Electric Co., 153 N. Y. S. 478, 484; Atchison, Topeka & Santa Fe Ry. Co. v. Kansas City Stock Yards Co., 33 I. C. C. 92, 99; Felin & Co. (Inc.) v P. & R. Ry. Co., 37 I. C. C. 231, 233; Waste Merchants' Asso. v. Director General, 57 I. C. C. 686; United States Gypsum Co. v. C. & P. C. R. R., 61 I. C. C. 117.. Merchant Shipbuilding Corp. v. Pa. R. R., 61 I. C. C. 214.

V. REASONABLENESS OF ALLOWANCES.

See Common Carrier §9; Tap Lines.

§13. In General.

See Tap Lines §6½.

IMPORTANT CASES SINCE 1908

(a) Allowances, under section 15, must not be above reasonable cost of service performed by shipper. Mfrs. Ry. Co. v. S. L., I. M. & S. Ry. Co., 28 I. C. C. 93, 101.

(b) Even on nonproprietary traffic divisions or allowances must not be abnormal. Chestnut Ridge Railway, 37 I. C. C. 558, 560.

(c) Excessive allowances to carriers controlled by shippers are tantamount to departures from the published rates and

entitle competing shippers who pay the published rates to reparation for damages actually sustained as a result of the discrimination. Divisions of Joint Rates for Transportation of Stone, 41 I. C. C. 321, 330.

(d) The act makes it unlawful for carriers to allow more than just and reasonable compensation to an industry for transportation services or facilities furnished by it. Stewart Furnace Co. v. P. R. R. Co., 68 I. C. C. 528, 532.

(e) To go into the matter of allowances between the parties would lead the Commission away from the direct results of the act of the carrier in the exaction of an unreasonable rate into the domain of indirect and remote consequences and perhaps into questions of equity between the vendor and vendee. Standard Oil Co. v. Director General, 89 I. C. C. 7, 10.

ALL OTHER CITATIONS

Kaye & Carter Lumber Co. v. C., M. & St. P. Ry. Co., 14 I. C. C. 604, 605; Duluth Log Co. v. M. & I. Ry. Co., 15 I. C. C. 192, 195; Merchants' Storage Co. v. I. C. R. R. Co., 17 I. C. C. 98, 102; Suffern Grain Co. v. I. C. R. R. Co., 27 I. C. C. 192, 195; Mfrs. Ry. Co. v. St. L., I. M. & S. Ry. Co., 28 I. C. C. 93, 101; Tap Line Case, 31 I. C. C. 490, 493; Chicago, West Pullman & Southern R. R. Co. Case, 37 I. C. C. 408, 414, 415; Chestnut Ridge Railway, 37 I. C. C. 558, 560; Iron Ore Rate Cases, 41 I. C. C. 181, 221; Divisions of Joint Rates for Transportation of Stone, 41 I. C. C. 321, 330; Graff & Son v. P. R. R. Co., 43 I. C. C. 200; Johnstown, Pa., Switching, 43 I. C. C. 654, 660; Ohio Cut Stone Co. v. N. Y. C. R. R., 48 I. C. C. 69, 74; Class Rates from Chestnut Ridge Ry. Stations, 50 I. C. C. 152; U. S. Cast Iron Pipe & Foundry Co. v. Director General, 57 I. C. C. 677, 684, 683, 685; Culver & Port Clinton R. R. Co., 58 I. C. C. 402, 404; Buckeye Steel Castings Co. v. H. V. Ry. Co., 58 I. C. C. 500, 502; Western Meat Co. v. Director General, as Agent, 58 I. C. C. 743; U. S. Cast Iron Pipe & Foundry Co., Inc., v. Director General, 59 I. C. C. 59; Sharon Steel Hoop Co. v. Pa. Co., 59 I. C. C. 378, 380; Philip Carey Co. v. Director General, 53 I. C. C. 640, 642; Carey Mfg. Co. v. Director General, 59 I. C. C. 640, 648; United Chemical & Organic Products Co. v. Director General, as Agent, 60 I. C. C. 523, 525; Whitaker-Glessner v. B. & O., 63 I. C. C. 47, 55; Swift & Co. v. Director General, as Agent, 61 I. C. C. 183; Cambria Steel Co. v. Director General, 64 I. C. C. 737, 740, 742.

§13. (1) Competition.

See Competition.

IMPORTANT CASES SINCE 1908

(a) Competition at one milling center may make proper the granting of an elevation allowance, while the same is denied to another milling center where the same points of origin of the grain and points of destination of the product are involved, but where such competition is not present. Suffern Grain Co. v. I. C. R. R. Co., 27 I. C. C. 192, 195.

(b) Defendant's refusal to make allowance to complainant for spotting cars at Harriman shipyard, near Bristol, Pa., while making allowance to other industries in the same rate district, found not unreasonable, discriminatory, or unduly prejudicial, as such industries are not in competition with complainant, and circumstances and conditions at the respective plants are dissimilar. Merchant Shipbuilding Corp. v. P. R. R. Co., 61 I. C. C. 214.

§13½. Retroactive Application.

IMPORTANT CASES SINCE 1908

(a) Complainant is not a party to joint rates, or, in its own right, a participant in through routes. The Commission is not empowered to abrogate retroactively, by an award of reparation, contracts which were voluntarily entered into, under which complainant acts as agent for defendants, performing for them on their own rails a part of their transportation service. Keystone Elevator & Warehouse Co. v. Director General, 73 I. C. C. 273, 274.

ALL OTHER CITATIONS

Moshassuck Valley R. R. Co. v. N. Y., N. H. & H. R. R. Co., 69 I. C. C. 368.

VI. DAMAGES AND REPARATION.

See Claims; Reparation.

§14. In General.

IMPORTANT CASES SINCE 1908

(a) Excessive allowances to carriers controlled by shippers are tantamount to departures from the published rates and entitle competing shippers who pay the published rates to reparation for damage actually sustained as a result of the discrimination. Reparation, however,

may be denied for want of proof of damage. Divisions of Joint Rates for Transportation of Stone, 41 I. C. C. 321, 330.

(b) Principle announced in General Electric Co. Case, 14 I. C. C. 297, reaffirmed and applied; and complaint of the National Tube Co., for reparation on traffic of its plant at Lorain, Ohio, during the period of 12½ months that allowances out of the line-haul rate to its industrial railway were discontinued, dismissed. Demands of the same nature by the Carnegie Steel Co. for reparation also dismissed. National Tube Co. v. B. &. O. R. R., 50 I. C. C. 489.

(c) Where injustice and hardship to innocent shippers results from unreasonable acts, misconduct, or default of carriers in failure to make proper delivery of shipments, the shipper is entitled to recover from the carrier at fault damages in the sum of the actual or fixed but not more than the reasonable costs of making such delivery. Guyton & Harrington Mule Co. v. L. & N. R. R., 50 I. C. C. 546, 550.

(d) Where the Commission renders a decision prohibiting the granting of allowances for the cartage of sugar, but enters no formal order, merely directing the carriers to conform in tariffs with the decision, the effect is to eliminate the allowances from the filed tariffs and to make it impossible for a shipper to recover such allowance on shipments made between the date of the decision and the formal change in the tariffs by the carriers. American Sugar Refining Co. v. D., L. & W. Ry. Co., 200 Fed. 652, 654.

(e) Where carriers had discriminated against a steel company by refusing to spot cars for it, or to make an allowance to it for the expense of spotting cars, as they did for its competitors in the same switching district, and the evidence showed that the steel company was unable to control the market price, so that it could not pass such charges on to its customers, it is manifest that the discrimination against that company had resulted in damage to it, by diminishing its profit to the extent of the cost of spotting its cars. Donner Steel Co. v. Interstate Commerce Commission, 285 Fed. 955.

(f) Where shipper did not demand either restoration of a former allowance for switching and spotting, discontinued following Industrial Railways case, 29 I. C. C., 212, or a performance of the service by the carrier, except during a stated period and for a special reason of its own, and has not established as a matter of reasonableness that the line-haul rates include any greater service than now rendered, it is not in position to demand reparation for the past on the ground that carrier has not justified the increased rates resulting from such discontinued allowance. Jackson Iron & Steel Co. v. Director General, as Agent, 77 I. C. C. 110.

ALL OTHER CITATIONS

Mitchell Coal & Coke Co. v. Penn. R. R. Co., 181 Fed. 403, 410; Balfour, Guthrie & Co. v. O. W. R. R. & Nav. Co., 21 I. C. C. 539, 540; Merriam & Holmquist v. U. P. R. R. Co., 16 I. C. C. 337; Nebraska-Iowa Grain Co. v. U. P. Ry. Co., 15 I. C. C. 90, 94; Modified In Other Respects, U. P. R. R. v. Updike Grain Co., 222 U. S. 215, 32 Sup. Ct. 39, 56 L. Ed. 171; Washer Grain Co. v. M. P. Ry. Co., 15 I. C. C. 147, 157; General Electric Co. v. N. Y. C. & H. R. R. R. Co., 14 I. C. C. 237, 242; Laning-Harris Coal & Grain Co. v. St. L. & S. F. R. R. Co., 13 I. C. C. 148, 151; LaSalle & Bureau County R. R. Co. v. C. & N. W. R. R. Co., 13 I. C. C. 610, 612; Mitchell Coal & Coke Co. v. Penn. R. R. Co., 33 Sup. Ct. 916, 230 U. S. 247; Flour City S. S. Co. v. L. V. R. R., 38 I. C. C. 729; Buckeye Steel Castings Co. v. H. V. Ry. Co., 58 I. C. C. 500, 502; Western Meat Co. v. Director General, as Agent, 58 I. C. C. 743; Philip Carey Mfg. Co. v. Director General, 59 I. C. C. 640, 643; United Chem. & Org. Products Co. v. Director General, as Agent, 73 I. C. C. 100.

§14½. Court Proceedings.

Action at Law; See Courts.

IMPORTANT CASES SINCE 1908

(a) Plaintiff, mining company, located in the Clearfield district of Pennsylvania, sued defendant carrier for damages for unjust discrimination in paying to plaintiff's competitors allowances which were refused to plaintiff. (See L. & M. Digest, pages 68 to 429, for decisions of the lower courts). Three of the competitors were located in the Clearfield district; two others were located in the Latrobe district, where the rates to destinations in question were about 20 cents higher than from the Clearfield district. The allowances in question were paid between the years 1897 and 1901. The evidence indicated

that the published rate applied from the mines of the various companies in the Clearfield district, and not from the station. The allowance complained of was paid to the plaintiff's competitors for services in hauling the coal from their mines over spur tracks to the station. With respect to the two competitors located in the Latrobe district, it appeared that the carrier itself performed the service of hauling coal from the mines to the station, but that it, nevertheless, made these companies the allowance complained of. HELD: That with respect to the competitors in the Clearfield district, plaintiff could not recover damages for unjust discrimination without first applying to the Interstate Commerce Commission for a determination as to whether the allowance paid these competitors was a reasonable one, since, as the statute stood between 1897 and 1901, it did not require the railroad to publish what free cartage or accessorial service it would furnish, or what sums it would pay shippers for transportation service rendered by them to the carrier, that, therefore, a question of the reasonableness of the allowance complained of was presented, which must first be passed upon by the Commission; but that with respect to the so-called allowance paid to the plaintiff's competitors located in the Latrobe district, plaintiff might sue in the courts without first applying to the Commission, since such allowance was not paid for any service rendered by the shipper, the haul from the mine to the station being performed by the carrier, and the allowance was, therefore, a mere gift or rebate. (Pitney, J., dissenting.) Mitchell Coal & Coke Co. v. Penn. R. R. Co., 33 Sup. Ct. 916; 230 U. S. 247.

(b) Where the Interstate Commerce Commission refused to award compensation for the services rendered to the carrier, because it misconceived the effect of the statute requiring such compensation as that statute had been interpreted by the Supreme Court, the shipper is entitled to mandamus to compel said Commission to make such allowance. U. S. v. Interstate Commerce Commission, 277 Fed. 538.

(c) State courts have jurisdiction in actions to recover the amounts due shippers of interstate freight for repairing cars, to put them in condition for holding the shipment, where the maximum charge for such repairs is fixed by the tariff on file with the Interstate Commerce Commission. Rock Milling & Elevator Co. v. Atchison, T. & S. F. Ry. Co. (Kan. 1916), 154 Pac. 254.

(d) An interstate tariff which provides the carrier will reimburse the shippers "actual cost" of repairing grain cars means the cost of material and labor of making repairs and does not include the inspection and cleaning of cars. Rock Milling & Elevator Co. v. Atchison, T. & S. F. Ry. Co. (Kan. 1916), 154 Pac. 254, 255.

ALL OTHER CITATIONS

United Verde Extension Mining Co. v. Director General, as Agent, 68 I. C. C. 271, 272; Loomis v. L. V. R. R. Co. (N. Y. 1913), 101 N. E. 907, 912; Penn. R. R. v. Puritan Coal Co. 237 U. S. 121, 35 Sup. Ct. 484, 59 L. Ed. 867; Illinois C. R. Co. v. Mulberry Hill Coal Co., 238 U. S. 275, 35 Sup. Ct. 760, 59 L. Ed. 1306; United States v. Interstate Commerce Commission, 277 Fed. 538.

VII. AS REBATES.

See Crimes VI; Rebates.

§15. In General.

IMPORTANT CASES SINCE 1908

(a) Whenever an abnormal division is allowed to a railroad which is tied up with an industry, there results an indirect and hidden rebate to shippers, because of their ownership of the railroad. In Re Divisions of Joint Rates on Coal, 22 I. C. C. 51, 55.

(b) If there is a holding out as a common carrier for hire, and if there is an ostensible and actual movement of traffic for the public for hire, the status of a common carrier exists, whether the holding out is by a company or by an individual. But such a holding out and the existence of an actual traffic is not conclusive in all cases. Where the holding out is in furtherance of a plan to secure unlawful advantages and the alleged carrier is able to pick up some traffic that is incidental to that purpose, it must be regarded simply as a cloak or device to effect unlawful results. The Tap Line Case, 23 I. C. C. 277, 292.

(c) Allowances by common carriers for plant facilities or plant service are unlawful. Atchison, Topeka & Santa Fe Ry. Co. v. Kansas City Stock Yards Co., 33 I. C. C. 92, 98.

(d) Allowances made to a shipper are unlawful rebates unless published.

Rates on Railroad Fuel and Other Coal, 36 I. C. C. 1, 13.

(e) Trunk line carriers can not lawfully compensate shippers directly or indirectly where service is a plant service. Second Industrial Railways Case, 34 I. C. C. 596, 601.

(f) That a carrier may by contract employ the owner of property transported to perform a portion of the transportation service is recognized by section 15 of the act. The effect of such a contract is to determine the amount to be paid for the services rendered. The Commission's duty is to take care lest the sum paid becomes so large as to amount to an unlawful concession from the transportation rate; and it may de termine what is a reasonable charge as the maximum to be paid by the carrier, and fix the same by appropriate order. Cambria Steel Co. v. Director General, 64 I. C. C. 737, 740, 741.

ALL OTHER CITATIONS

In the Matter of Allowances to Elevators by the U. P. R. R. Co., 14 I. C. C. 315, 316; In Re Allowances for Transfer of Sugar, 14 I. C. C. 619, 627, 630; Crane Railroad Co. v. P. & R. Ry. Co., 15 I. C. C. 248, 252; In Re Divisions of Joint Rates on Coal, 22 I. C. C. 51, 55; The Tap Line Case, 23 I. C. C. 277, 292, 549, 586, 589, 632, 646; American Sugar Refining Co. v. D., S. & W. R. R. Co., 207 Fed. 733, 742, 744; American Sugar Refining Co. v. D., L. & W. Ry. Co., 200 Fed. 652, 656; Divisions Received by Brimstone R. R. & Canal Co., 68 I. C. C. 375, 386, 387; Allowances on Anburg, 35 Sup. Ct. 675, 238 U. S. 56, 59 L. Ed. 56.

VIII. CRIMINAL LIABILITY.

See Crimes.

§16. In General.

IMPORTANT CASES SINCE 1908

(a) Under the Elkins Act, which requires that the act of rebating must be wilful in order to constitute a criminal offense, it is not sufficient to support a contention against a carrier that it knowingly granted a rate by means of an elevation allowance lower than the published rate without proof that the defendant acted in bad faith. C., St. P., M. & O. Ry. Co. v. U. S. 162 Fed. 835, 842.

(b) Deviation from legally applicable rate is not permitted by the act under any pretext; an allowance can not be made except under provisions of lawfully filed tariff. Lay Fish Co. v. Director General, as Agent, 80 I. C. C. 4, 5.

ALL OTHER CITATIONS

Mitchell Coal & Coke Co. v. Penn. R. R. Co., 181 Fed. 403, 410; Wisconsin Central Ry. Co. v. U. S., 169 Fed. 76, 78; C., St. P., M. & O. Ry. Co. v. U. S., 162 Fed. 835, 839, 842.

ALTERNATIVE RATES

I. ESTABLISHMENT AND REASONABLENESS.

See Released Rates.

IMPORTANT CASES SINCE 1908

(a) The method of stating rates by an alternative clause giving the shipper the right to elect a combination rate when that one is cheaper than the class rate is an indefinite method of stating rates that the Commission condemns. Railroad Commission of Nevada v. S. P. Co., 19 I. C. C. 238, 240.

(b) But it is sometimes reasonable to make varying rates on same commodity, dependent upon value. Norcross Bros. Co. v. L. & N. R. R. Co., 29 I. C. C. 109, 112.

(c) Where rate depends upon release of carrier's liability tariff should provide for exercise of choice of rates by means of a statement in bill of lading, signed by shipper, that shipment is released to value stated in tariff. Norcross Bros. Co. v. L. & N. R. R. Co., 29 I. C. C. 109, 113.

(d) The Carmack amendment does not prohibit carriers from entering into reasonable contracts with shippers for a release from liability as an alternative to other tariff provisions, under which the carriers will accept this responsibility themselves. Protection of Potatoes in Winter, 29 I. C. C. 504, 507.

(e) Where alternative rates apply duty rests upon agent of carrier to call attention of shipper to different rates and secure his signature to bill of lading. Harmon & Co. v. N. P. Ry. Co., 33 I. C. C. 370, 371.

(f) A carrier may be given the choice of two routes over which a rate prescribed should be made applicable. Black Mountain Corn v. L. & N. R. R. Co., 39 I. C. C. 153, 158.

(g) Complainant seeks reparation on carload shipments of wood board or wall board from Cornell, Wis., to various destinations, in that the applicable rates

were those named in the tariffs to cover wood pulp board, or, in the alternative, that if the rates on wall board were applicable, they were unjust, unreasonable and unduly discriminatory to the extent that they exceeded the rates on wood pulp board. In the Commission's decision, 49 I. C. C. 91, it was held that the rates on wall board were applicable to the shipments made by complainant and were not shown to have been unreasonable, and that evidence of damage sufficient to support an award of reparation upon a finding of undue prejudice had not been introduced. Complaint was dismissed. Complainant filed a petition for rehearing, which was granted. The commodity shipped was a multiple-ply pulp board, used principally as a wall covering, although put to several uses. Complainants' wall board is shipped packed flat in packages or bundles, with the corners and edges protected and is less liable to damage than wood pulp boards which are shipped in rolls. Wall boards load more heavily than the wood pulp boards, which are shipped in rolls because practically all the space in the car can be utilized. There is never any difficulty in loading wall board above the minimum carload weight of 40,000 pounds, while only one tier of some wood pulp boards shipped in large rolls can be loaded into a car, leaving considerable space unoccupied. Wood pulp boards which are shipped in the larger rolls are also more difficult to handle than the wall board in flat packages. Upon being advised by the Inspection Bureau that the wood pulp board rates were not properly applicable on the wall board shipped by complainant, the defendant carriers, took steps to establish the same rates upon wall board as applied on other wood pulp boards. Since the date of the Commission's ruling in Wall Board Rating, 43 I. C. C. 189, rates on wall board in all of the territories to which complainants ship have been established on the same basis as applies on wood pulp board. HELD: Rates attacked were unreasonable and unduly prejudicial to the extent that they exceeded the rates contemporaneously maintained upon wood pulp board. Reparation with interest awarded. Cornell Wood Products Co. v. A., T. & S. F. Ry., 55 I. C. C. 257.

(h) Two rates published in different sections of the same tariff, each section providing that if a rate therein made a lower charge than a rate in the other the rate therein would be applied. Since the tariff provided for the alternative application of rates in the different sections, the rate producing the lowest charge on a particular shipment was the rate applicable. Shipments found overcharged and reparation awarded. Rothschild Co. v. Director General, as Agent, 73 I. C. C. 126, 127.

ALL OTHER CITATIONS

Phillips Co. v. G. T. W. Ry. Co., Unrep. Op. 590; George Tritch Hardware Co. v. C., R. I. & P. Ry. Co., 18 I. C. C. 71, 72; Railroad Commission of Nevada v. S. P. Co., 19 I. C. C. 238, 240; Goodman Mfg. Co. v. P., C., C. & St. L. Ry. Co., 21 I. C. C. 95; Marion Iron & Brass Bed Co. v. T., St. L. & W. R. R. Co., 22 I. C. C. 272; In Re Suspension of Western Classification No. 51, 25 I. C. C. 442, 477; Moore v. D. & R. G. R. R., 25 I. C. C. 1, 3; Highland Park Mfg. Co. v. S. Ry. Co., 26 I. C. C. 67, 68; Western Fruit Jobbers' Assn. v. C., R. I. & P. Ry. Co., 27 I. C. C. 417, 419; Protection of Potatoes in Winter, 29 I. C. C. 504, 506; Northwestern Woodenware Co. v. C., M. & P. S. Ry. Co., 28 I. C. C. 237, 239; Norcross Bros. Co. v. L. & N. R. R. Co., 29 I. C. C. 109, 112; N., C. & St. L. Ry. v. C. B. Truitt Co. (Ga. App. 1914), 82 S. E. 465; Great Western Smelting & Refining Co. v. B. & O. S. W. R. R. Co., Unrep Op. 2051; Henderson v. M., L. & T. R. R. & S. S. Co., 39 I. C. C. 483, 484; Swanson v. T. & P. Ry. Co., 39 I. C. C. 725; Russi & Co. v. O. S. R. R., 45 I. C. C. 77, 78; Asphalt from New Orleans, 83 I. C. C. 424.

AMENDMENT

See Tariffs §8½.

ANALOGOUS COMMODITIES

See Classification §17.

ANTI-TRUST LAWS AND MONOPOLIES

See Clayton Act; Evidence §10.

CASES 1887-1908

(aa) The language of this provision of the Constitution of Texas evinces that control in any manner and to any extent was intended to be prohibited—provided it was such as is calculated to enable one railroad, by means of a contract or agreement for interference in the other's affairs, to keep down competition between them. Gulf, Colorado & Santa Fe R. Co. v. State of Texas, 2 I. C. R. 335.

(ab) An agreement between several

railroad companies, some of which own and control competing lines, for the appointment of a common governing committee, or an association (composed of one member from each company) to fix the rates for which freights should be carried to and from points within the State of Texas, is illegal because contrary to article 10, §5, of the Constitution of Texas, which provides that "No railroad . . . or managers of any railroad corporation shall consolidate the stock, property or franchises of such corporation with . . . or in any way control any railroad corporation owning or having under its control a parallel or competing line." Gulf, Colorado & Santa Fe R. Co. v. State of Texas, 2 I. C. R. 335.

(ac) Such agreement is not relieved from illegality by the fact that any company party to the agreement has the right of withdrawal, or that it cannot be punished for a failure to obey the regulations, or that it has not been shown that the companies have made charges in excess of the limits allowed by law. Gulf, Colorado & Santa Fe. R. Co. v. State of Texas, 2 I. C. R. 335.

(ad) The State of Texas has the right to prohibit and interfere with a contract in restraint of competition, some of the parties to which are corporations created by the State, although it regulates charges upon freight carried to and fro between Texas and other States. The agreement, being illegal as to some, is illegal as to all. Gulf, Colorado & Santa Fe R. Co. v. State of Texas, 2 I. C. R. 335.

(ae) Prescribing a minimum weight for a carload, and then charging by the hundred pounds in proportion to the carlot rate for any excess over the minimum, is not unlawful. Leonard v. Chicago & A. R. Co., (Com.) 2 I. C. R. 599.

(af) The fact that by the action of certain state commissioners a car is permitted to be loaded by the shipper at discretion without the carlot rate being affected thereby is not a reason for adopting a like rule in interstate traffic if that course is found not to be most just and politic. Leonard v. Chicago & Alton R. Co., 2 I. C. R. 599.

(b) The complainants are large manufacturers of common soap at Cincinnati, Ohio. In the Official Classification common soap stands in the fifth class in carload lots. The defendant Railroad Companies have always given it the rate of fifth class articles, but for many years prior to May 1889, they charged the complainants for only net weight, the gross weight being one sixth more than net weight, but since said date they have charged for gross weight without diminishing the rate per hundred pounds. The effect of this was to charge one sixth more for the same service than had before been charged. The charge for transportation under the net weight practice was reasonable and just, and without complaint on the part of shippers or carriers. HELD: That the increased charge by the device of charging for the gross weight being one-sixth advance for the same service, was unwarranted, as it operated to make the rate unreasonable. Proctor & Gamble v. Cincinnati, H. & D. R. Co., 3 I. C. R. 131.

(cd) Contracts between rival and competing railroad companies, which prevent unhealthy competition, but do not raise rates of transportation above the standard of fair compensation, or violate any duty that is owing to the public from noncompeting roads, are not void as against public policy. Manchester & L. R. Co. v. Concord R. Co. (N. H.), 3 I. C. R. 319.

(e) A railroad company which continues to operate a rival and competing line under a prior contract after the passage of a statute prohibiting such contracts, and making the company which operates a rival line subject to penalty, although such continuation was illegal, cannot retain the money acquired by such operation when called upon by the owner of the road for an accounting, but the latter, not being in pari delicto, is entitled to an equitable share of the earnings. Manchester & L. R. Co. v. Concord R. Co. (N. H.), 3 I. C. R. 319.

(fg) A combination between coal producers in one state and coal dealers in another, to regulate prices of coal in a certain city and to divide any advances in price in excess of the advances in freights, and tending to monopolize the coal trade of the city among members of the combination, is in violation of the Act of Congress of July 2, 1890, prohibiting conspiracies in restraint of trade and commerce. U. S. of America v. Jellico Mt. Coke & Coal Co., 3 I. C. R. 627.

(fga) An association of railroad companies for mutual protection by establishing and maintaining reasonable rates, rules and regulations is not illegal as a

restraint of trade, under the Anti-Trust Act of Congress, merely because it incidentally tends to restrict competition in some degree, where each member of the association must still compete with other members for business, and while regular monthly meetings are provided for, at which action may be taken, five days' notice of any proposed reduction of rates or change of rules must be given, and members are bound by the decision of the association, unless they give written notice in ten days thereafter to the contrary, and any member may withdraw on thirty days' notice. United States v. Trans-Missouri Freight Association, 4 I. C. R. 443.

(fgb) An alleged violation of the Anti-Trust Act of Congress must be clearly within its provisions, as the statute is a criminal one. United States v. Trans-Missouri Freight Association, 4 I. C. R. 443.

(fgc) An association of railroad companies cannot be held to create a monopoly, within the meaning of the Anti-Trust Act of Congress, where it is not intended to have any trade of its own, but to be a mere advisor of its members, who are competitors of each other. United States v. Trans-Missouri Freight Association, 4 I. C. R. 443.

(fgd) A contract between competing railroad companies is not necessarily "in restraint of trade" and illegal, within the meaning of the Anti-Trust Act of Congress, because it in some manner imposes a restriction upon competition United States v. Trans-Missouri Freight Association, 4 I. C. R. 443.

(h) Railway companies which enter into an association to control traffic to a common market and maintain rates higher than are reasonable, unjustly prejudicial, and preferential, if not jointly liable, are at least severally liable. Cincinnati Freight Bureau v. Cincinnati, N. O. & T. P. R. Co. (Com), 4 I. C. R. 592.

(i) An indictment for conspiracy in restraint of trade or commerce, under the Act of Congress of July 2, 1890, must declare the means by which it is intended to engross or monopolize the market; and it is not sufficient to declare the conspiracy in the words of the enactment. United States v. Patterson, 4 I. C. R. 775.

(j) Allegations of what was done in pursuance of an alleged conspiracy cannot enlarge the necessary allegations of an indictment for conspiracy under a particular statute, such as the Act of Congress against conspiracies in restraint of commerce. United States v. Patterson, 4 I. C. R.775.

(k) A conspiracy to drive certain competitors out of the field by violence, annoyance, intimidation or otherwise is not within the prohibition of the Act of Congress against conspiracies in restraint of trade, where there is no aim to engross, monopolize or grasp the market. United States v. Patterson, 4 I. C. R. 775.

(l) Violence and intimidation are as much within the mischief of the Act of Congress against conspiracies in restraint of trade or commerce as negotiations, contracts or purchases, if such means are used for the purpose of engrossing, monopolizing or grasping a particular trade. United States v. Patterson, 4 I. C. R. 775.

(m) Wilful failure of railroad companies to carry the mails is within U. S. Rev. Stat. § 3995, making it an offense to unlawfully and wilfully retard or obstruct the passage of the mail, although their employes refuse to move trains having certain sleeping cars thereon, where the situation is of an extraordinary character, and the interruption to commerce has been serious and long continued, and the employes are willing to move trains without such cars. Re Charge to Grand Jury (No. 3) (D. C. N. D. Cal.), 4 I. C. R. 784.

(n) The conspiracies in restraint of trade or commerce among the several states, declared illegal by Act of Congress of July 2, 1890, § 1, embrace all which are contrived with intent, or of which the necessary or probable effect shall be, to restrain, hinder, interrupt, or destroy interstate commerce, embracing all instrumentalities and subjects of transportation among the states. United States v. Debs, 5 I. C. R. 163.

(o) An injunction will lie under the Act of Congress of July 2, 1890, §§ 1, 4, declaring conspiracies in restraint of trade or commerce among the several states illegal, and empowering the circuit courts to restrain violations of the act, in proceedings instituted by the district attorney to enjoin a conspiracy of striking employes to prevent the operation of railroads engaged in interstate commerce. United States v. Debs, 5 I. C. R. 163.

(p) All members of a union of railway employes which have conspired to strain interstate commerce by preventing the operation of railroads engaged therein, and all who join in the movement, are each criminally responsible for the acts of others done in furtherance of the common purpose, whether they intend them or not. United States v. Debs, 5 I. C. R. 163.

(q) Persons who, in combination with a union of railway employes and others, are engaged in a conspiracy in restraint of interstate commerce over railroads, in furtherance of which design those actively engaged use threats, violence, and unlawful means of interference, from which they are commanded to desist by injunction, are guilty of contempt in persisting in their purpose without essential change of conduct until compelled to yield to superior force. United States v. Debs, 5 I. C. R. 163.

(r) The "fines" or "penalties" imposed by the provisions of the agreement of the Southern Railway & Steamship Association on members for violation of association rules appear on the face of that agreement to be available as substitutes for payments which would be exacted under a regular pooling system, and the arrangement under which they are imposed is tantamount to a combination, contract or agreement "for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads or any portion thereof," which are forbidden by the statute. Freight Bureau v. Cincinnati, N. O. & T. P. R. Co. et al., 6 I. C. C. 197.

(s) Combinations between railway companies not within Act July 2, 1890: The Act of July 2, 1890, relating to trusts and combinations in restraint of trade, does not include combinations or agreements between railway companies. United States v. Trans-Missouri Freight Asso. et al., 7 I. C. C. App. xi.

(t) Agreement looking toward monopoly of manufacturing business, not an interference with commerce or with the act of July 2, 1890: The court, following the case of United States v. E. C. Knight Company, 156 U. S. 1, 39, L. Ed. 325, holds that an agreement by certain corporations and persons engaged in manufacturing gelatine capsules, that the entire property and business should be conveyed to a new corporation for the purpose of controlling the price of the output, and each of the individual manufacturers should become simply an employe of the new corporation, subject to its dominion and control, was not an unlawful interference with commerce, or illegal under the act of July 2, 1890. Merz Capsule Co. v. U. S. Capsule Co., 7 I. C. C. App. xxv.

(u) Act of July 2, 1890, not applicable to monopoly of the business of sugar refining: The act of July 2, 1890, to protect trade and commerce against unlawful restraints and monopolies does not apply to a combination of sugar refineries located throughout the United States, which gives them a practical mopoly of the business of sugar refining. The court says: "Commerce succeeds to manufacture, and is not a part of it. The power to regulate commerce is the power to prescribe the rule by which commerce shall be governed, and is a power independent of the power to suppress monopoly. But it may operate in repression of monopoly whenever that comes within the rules by which commerce is governed, or whenever the transaction is itself a monopoly of commerce. It is vital that the independence of the commercial power and of the police power, and the delimitation between them, however sometimes perplexing, should always be recognized and observed. Congress did not, by the Act of July 2, 1890, attempt to assert the power to deal with monopoly directly as such; or to limit and restrict the rights of corporations created by the States or the citizens of the States, in the acquisition, control, or disposition of property; or to regulate or prescribe the price or prices at which such property or the products thereof should be sold; or to make criminal the acts of persons in the acquisition and control of property, which the states of their residence or creation sanctioned or permitted. Aside from the provisions applicable where Congress might exercise municipal power, what the law struck at was combinations, contracts, and conspiracies to monopolize trade, and commerce among the several States or with foreign nations; but the contracts and acts of the defendants related exclusively to the acquisition of the Philadelphia refineries and the business of sugar refining in Philadelphia, and bore no direct relation to commerce between the States or with foreign nations. It

does not follow that an attempt to monopolize, or the actual monopoly of, the manufacture was an attempt, whether executory or consummated, to monopolize commerce, even though, in order to dispose of the product, the instrumentality of commerce was necessarily invoked. United States v. E. C. Knight Co., 7 I. C. C. App. xxiv.

(v) Competing roads cannot agree to maintain rates: Competing and nonconnecting railroads are not authorized by the commerce act to make an agreement for maintenance of rates and the curbing of competition. U. S. A. v. Trans-Mo. Freight Asso., 7 I. C. C. App. ci.

(w) Combinations in restraint of trade are prohibited: All combinations in restraint of trade or commerce are prohibited by the Act of Congress of July 2, 1890, whether they are in the form of trusts or in any other form. U. S. A. v. Trans-Mo. Freight Asso., 7 I. C. C. App. ci.

(x) Unlawful restraints not limited to those unlawful at common law: The words "unlawful restraints and monopolies" in the title of the Act of Congress of July 2, 1890, do not show that the purpose of the act was to include only contracts which were unlawful at common law, but refer to and include those restraints and monopolies which are made unlawful in the body of the act. U. S. A. v. Trans-Mo. Freight Asso., 7 I. C. C. App. ci.

(y) All contracts in restraint of trade prohibited: The term "contracts in restraint of trade" as used in the Act of Congress of July 2, 1890, does not refer only to contracts which were invalid at common law, but includes every kind of contract in restraint of trade and is not limited to that kind of contract which is an unreasonable restraint of trade. U. S. v. Trans-Mo. Freight Asso., 7 I. C. C. App. ci.

(z) Combination to maintain reasonable rates illegal: The right of the railroad company to charge reasonable rates does not include the right to enter into a combination with competing roads to maintain rates. U. S. A. v. Trans-Mo. Freight Asso., 7 I. C. C. App. ci.

(aa) Agreement between competing roads to maintain reasonable rates illegal: An agreement between railroad companies for the purpose of mutual protection by establishing and maintaining reasonable rates, rules, and regulations on all freight traffic both through and local is by its necessary effect an agreement to restrain trade or commerce within the meaning of the Act of Congress of July 2, 1890, no matter what the intent was on the part of those who signed it. U. S. A. v. Trans-Mo. Freight Asso., 7 I. C. C. App. ci.

(bb) Statute not applied to pre-existing contract: Retroactive effect is not given to a statute making combinations in restraint of trade illegal by applying the statute to a continuance after its passage of a pre-existing contract. U. S. A. v. Trans-Mo. Freight Asso., 7 I. C. C. App. ci.

(cc) United States may bring action to dissolve unlawful combination: The United States is authorized by the Act of July 2, 1890, to bring an action for the dissolution of an unlawful combination of carriers in violation of such act and for an injunction against continuing such a combination. The court says: "The language of the act includes every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several states or with foreign nations. So far as the very terms of the statute go, they apply to any contract of the nature described. A contract, therefore, that is in restraint of trade or commerce is by the strict language of the act prohibited, even though such contract is entered into between competing common carriers by railroad and only for the purposes of thereby affecting traffic rates for the transportation of persons and property. If such an agreement restrain trade or commerce it is prohibited by statute unless it can be said that an agreement, no matter what its terms, relating only to transportation, cannot restrain trade and commerce. We see no escape from the conclusion that if any agreement of such a nature does restrain it the agreement is condemned by this act. U. S. A. v. Trans-Mo. Freight Asso., 7 I. C. C. App. ci.

(dd) United States act against monopolies not applicable to acts of a State: A State for the purpose of monopolizing to the State the business of selling intoxicating liquors is not within the prohibition of the United States Act of July 2, 1890, forbidding every contract, combination in the form of trust

or otherwise, or conspiracy in restraint of trade or commerce among the several states or with foreign nations. The court says: "By this act the State makes no contract, enters into no combination or conspiracy. She declares and asserts in herself the monopoly in the purchase and sale of liquors. The section of the Act of 1890 gives a right of action for any injury by any other person or corporation. The state is not a corporation. Nor can it be said that the state is a person in the sense of this act. Even were this the case, as the monopoly now complained of is that of the state, no relief can be had without making the state a party and this destroys the jurisdiction of this court." Lowenstein v. Evans et al., 7 I. C. C. App. xlviii.

(dda) An association of commission merchants engaged in business at certain stock yards, intended to restrict, control, and monopolize for its members that class of trade and commerce, is within the act of Congress against monopolies or conspiracies when such trade is interstate commerce, although it does not directly require any person engaged in the business to become a member, where in practice its rule prohibiting any member from dealing with a person violating any of its rules and regulations prevents shippers and growers of stock from shipping their stock to a person not a member. U. S. V. Hoppins et al 8. I. C. C. App. XXII.

(ddb) A secret combination to prevent competition and deceive the public by a pretended competition in bidding for contracts is a conspiracy in restraint of trade, within the maning of the act of 1890. U. S. v. Addyston Pipe & Steel Co. 8 I. C. C. App XL.

(ddc) A combination of manufacturers in different States to regulate sales and prices of their commodities in a large number of States in which it was their invariable custom to bid for the contracts and deliver the goods at the home of the buyer, is a combination in restraint of interstate trade within the condemnation of the act of 1890. And the absence of intention to restrain interstate commerce will not save from condemnation a scheme of manufacturers to control the whole commerce in their commodity, within a large number of States. U. S. v. Addyston Pipe & Steel Co. 8. I. C. C. App. XL.

(ddd) Contracts unenforceable at common law because in restraint of trade are, if the trade restrained is interstate, made unlawful in an affirmative and positive sense by the act of 1890, so as to be punishable as a misdemeanor and create a right of civil action for damages in favor of those injured thereby, and a civil remedy by injunction in favor of private persons and the public. U. S. v. Addyston Pipe & Steel Co., 8 I. C. C. App. XL.

(dde) A forfeiture of property under the anti-trust act of 1890 cannot be declared in an equity suit. U. S. v. Addyston Pipe & Steel Co. 8 I. C. C. App. XL.

(ddf) A combination of manufacturers to limit competition and control trade and prices in a large number of States is not legal because the restraint is but partial and limited in territory, and does not make a complete monopoly, but is tempered by fear of competition, and affects only a part of the price. U. S. v. Addyston Pipe & Steel Co., 8 I. C. C. App. XL.

(ddg) An association of coal dealers stifling and restricting competition and trade in coal imported from other States and from foreign countries is in restraint of commerce within the act of Congress of July 2, 1890, although the coal is not sold until imported, delivered, and bulk-broken, as the principle of the original package does not apply to the sale of coal, and it is no defense that the contract or combination involved imposes only a fair and reasonable restraint upon trade and commerce, but the question is, Does it impose any restraint whatever. U. S. v. Coal Dealers' Asso. of California et al. 8. I. C. C. App. XLII.

(ddh) An association of coal dealers establishing arbitrary rates for coal, from which the dealer is not permitted to deviate in any particular, and stifling all competition between retail dealers, assuming jurisdiction over those who are not members, and imposing fines upon those found guilty of selling coal in violation of card rates or rules,—constitutes a restraint of trade which is injurious to the public interest, against public policy, and unlawful. U. S. v., Coal Dealers' Asso. of California et al 8 I. C. C. App. XLII.

(ddi) A restraining order may be issu-

ed by the court or judge without notice, under circumstances sanctioned by the established usage of equity practice in a suit under the act of Congress of July 2, 1890, denouncing trusts and monopolies in restraint of commerce, and by §4, giving the circuit court of the United States jurisdiction to prevent and restrain violations of the act, and providing that pending the petition and before final decree the court may at any time make such restraining order or prohibition as shall be deemed just in the premises. U. S. v. Coal Dealrs' Asso. of California et al., 8 I. C. C. App. XLII.

(ddj) A suit against an unincorporated association claimed to constitute a trust in restraint of commerce is properly brought as to parties against such association and all its members, and against a number of individuals who are designated as members and officers of the association with service upon such individuals, and the president individually as president. U. S. v. Coal Dealers' Asso. of California et al. 8 I. C. C App XLII.

(ddk) Suits in equity, are injunction suits by others than the government, are not authorized by act of 1890, prohibiting conspiracies and monopolies in restraint of trade and interstate commerce. Gulf, Colorado & Santa Fe R. R. Co., x. Miami Steamship Co. 8 I. C. C. App. XLVII.

(ddl) The declaration of Federal anti-trust act that every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce, among several States or foreign nations shall be illegal does not extend to a stipulation incidental to the sale of the business of a shipbroker not to solicit freight within a certain territory for shipment to foreign ports. Brett v. Ebel, 8 I. C. C. App. L.

(ee) The Commission has no authority to administer the anti-trust law, or even to determine whether it has been violated. Spring v. Baltimore & O. R. Co., 8 I. C. C. 443.

(ff-gg) The Commission has no authority to administer the anti-trust law, or even to determine whether it has been violated. If an investigation discloses a violation of that law, the power of the Commission is not enlarged nor its duty changed in respect of the rate involved in the inquiry. No relief could be afforded the complainants in this proceeding upon the theory that the quarterly ticket was withdrawn under an agreement between the carriers in violation of the anti-trust law, even if the facts were found in support of that contention. Sprigg v. B. & O. R. R. Co., 8 I. C. C. 443, 456.

(hh) It is contrary to public policy, as well as unlawful, for railways to acquire control of parallel and competing lines. Consolidations and Combinations of Carriers, 12 I. C. C. 277, 306.

(hha) The Interstate Commerce Commission does not extend to violation of antitrust act by carriers of interstate commerce. Warren Mfg. Co. v. Southern R. Co., 12 I. C. C. 381.

(ii) The absorption of a competing line of railway by another in alleged violation of the statutes of a state is a matter within the control of the state courts and can be considered by the Commission only in its ultimate results of inducing unreasonable rates. Warren Mfg. Co. et al. v. Southern Ry. Co. et al., 12 I. C. C. 381.

(jj) The violation of the so-called anti-trust act by unwarranted agreements in restraint of trade by carriers of interstate commerce is not within the jurisdiction of the Commission, but only the correction of unreasonable rates which may be the purpose and effect of such illegal act. Warren Manufacturing Co. v. Southern Ry. Co., 12 I. C. C. 381.

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(jja) Neither the consolidation of the New York Central and the Lake Shore & Michigan Southern nor the exchange of bonds on the basis of increased interest rate indicated, incident thereto, would offend any federal statute. Proposed Bond Issue by N. Y. C. & H. R. R. R. Co., 30 I. C. C. 147, 151.

(jjb) The Temple Iron Company was an agency used by carriers for unlawful purposes of gaining a monopoly on sale of anthracite coal. Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 231.

(jjc) It has been the policy of the carriers to gain a monopoly of production and sale of anthracite coal. Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 232.

(jjd) Small shipper or shippers who had no transportation affiliations could not compete with mines favored by the carrier. Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 247.

(kk) If it had been intended that the

provisions of section 5 of the act should merely afford a means of escaping from the restraints of the "anti-trust laws" and other state or federal statutes, much simpler machinery would have been devised for accomplishing the purpose. The "plan of consolidation" is incompatible with such an interpretation of the section and embodies a policy of far greater breadth and vision. Securities Application of P. & W. V. Ry., 70 I. C. C. 688.

(ll) A railroad rate is not necessarily illegal because it is the result of a conspiracy in restraint of trade, in violation of the Anti-Trust Act (Comp. St., sections 8820-8823, 8827, 8830), as the legality of rates is determined by the Interstate Commerce Act. Keogh v. Chicago & N. W. Ry. Co., 43 Sup. Ct. 47.

(mm) Under Anti-Trust Act, §7 (Comp. St. § 8829), giving a right of action to one injured in his business or property by violation thereof, recovery cannot be had, unless it is shown that as a result of defendant's acts damages in some amount susceptible of expression in figures resulted, and the damages must be proved by facts from which their existence is logically and legally inferable, and cannot be supplied by conjecture. Keogh v. Chicago & N. W. Ry. Co., 43 Sup. Ct. 47.

(nn) A shipper's damages from a conspiracy between carriers to fix a higher rate on a certain class of goods than would otherwise have prevailed, but found by the Interstate Commerce Commission to be reasonable and nondiscriminatory, are too conjectural for recovery, as his competitors would have been entitled to the same rate, and an adjustment of the rate on articles competing with such class of goods would have been required. Keogh v. Chicago & N. W. Ry. Co., 43 Sup. Ct. 47.

(oo) Under the Anti-Trust Act, a combination of carriers to fix rates may be illegal, though the rates fixed are reasonable and nondiscriminatory, and if illegal, the government may have redress by criminal proceedings under section 3 (Comp St. Sec. 8822), by injunction under section 4 (Comp. St. Sec. 8823), and by forfeiture under section 6 (Comp. St. Sec. 8828). Keogh v. Chicago & N. Y. Ry. Co., 43 Sup. Ct. 47.

(pp) Where railroad rates, though fixed pursuant to conspiracy between carriers, have been approved as reasonable and nondiscriminatory by the Interstate Commerce Commission, a private shipper may not, under Anti-Trust Act, sec. 7 (Comp St. sec. 8829), recover damages because of his loss of benefit of a rate still lower, which but for the conspiracy he would have enjoyed, in view of Interstate Commerce Act, sections 8, 9, 16 (Comp. St. sections 8572, 8573, 8584), relative to the rights of persons injured, the fact that the recovery of damages might operate to give him a preference, the necessity of determining whether the hypothetical lower rate would have been nondiscriminatory, and the impossibility of obtaining such a determination from the Commission, and the speculative character of his damages. Keogh v. Chicago & N. W. Ry. Co., 43 Sup. Ct. 47.

(qq) Within Anti-Trust Act, Sec. 7 (Comp. St. Sec. 8829), giving a right of action to one injured in his business or property by violations thereof, "injury" implies violation of a legal right, and the legal rights of a shipper as against the carrier in respect to a rate are measured by the published tariff. Keogh v. Chicago & N. W. Ry. Co., 43 Sup. Ct. 47.

(qqa) Under Anti-Trust Act, §7 (Comp. St. §8829), giving a right of action to one injured in his business or property by violations thereof, recovery cannot be had, unless it is shown that as a result of defendant's act damages in some amount susceptible of expression in figures resulted, and the damages must be proved by fact from which their existence is logically and legally inferable, and canot be supplied by conjecture. Keogh v. Chicago & N. W. Ry. Co. (1922) 43 Sup. Ct. 47.

(qqb) A shipper's damages from a conspiracy between carriers to fix a higher rate on a certain class of goods than would otherwise have prevailed, but found by the Interstate Commerce Commission to be reasonable and nondiscriminatory, are too conjectural for recovery, as his competitors would have been entitled to the same rate, and an adjustment of the rate on articles competing with such class of goods would have been required. Keogh v. Chicago & N. W. Ry. Co. (1922), 43 Sup Ct. 47.

(qqc) The mere fact that uniform freight rates are established by carriers forming the Western Trunk Line Committee, does not give a shipper damaged thereby, a right of action under Sec. 7

of the Sherman Anti-Trust Law. Keogh v. Chicago & N. W. Ry. Co., (1922), 43 Sup. Ct. 47.

(rr) Injury implies violation of the legal rights. The legal rights of a shipper as against carrier in respect to a rate are measured by the published tariff Unless and until suspended or set aside, this rate is made, for all purposes, the legal rate, as between carrier and shipper. Keogh v. Chicago & N. W. Ry. Co., 43 Sup. Ct. 47, 49.

(ss) A shipper of excelsior at St. Paul brought suit under section 7 of the Federal Anti-Trust Act against the carriers and the Western Trunk Line Committee for damages in establishing uniform rates on excelsior and flax tow from St. Paul, which rates had been approved by the Interstate Commerce Commission. Keogh claims that he was not only entitled to reasonable rates, but was entitled to competitive rates, but for the action of the Western Trunk Line Committee, one or more of these railroads would have maintained lower rates. The Supreme Court held that the fact the rates fixed were reasonable and non-discriminatory were settled by the proceedings before the Interstate Commerce Commission. That under the Anti-Trust Act the contention of carriers to fix reasonable and non-discriminatory rates might be illegal and also the government could have redress by criminal proceedings in section 3, by injunction in section 4 and by forfeiture in section 6 and the fact that such rates had been approved by the Commission would not bar proceedings by the Government, but that because of these things the shipper could recover damages under Section 7 because he lost the benefit of rates still lower, which but for the conspiracy he would have enjoyed. The Supreme Court held that if the conspiracy claimed of had resulted in rates becoming unreasonably high and discriminatory, the full amount of damages whatever their nature, would have been recovered, but from whom legal rates had been exacted with the additional remedy under the Anti-Trust Act. The court further held that furthermore the damages complained of were too speculative and conjectural to be made certain with such proof as the law demands. Keogh v. Chicago & N. W. Ry. Co., 43 Sup. Ct. 47, 49.

(tt) Under Section 7 of the Federal Anti-Trust Act, as under Section 8 of the Interstate Commerce Act to recover damages, it must be shown that as a result of the defendant's acts, the damages in some amount susceptible of expression in figures resulted. These damages must be proved by facts from which their existence is logically and legally inferable. They cannot be supplied by conjecture. In this respect this case is different from those instances where shipper recovers from the carrier the amount by which its exaction exceeded the legal rate. Keogh v. Chicago & N. W. Ry. Co., 43 Sup. Ct. 47, 50.

(uu) Interference with operation of brick factory, which in the ordinary course of business shipped brick out of state. HELD: Not to constitute restraint of trade or commerce among the several states," within Sherman Anti-Trust Act, §§ 1, 4 (Comp. St. §§ 8820, 8823), declaring combinations or conspiracies in restraint of such trade illegal, and giving the federal courts jurisdiction to prevent violations of the act, since the production of goods destined for shipment out of the state does not constitute interstate commerce, and interference with such production does not constitute a restraint of interstate commerce, where purely local in character and confined to a single local industry, so that the effect on interstate commerce is not immediate and applicable. Danville Local Union No. 115 of United Brick and Clay Workers of America v. Danville Brick Co., 283 Fed. 909.

(vv) Persons purposely engaging in a conspiracy which necessarily and directly operates to restrain interstate commerce, which the Anti-Trust Act is designed to prevent, are in legal contemplation chargeable with intending that result. United Leather Workers' International Union v. Herkert & Meisel Trunk Co., 284 Fed. 446.

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Lease of Valley Terminal Ry., 65 I. C. C. 105, 109; United Leather Workers' International Union v. Herkert & Meisel Trunk Co., 284 Fed. 446; Danville Local Union No. 115 of United Brick and Clay Workers of America v. Danville Brick Co., 283 Fed. 909; Securities Application of P. & W. V. Ry., 70 I. C. C. 688; Keogh v. Chicago & N. W. Ry. Co., et al 271 Fed. 444; State v. Arkansas Lumber Co. (Mo. 1914) 169 S. W. 145, 171.

ANY-QUANTITY RATES

I. REASONABLENESS AND APPLICATION.

CASES 1887-1908

(a) Commission instituted an investigation as to the rates on cotton, the complaint arising out of different modes of preparing that article for transportation. Cotton is transported by defendants and carriers generally at the same rate per hundred pounds, whether shipments are made by the carload or in less quantities. The usual shipment weighs about 25,000 pounds, when the common method of square bale compression is used, though considerable greater weight may be loaded in the ordinary car. The round bale process permits the shipment of 45,000 pounds or more per car, and complainant sought a ruling which would in effect require one rate on cotton as ordinarily loaded and a lower rate based upon a carload minimum of 45,000 pounds or more. The reasonableness of the defendants' rates as applied to all cotton is not questioned, and the sole object of this proceeding is a carload differential based upon a high carload minimum, which could not be complied with by shippers using the square hole process without considerable difficulty and greater expense. The cotton grower would benefit by a general reduction of cotton rates, but no advantage would result to either the cotton grower or the middleman from such a differential, and complainants' proposals would not advance the interests of the public. HELD: While carriers may lawfully establish carload and less carload rates on cotton, with a reasonable difference between the two rates and a reasonable carload minimum securing to shippers generally the lower carload rates, it does not follow that they are bound to do so, much less that they can be required to establish a differential based upon an unusual carload minimum. Defendants' refusal to grant lower rates on cotton in carloads of 45,000 pounds or more is not a violation of the statute. Planters' Compress Co. v. C., C., C. & St. L. Ry., 11 I. C. C. 382.

(b) Cotton is transported by defendants and carriers generally at the same rate per hundred pounds, whether shipments are made by the carload or in less quantities. The usual shipment weighs about 25,000 pounds, when the common method of square-bale compression is used, though considerably greater weight may be loaded in the ordinary car. The round-bale process permits the shipment of 45,000 pounds or more per car, and complainant seeks a ruling which would in effect require one rate on cotton as ordinarily loaded and a lower rate based upon a carload minimum of 45,000 pounds or more. The reasonableness of the defendants' rates as applied to all cotton is not questioned, and the sole object of this proceeding is a carload differential based upon a high carload minimum, which could not be complied with by shippers using the square-bale process without considerable difficulty and greater expense. The cotton grower would benefit by a general reduction of cotton rates, but no advantage would result to either the cotton grower or the middleman from such a differential, and complainants' proposal would not advance the interests of the public. After considering all the conditions and circumstances, including the effect of the proposed differential upon carriers from producing territory as well as the defendants, HELD: 1. No classification can be so minute as to conform to the differing varieties and conditions of traffic, and to separate different grades or densities of the same article into different classes with varying rates, even if it could be accomplished, would go far to defeat the real purpose of classification. 2. If the rate on an article is reasonable to those who ship the great bulk of that article in the form in which it is commonly prepared for transportation, that rate does not become unreasonable to the shipper of a small quantity of the same article merely because he chooses to prepare his shipments in a form which affords the carrier a greater profit per hundred pounds, particularly when the preparation of that article in the more profitable form would impose some degree of hardship upon a large majority of shippers because of its greater expense or for other reasons. 3. While carriers may lawfully establish carload and less than carload rates on cotton, with a reasonable difference between the two rates and a reasonable carload minimum securing to shippers generally the lower carload rates, it does not follow that they are bound to do so, much less that they can be required to establish a differential based upon an unusual carload minimum. 4. Defendants' refusal to grant lower rates on cotton in carloads of 45,000 pounds or more is not a violation

of the regulatory statute. Planters' Compress Co. v. C., C., C. & St. L. R. Co., 11 I. C. C. 382.

(c) The fact that a carload rating has been established on cotton-piece goods from the East to Pacific Coast points because of water competition, and the fact that duck and denims have been given carload rates to Salt Lake City and Denver to encourage manufacturing industries at those points, while elsewhere throughout the country the rate on cotton-piece goods is the same for any quantity, do not indicate that the action of defendants in denying a carload rating on tickings, drills and sheetings to Denver is unlawful. Kindel v. Boston & A. R. Co. et al., 11 I. C. C. 495.

(d) The application by defendants of uniform rates on cotton in any quantity, and their refusal to conceed lower rates based upon car loadings, was not in violation of the regulating statute. Planters' Compress Co. v. Missouri, K. & T. R. Co., 11 I. C. C. 606.

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(e) One of the benefits, if not one of the objects, of an 'any-quantity rate" is that it leaves the carrier with some freedom in the use of its equipment. Such a tariff gives the shipper no right to demand a car of a given size. Falls & Co. v. C., R. I. & P. Ry. Co., 15 I. C. C. 269, 272.

(f) The any-quantity rate rests upon sound public policy. It enables the small shipper to compete on fairly equal terms with his powerful competitor, thereby counteracting in a measure the prevalent tendency toward monopoly. While the Commission has consistently sustained the legality of a differential between carload and less-than-carload rates upon the ground that the difference in the cost of service justifies a reasonable difference in charge, it is highly significant that no order has ever been issued requiring that an any-quantity basis be superseded. Commercial Club of Omaha v. B. & O. R. R. Co., 19 I. C. C. 397, 401.

(g) When a carrier instead of providing a carload and less-than-carload rate provides only an any-quantity rate, the presumption is that it is higher than a carload rate and lower than a less-than-carload rate would be. Mutual Rice Trade & Devel. Assn., Houston v. I. & G. R. R., 23 I. C. C. 219, 224.

(h) A through carload rate should not be based on an any-quantity rate. Mutual Rice Trade & Development Assn. v. I. & G. N. R. R. Co., 23 I. C. C. 219, 224.

(i) There is no necessity for the establishment of a carload rate if the any-quantity rate in effect is a reasonable one for the transportation of the commodity in carloads. Schmidt-Peters v. A., T. & S. F. R. R., 28 I. C. C. 376, 378.

(j) The unit of transportation is one for the carriers to decide as long as they publish reasonable any-quantity rates, and they will not ordinarily be required to apply different rates to carloads than to less than carloads, especially if to do so would tend to increase the prevailing rates for less than carloads. Stuarts Draft Co. v. S. Ry. Co., 31 I. C. C. 623, 631.

(k) The fact that carloads are offered for shipment does not prove the unreasonableness of any-quantity rates, for there are a number of commodities, such as cotton piece goods and boots and shoes, which move under any-quantity rates in carload quantities. Wyeth Hdw. & Mfg. Co. v. A., T. & S. F. Ry., 39 I. C. C. 697, 700.

(l) The application of any-quantity rates on traffic moving by freight is proper in the absence of a showing that the public could not be adequately served without carload rates. The same rule applies to shipments by express. Kimberly Clark Co. v. American Express Co., 45 I. C. C. 7.

(m) An occasional carlot movement of a commodity under an any-quantity rating does not of itself demonstrate the unreasonableness of the any-quantity basis. Jonas & Naumburg, Inc., v. Director General, 69 I. C. C. 29, 30.

(n) Rates on cotton uncompressed, any quantity, found not unreasonable or unduly prejudicial as compared with rates on cotton compressed in transit at expense of carrier. More cars are required to handle uncompressed than compressed cotton, and service rendered on the former cost more than on the latter. Reduction of rates on uncompressed cotton to level of those on cotton compressed in transit would result in increased movement of the uncompressed commodity, requiring additional cars and resulting in congestion at the port during the cotton-shipping season. Galveston Commercial

Asso. v. A. & V. Ry. Co., 77 I. C. C. 388, 407, 410.

(o) Fact that cotton is produced at small centers and moves in relatively light volume constitutes principal justification for any-quantity rates maintained throughout Southwest. American Round Bale Press Co. v. A., T. & S. F. Ry., 32 I. C. C., 458, 464. Kempner v. Director General, as Agent, 80 I. C. C. 347, 349.

(p) N. C. & St. L., and L. & N., and T. C., proposed new individual and joint regulations and practices relating to any quantity transit at Nashville, Tenn., and other points in the southeast on interstate shipment of phosphated flour. Phosphated flour is composed of plain flour and not more than one half of one per cent phosphate. Respondents provided for any quantity transit on plain or self rising flour. The transit is limited to the plain flour content of the shipment, the foreign substances not being accorded transit. Respondent proposed that on every 100 pounds of self rising or phosphated flour outbound, transit privileges will be applied on 95 pounds; and the rate from Nashville proper, to destination, in effect on date of shipment will be assessed on five pounds. HELD, the rule authorizing full transit on flour containing not more than one half of 1 per cent of phosphate will be reasonable for application on interstate shipments of phosphated flour, any quantity, transit at Nashville, Tenn., and other points on respondent lines. Transit on phosphated flour, 81 I. C. C. 738.

ALL OTHER CITATIONS

Falls & Co. v. C., R. I. & P. Ry. Co., 15 I. C. C. 269, 272; Duncan & Co. v. N., C. & St. L. Ry. Co., 16 I. C. C. 590, 595; Bentley & Olmsted Co. v. L. C. & M. S. Ry. Co., 17 I. C. C. 56; Greater Des Moines Committee v. C., R. I. & P. Ry. Co., 17 I. C. C. 54; Schmidt & Sons v. M. C. R. R. Co., 19 I. C. C. 535, 538; Commercial Club of Omaha v. B. & O. R. R. Co., 19 I. C. C. 397, 401; Weld & Co. v. Ocean S. S. Co., 21 I. C. C. 581; Jouannet v. A. C. L. R. R. Co., 23 I. C. C. 392; Mutual Rice Trade & Devel. Assn., Houston, v. I. & G. R. R., 23 I. C. C. 219, 224; In Re Transportation of Wool, Hides and Pelts, 23 I. C. C. 151, 163; Tone Bros. v. I. C. R. R. Co., 26 I. C. C. 279; Schmidt-Peters v. A., T. & S. F. R. R., 28 I. C. C. 376, 378; Boston Chamber of Commerce v. A., T. & S. F. Ry. Co., 28 I. C. C. 230; John Taylor Dry Goods Co. v. M. P. Ry. Co., 28 I. C. C. 205; Taylor Dry Goods Co. v. M. P. Ry. Co., 28 I. C. C. 223, 224; Massachusetts-Maine Wool Rates, 28 I. C. C. 396; Wichita Business Asso. v. A., T. & S. F. Ry. Co. 30 I. C. C. 45, 52; Minimum Weight on Fresh Meats and Other Commodities, 30 I. C. C. 349; Salt Lake Mattress & Mfg. Co. v. A., T. & S. F. Ry. Co., 32 I. C. C. 417, 426; Stuart's Draft Milling Co. v. S. Ry. Co., 31 I. C. C. 623, 631, 632; Barnhardt Mfg. Co. v. S. Ry. Co., Unrep. Op. A-698; Bale Press Co. v. A., T. & S. F. Ry. Co., 32 I. C. C. 458, 463, 464, 465, 467; Lindsay & Co. v. Northern Exp. Co., 33 I. C. C. 394, 397; Trap or Ferry Car Service Charges, 34 I. C. C. 516, 524; Sodeman Heat & Power Co. v. I. C. R. R. Co., Unrep. Op. 1971; National Lock Co. v. C., N. & G. Ry. Co., Unrep. Op. 2007; 1915 Western Rate Advance Case, 35 I. C. C. 497; Lookout Refining Co. v. L. & N. R. R. Co., 36 I. C. C. 667, 668; Chicago Wool Co. v. C., M. & St. P. Ry., 40 I. C. C. 101; Burson Knitting Co. v. C., I. & S. R. R. Co., 39 I. C. C. 494, 496; Interstate Packing Co. v. C. M. & St. P. Ry. Co., 41 I. C. C. 396, 399; Nashville Flour Transit Rules, 41 I. C. C. 483; Coates Bros. v. C., B. & Q. R. R. Co., 41 I. C. C. 681; Montague Mailing Machinery Co v I. C. R. R. 42 I. C. C. 357, 359; Burson Knitting Co. v. C., M. & G. Ry., 42 I. C. C. 739; Fruits from Florida, 43 I. C. C. 595, 598; Fern Glen Distilling Co. v. St. L. & S. F. R. R., 45 I. C. C. 101; Smith & Sons Carpet Co. v. B. & A. R. R., 45 I. C. C. 103; Hopkins v. Ocean S. S. Co. of Savannah, 45 I. C. C. 568; Louisiana Cotton, 46 I. C. C. 451, 461; Williams Co. v. H. & N. Y. T. Co., 48 I. C. C. 269; New England Dry Goods, 49 I. C. C. 147; Friedman Mfg. Co. v. W. P. R. R., 51 I. C. C. 225; Smith Cotton Product Co. v. L. & N. R. R., 51 I. C. C. 311; Reliance Mfg. Co. v. I. C. R. R., 51 I. C. C. 607, 611; Kansas Car-Lot Egg Shippers' Asso. v. B. & O. R. R. Co., 53 I. C. C. 59, 63, 65; Western Stoneware Co. v. A., T. & S. F. Ry. Co., 53 I. C. C. 564; Merchants' Freight Bureau of Little Rock, Ark., v. Atlantic Coast Line R. R., 55 I. C. C. 119; Aetna Explosives Co. v. Director General, 53 I. C. C. 375; Aetna Explosives Company v. Wabash R. R., 53 I. C. C. 749; R. J. Reynolds Tobacco Co. v. Penn. Ry., 55 I. C. C. 33; Mohr & Sons v. N. E. S. Ry., 55 I. C. C. 265; Cannon Manufacturing Co. v. Southern Ry., 56 I. C. C. 128;

Brunswick-Balke-Collender v. C. G. W., 56 I. C. C. 340; Goodyear Tire & Rubber Co. v. A., C. & Y. Co., 57 I. C. C. 206; Dr. Kilmer & Co., Inc., v. Director General, 57 I. C. C. 453; Waukesha Pure Food Company v. Director General, 58 I. C. C. 49; Du Pont de Nemours & Co. v. Director General, as Agent, 73 I. C. C. 129, 132; R. H. Foerderer, Inc., v. Pennsylvania R. R., 74 I. C. C. 527; Philip Bernard Co. v. Director General, 74 I. C. C. 557; Kissel Motor Car Co. v. G. T. Ry. Co., 74 I. C. C. 47; G. J. Heimerichs Leaf Tobacco Company v. C., L. & N. R. Co., 81 I. C. C. 184; Galveston Commercial Asso. v. A. & V. Ry. Co., 77 I. C. C. 388, 393, 397, 407, 410, 411; Kempner v. Director General, as Agent, 80 I. C. C. 347, 349; Sanford v. P. R. R. Co., 81 I. C. C. 730; Transit on Phosphated Flour, 81 I. C. C. 738; Hamilton Carhartt Cotton Mills v. A. & V. R. Co., 83 I. C. C. 212; Pyrene Mfg. Co. v. Director General, 57 I. C. C. 143; Ayres, Bridges & Co. v. Director General, as Agent, 58 I. C. C. 748; Barrett & Zimmerman v. Director General, 62 I. C. C. 629; Speir & McKay v. Director General, 61 I. C. C. 736; Globe Soap Co. v. Director General, 62 I. C. C. 307, 310; Interstate Crushers Asso. v. Director General, 61 I. C. C. 1, 6; Rolling Fork Oil Co. v. Director General, as Agent, 61 I. C. C. 627; Proctor & Gamble Distributing Co. v. A. C. Ry., 61 I. C. C. 700; Woolen Yarn from Skowhegan to Boston, 64 I. C. C. 261; Hipolite Co. v. A. C. & Y. Ry. Co., 66 I. C. C. 666; Aetna Explosives Co. v. West Shore Railroad Co., 68 I. C. C. 264; Jonas & Naumburg, Inc., v. Dierctor General, 69 I. C. C. 29, 30; Cotton and Cotton Linters from Mississippi Valley Points, 69 I. C. C. 318; Joseph Bancroft & Sons Co. v. N. Y., H. & H. R. R., 69 I. C. C. 681; Weatherford Crump & Co. v. A. & S. Ry., 73 I. C. C. 315; Fairmont Creamery Co. v. C. B. & Q. R. R. Co., 68 I. C. C. 319; Traffic Bureau of Nashville v. L. & N. R. R. Co., 68 I. C. C. 623; Natchez Chamber of Commerce v. St. L. I. M. & S. Ry. Co., 69 I. C. C. 666; Du Pont de Nemours & Co. v. Director General, as Agent, 73 I. C. C. 129, 132; R. H. Foerderer, Inc., v. Pennsylvania R. R., 74 I. C. C. 527; Phillip Bernard Co. v. Director General, 74 I. C. C. 557; Maine Spinning Co. v. Director General, as Agent, 78 I. C. C. 279; Sanford v. P. R. R. Co., 81 I. C. C. 730; Mileage Commodity Rates on Eggs, 83 I. C. C. 1; Carhartt Cotton Mills v. A. & V. Ry. Co. 83 I. C. C. 212; Helmerichs Tobacco Co. v. E. St. L. C. Ry. Co. 83 I. C. C. 579; Graniteville Mfg. Co. v. Director General 87 I. C. C. 541; St. Louis Merchants Exchange v. A. & R. R. R. 87 I. C. C. 548; Classification exception on empty egg cases 88 I. C. C. 376; Japan Cotton Trading Co. v. Director General 88 I. C. C. 407; Diamond Match Co. v. Director General, 88 I. C. C. 435; Locke & Company v. Director General, 88 I. C. C. 487; Mississippi Railroad Commission v. A. & V. Ry. 89 I. C. C. 48.

APPEAL

See Courts II; Interstate Commerce Commission VII.

APPLICATION OF RATES

See Absorption of Charges I; Accounting II, §5; Basing Points and Lines I; Bill of Lading III; Class Rates I; Classification §3½, V; Commodities Clause; Commodity Rates I, II; Differentials II; Legal Rates; Long and Short Hauls III; Minimums I; Proportional Rates I; Released Rates II; Through Routes and Joint Rates §18.

ASSIGNMENT

See Loss and Damage §5¾.

ASSOCIATION

CASES 1887-1908

(a) HELD: That the persons composing the Vermont State Grange of the Patrons of Husbandry had such an interest that it was proper that they, as an association, should raise the question as to the justice of the high rates complained of by them, and that the proceeding was maintainable upon their petition. Boston & A. R. R. Co. v. Boston & L. R. R. Co., 1 I. C. R. 571.

(b) A fruit and produce exchange is a mercantile society, such as is described in the Act to Regulate Commerce, § 13, and as such has the right to maintain a proceeding to determine the reasonableness of rates to that place. Boston Fruit & P. Exchange v. New York & N. E. R. Co. (Com.), 3 I. C. R. 493.

(c) The complaining Milk Producers' Association, whether representing its own members, or specially authorized to represent other shippers, or assuming in addition to represent shippers engaged in the same industry on some of the de-

fendant lines, was entitled to bring and maintain this proceeding, affecting rates on milk supplied for a common market, against all the defendants engaged in carrying for that market. A defendant carrier is not entitled to have a complainant dismissed as to it "because of the absence of direct damage to the complainant," and it is the duty of the Commission, under express direction in the act, to "execute and enforce" the provisions of the statute. Milk Producers' Protective Asso. v. Delaware, L. & W. R. Co., 7 I. C. C. 92.

(d) A milk producers' association, whether representing its own members or specially authorized to represent other shippers, or assuming in addition to represent shippers engaged in the same industry may bring and maintain a proceeding before the Interstate Commerce Commission affecting rates on milk supplied for a common market, against all engaged in carrying for that market. Milk Producers' Protective Asso. v. Delaware, L. & W. R. R. Co., 7 I. C. C. 92.

(e) A corporation whose object is to promote the marketing of live stock at Chicago in the interest of its members may, under the Act to regulate Commerce, §13, maintain a proceeding to correct an unreasonable freight rate on live stock shipped to Chicago, as its members, for whose general benefit and protection it was formed, have a vital interest in such a proceeding. Cattle Raisers' Asso. v. Fort Worth & D. C. R. Co., 7 I. C. C. 513.

(f) That the members of a corporation organized to promote the marketing of live stock at a given city are violating the anti-trust law will not prevent the corporation from maintaining a proceeding to correct an unreasonable freight rate on live stock shipped to such city. Cattle Raisers' Asso. v. Fort Worth & D. C. R. Co., 7 I. C. C. 513.

(g) The Chicago Live Stock Exchange, a corporation whose members are persons engaged in the sale of live stock upon commission at Chicago, and the object of which is to promote the interests of its members in the sale of such live stock, may, under section 13 of the Act to Regulate Commerce, maintain a proceeding to correct an unreasonable freight rate upon live stock from various points to Chicago; and this, notwithstanding that certain by-laws and proceedings of the corporation are in violation of that statute of the United States commonly known as the anti-trust law. Cattle Raisers' Association v. Fort Worth & D. C. R. Co., 7 I. C. C. 513.

(ga) Any person or association is entitled to complain before the Commission of failure on the part of carriers to publish and enforce transportation or terminal charges, rules and regulations, and that such failure results from special privileges allowed to shippers on many important lines. American Warehousemen's Asso. v. Illinois Cent. R. Co., 7 I. C. C. 556.

(gb) The Cattle Raisers' Association of Texas asked in its original petition for reparation in behalf of its members, and whatever may be said of the right or status of shippers generally as to reparation for damages resulting from a rate or charge declared by the Commission to be unlawful, in this case the Cattle Raisers' Association of Texas is entitled to show damages to its members and upon such showing it will be the duty of the Commission to order the defendant carriers to make reparation, but in view of the unsettled state of the law in this respect, and in order that all phases of the question may be presented to the court, the members of the association seeking damages should file claim in the nature of an intervening petition showing their membership in the association and payment by them of the charges in question, accompanied by a specification giving as definitely as possible the dates and amounts paid. Cattle Raisers' Asso. v. C., B. & Q. R. Co., 10 I. C. C. 83.

(h) While an association of shippers has no direct interest in a determination of the question as to whether divisions or allowances from published tariff rates, made by defendants to tap lines owned or controlled by other shippers, constitutes departures from the published rates, it has such an indirect interest as entitles it, under the statute, to maintain a proceeding to have such division declared unlawful. Central Yellow Pine Asso. v. Vicksburg, S. & P. R. Co., 10 I. C. C. 193.

(i) An incorporated association whose members are engaged in the purchase, shipment, and sale of live stock has the right, under section thirteen of the Act to Regulate Commerce, to institute and maintain a proceeding to have live stock

rates declared unreasonable, even though the purpose of the organization is to restrain, limit and destroy competition in trade. Chicago Live Stock Exchange v. Chicago G. W. R. Co., 10 I. C. C. 428.

(j) The complainant, an incorporated association, is entitled under section 13 of the Act to Regulate Commerce to bring and maintain a proceeding of this character. Chicago Live Stock Exchange v. C., G. W. R. Co. et al., 10 I. C. C. 428.

(k) The complainants are entitled to bring and maintain a proceeding on behalf of themselves and in the interest of all shippers of the traffic involved, to have an advance in freight rates declared unlawful, notwithstanding their membership in an unlawful trade association, as, in the first place, the complainants constitute but a small portion of the membership of the association, and, in the second place, such a proceeding is not a strictly private or personal suit into which a party complainant must enter with "clean hands," but is a proceeding for the enforcement of a public duty, as well as of an individual or private right. Tift v. Southern R. Co., 10 I. C. C. 548.

IMPORTANT CASES SINCE 1908

(l) A voluntary association cannot by claiming reparation generally in behalf of its members stop the running of the statute of limitations. Michigan Hardwood Mfrs. Assn. v. Transcontinental Freight Bureau, 27 I. C. C. 32.

(m) A voluntary association cannot file a complaint in favor of its members without naming specifically those persons in whose favor the complaint was brought. While other members of the association, or other shippers not members may become parties to the original proceeding, the period of limitation will be reckoned from the date when they appeared as parties to the record. International Agricultural Corporation v. L. & N. R. R. Co., 29 I. C. C. 391, 394.

(n) Contention that members of an association in whose behalf complaint was filed are barred from reparation because complainant took position that it would await decision on merits before offering detailed evidence as to payment and bearing of freight charges by its members. HELD: While ordinarily complainants should present entire cases at time of original hearings, in a case involving numerous shipments by many shippers it is often to the best interest of the commission that parties defer taking testimony on details of damage until main issue has been decided. National Preserves & Fruit Products Asso. v. A. & S. Ry. Co., 74 I. C. C. 179, 183.

(o) The Interstate Commerce Act provides that any association, body politic, or municipal organization, complaining of anything done or omitted to be done by any carrier subject thereto, may apply to the Commission by petition. Act Feb. 19, 903, c. 708, §2, 32 Stat. 848 (Comp. St. 1913, § 8598), provides that in any proceeding for the enforcement of statutes relating to interstate commerce, whether instituted before the Commission or in any Circuit Court, it shall be lawful to include as parties all persons interested or affected, and that investigations, decrees, etc., may be made with reference to and against them. Equity rule 37 (198 Fed. xxviii, 115 C. C. A. xxviii) provides that all persons having an interest in the subject of the action and in obtaining the relief demanded may join as plaintiffs, and that persons having a united interest must be joined on the same side as plaintiffs or defendants. Equity rule 38 (198 Fed. xxix, 115 C. C. A. xxix) provides that when the question is one of common or general interest to many persons, constituting a class so numerous as to make it impracticable to bring them all before the court, one or more may sue or defend for the whole. HELD: That where an order of the Interstate Commerce Commission authorized, and a tariff filed thereunder provided, higher rates to four certain cities than to certain other cities, one of such cities, representing the interest of its citizens, and traffic associations formed for the purpose of representing jobbers and merchants in the three other cities, could maintain a suit to enjoin the enforcement of such order and tariff, as they were within the rule that bills may be filed in the name of unincorporated associations and parties in behalf of others similarly situated, and moreover the equity rules seem to contemplate such a suit for the common benefit of all, where the parties are numerous and have a common or general interest. Merchants' & Manf. Traffic Assn. v. United States, 231 Fed. 292.

(p) Reparation awarded to complainant corporation, organized to render general commercial and traffic services

to its subscribers without profit, in its representative capacity. Detroit Coal Exchange v. Director General, as Agent, 80 I. C. C. 258, 260.

ALL OTHER CITATIONS

Forest City Freight Bureau v. Ann Arbor R. R. Co., 13 I. C. C. 118, 121; California Commercial Assn. v. Wells, Fargo & Co., 14 I. C. C. 422, 425; California Commercial Assn. v. Wells, Fargo & Co., 16 I. C. C. 458, 463; West End Improvement Club v. O. & C. B. Ry. & Bridge Co., 17 I. C. C. 239, 240; Peavey & Co. v. U. P. R. R. Co., 176 Fed. 409, 415; Nashville Grain Exch. v. U. S., 191 Fed. 37, 39; Michigan Hardwood Mfrs. Assn. v. Transcontinental Freight Bureau, 27 I. C. C. 32; Commercial Club of Omaha v. A. & S. Ry. Co., 27 I. C. C. 302; International Agricultural Corporation v. L. & N. R. R. Co., 29 I. C. C. 391, 394; Lake Line Applications, Under Panama Canal Act, 33 I. C. C. 699, 715; Merchants' & Manf. Traffic Assn. v. United States, 231 Fed. 292; National Preservers & Fruit Products Asso. v. A. & S. Ry. Co., 74 I. C. C. 179, 183.

ASSORTING PACKAGES

See Additional Services; Proportional Rates IV.

IMPORTANT CASES SINCE 1908

(a) Services rendered by the defendant in providing a place where consignments of perishable produce can be handled and in assorting into lots the packages marked with the names of the single dealers to whom they are consigned is a thing of value to the shipper for which he may properly be required to pay. Davies v. I. C. R. R. Co., 17 I. C. C. 186, 188.

(b) In Wholesale Fruit & Produce Assn. v. A., T. & S. F. Ry. Co., 14 I. C. C. 410, the Commission held that on consolidated carloads of fruit consigned to Chicago the carriers should remove same from the cars to the station platforms and distribute the fruit in lots to the various owners and might charge one cent per hundred pounds for this service. HELD: Under this order the carrier discharged its obligation by removing the fruit to the platform and assorting the packages in piles for the various owners, and that it was not bound to deliver the same to the owners by checking off the packages as called for. Davies v. I. C. R. R. Co., 17 I. C. C. 186, 188.

(c) Complainants, relying on the decision in Wholesale Fruit & Produce Assn. v. A., T. & S. F. Ry. Co., 14 I. C. C. 410, asked that the order in said case requiring railroads at Chicago to bring packages of fruit and vegetables to the car door for unloading be extended to package freight of all kinds, and further asked that the order with respect to the unloading of fruit and vegetables be applied to St. Paul and Minneapolis. It appeared that at Chicago the fruit and vegetable traffic was very congested; these products being shipped in packages of estimated weight, it was necessary for the carriers to count said packages upon unloading, and that the men stationed to do this could perform the service of carrying the packages to the car door without additional expense to the carrier. At Minneapolis and St. Paul different conditions prevailed. Fruit and vegetables were allowed to be kept in the care for a longer free time than at Chicago and were unloaded at no definite time, but at whatever time the shipper desired. To compel the carriers at those points to bring the packages to the car doors for unloading would impose a hardship on them in compelling them to have men ready at all times to perform such service. At said cities no custom as fixed and definite had grown up for the performance of said service as at Chicago. Dealers in fruit and vegetables at St. Paul and Minneapolis were not in competition with those at Chicago. HELD, the rule applying to Chicago requiring the carrier to assist in unloading fruit and vegetables should not be applied to other package fruit; that on account of different conditions at Minneapolis and St. Paul carriers at those points should not be required to perform such service with respect to fruit and vegetables. Wholesale Fruit and Produce Ass'n v. A. T. & S. F. Ry. Co., 17 I. C. C. 596, 600-602.

ALL OTHER CITATIONS

Wholesale Fruit and Produce Ass'n v. A. T. & S. F. Ry. Co., 14 I. C. C. 410, 420.

ATTORNEY FEES

See Overcharges §6; Procedure Before Commission §9.

CASES 1887-1908

(a) Permitting the recovery of attorneys' fees on recovery against a railroad company for violation of a statute regu-

lating rates does not violate the constitutional provision as to equality. Burlington, Cedar Rapids & R. R. Co. v. Dey, 3 I. C. R. 584.

(b) A provision allowing attorneys' fees on recovery by the plaintiff for the violation by a railroad company of the statutory schedule of rates does not impose a "penalty for exercising the right of defense." Burlington, Cedar Rapids & N. Ry. Co. v. Dey, 3 I. C. R. 584.

(c) Attorneys' fees cannot be allowed for the prosecution of a suit before the Interstate Commerce Commission. Mills v. Lehigh Valley R. Co., 35 Sup. Ct. 888, 892; 238 U. S. 473, 59 L. ed.

(d) The service for which an attorney's fee is to be taxed and collected under the act, in case of the plaintiff's final success in an action to recover from a carrier the damages alleged to have been sustained by a shipper and awarded by the Interstate Commerce Commission by reason of the carrier's violation of the provisions of those statutes, must be deemed to be those incident to the action in which the recovery is had, and not to those before the Commission, in view of the fact that the Commission is not to allow a fee, but only to find the amount of the damages and fix a time for payment, and that if the carrier pays the award within the time named no right to an attorney's fee arises. Mills v. Lehigh Valley R. Co., 35 Sup. Ct. 888, 889, 892; 238 U. S. 473; 59 L. ed 628.

(e) An attorney who had a contract for a contingent fee for recovering damages for the death of a railway employee, which under Rev. St. Mo. 1919, §691, made the company settling the claim after notice of such contract without the consent of the attorney liable to the attorney, cannot enforce his claim against the railway company, where the railway was being operated by the Director General at the time the injury was caused, so that the liability was that of the Director General, and not of the railway company, under Federal Control Act March 21, 1918, §10 (Comp. St. 1918, Comp. St. Ann. Supp. 1919, §3115¾j), and General Order No. 50 of the Director General, the settlement was made by the Director General's check, and the claim agent who made it was in the Director General's employ, though the railway company was included in the release signed by the representative of the deceased employee, and the claim agent signed as attorney for the company a stipulation for dismissal of the suit begun against the company. Wabash Ry. Co. v. Elliott, 43 Sup. Ct., 406.

ALL OTHER CITATIONS

M. P. Ry. Co. v. Harper Bros., 201 Fed 671, 676; M. K. & T. Ry. Co. v. Harris, 34 Sup. Ct. 790, 793; 234 U. S. 58 L. ed. —; M. K. & T. Ry. Co. v. Cade, 34 Sup. Ct. 678; 233 U. S. 642; 58 L. ed. —; Meeker v. Leigh Valley R. Co., 35 Sup. Ct. Rep. 328, 337, 236 U. S. 412, 434; 59 L. ed.; D. & R. G. Ry. Co. v. Baer Bros. Mercantile Co. (C. C. A., 1913), 209 Fed. 577, 581; Bottsford & Barrett v. P. R. R. Co., 29 I. C. C. 469, 472; McDiarmid Co. v. P. R. R. Co. Unrep. Op. 1908; A. T. & S. F. R. Co. v. Vosburg, 35 Sup. Ct., 675; 238 U. S. 56, 59 L. Ed.; Peller v. P. R. R. Co., 40 I. C. C. 84, 86; Missouri Pac. Ry. Co. v. C. E. Ferguson Sawmill Co., 235 Fed. 474, 475, 482; P. R. Co. v. Minds, 244 Fed. 53; Minnesota & O. Powder Co. v. B. F. & I. F. Ry., 47 I. C. C. 208, 209; A. C. L. R. R. Co. v. Riverside Mills, 219 U. S. 186, 208, 31 Sup. Ct. 164, 55 L. ed. 167; Chicago, Burlington & Quincy R. R. Co. v. Feintuch, 191 Fed. 482, 489; Louisville & Nashville R. R. Co. v. Dickerson, 191 Fed. 705, 712; Riverside Mills v. A. C. L. R. R. Co., 168 Fed. 990, 992; Washer Grain Co. v. M. P. Ry. Co., 15 I. C. C. 147, 152, 154; Kansas City S. Ry. Co. v. Tonn. (Ark. 1912), 143 S. W. 577, 581; Blair & Jackson v. Wells, Fargo Co. (Ia. 1912), 135 N. W. 615, 620.

AUCTION COMPANY

IMPORTANT CASES SINCE 1908

(a) The complainant attacked the action of the Penn. R. R. in granting to the Union Fruit Auction Co. the sole right to auction off consignments of fruit in the carrier's produce yards at Pittsburgh. One Fanning, the principal spirit of the auction company, was also a large buyer at the auctions. The institution was of great service to shippers, receivers and purchasers of fruit, as well as to the carrier. HELD: (1) That employment by the company of one company only as its auction agency was not illegal; (2) that the mere fact that certain stockholders of the auction company were receivers of fruit did not necessarily constitute undue discrimination against other receivers; and (3) that no undue discrimination or preference had

been shown; but (4) that the carrier should require the auction company to publish the rules and rates of commission governing auction sales. Complaint dismissed. Andrews Bros. Co. v. Penn. R. R., 38 I. C. C. 165.

(b) That a carrier may contract with one agency to the exclusion of others for the performance of a function which is not transportation is established; and such arrangement does not, of itself, suffice to establish a charge of undue or unreasonable preference or advantage; nor does the mere fact that certain stockholders in the Union Fruit Auction Company are receivers of fruit necessarily constitute undue discrimination against receivers of fruit not interested in the auction. Andrews Bros. Co. v. P. R. R. Co., 38 I. C. C. 165, 167.

ALL OTHER CITATIONS

Southwestern Produce Distributors v. Wabash R. R. Co., 20 I. C. C. 458, 460, 462.

AVERAGE DEMURRAGE PLAN

See Demurrage §13.

BACK HAUL

See Evidence §5½; Facilities and Privileges §7.

BAD ORDER CARS

See Cars and Car Supply §7⅛.

BAGGAGE CAR SERVICE

IMPORTANT CASES SINCE 1908

(a) Refusal to accord baggage-car service to shipments of condensed skimmed milk from Richmond, Petersburg, and Suffolk, Va., to Wilson and Rocky Mount, N. C., or to receive at such originating points mixed shipments of milk, cream, and condensed skimmed milk from connecting lines for further transportation to above destinations in baggage cars, found not unreasonable or unduly prejudicial. Present means of transportation accorded by express are not shown inadequate, and carrier should not be compelled to extend milk baggage-car service to other commodities simply because they are somewhat similar in character where same compelling reasons do not exist. Chapin-Sacks Corp. v. A. C. L. R. R. Co., 80 I. C. C. 255.

(b) Milk traffic in baggage cars is not an incident to passenger transportation. Chapin-Sacks Corp. v. A. C. L. R. R. Co., 80 I. C. C. 255, 256.

(c) Maintenance of baggage-car service on milk, cream, and buttermilk is justified on grounds that they are used in practically every home as daily items of food, and from their perishable nature require prompt transportation. This service was not intended to serve private concerns at commercial centers, but in interest of public to provide small communities which are without adequate service by express with expeditious service necessary to movement of cream and milk to the cities. Chapin-Sacks Corp. v. A. C. L. R. R. Co., 80 I. C. C., 255, 256, 257.

BAGGAGE TRANSFER

I. CONTROL AND REGULATION.
- §1. Jurisdiction of Commission.

II. EXCLUSIVE CONTRACT TO SOLICIT.
- §2. In general.

CROSS REFERENCES

See Passenger Fares and Facilities §10.

I. CONTROL AND REGULATION.

§1. Jurisdiction of Commission.

IMPORTANT CASES SINCE 1908

(a) The Commission has no jurisdiction over local baggage transfer agencies. Cosby v. Richmond Transfer Co., 23 I. C. C. 72, 74.

(b) If a carrier undertook to make delivery of passenger baggage, and to issue baggage checks at residences for the rate of fare stated in its tariffs, this would be a service over which the Commission would have jurisdiction, and which must in all regards become subject to the mandates and prohibitions of the Act, even though the service in whole or in part was not performed by the carrier itself but was rendered by some agency under contract or otherwise. But in merely granting the exclusive privilege of soliciting on its trains, and issuing baggage checks at residences, to one baggage transfer company, a carrier does not undertake an additional service to the public. The carrier's duty to the public as to baggage begins and ends in the baggage room provided by it. Baggage transfer is prior or subsequent to the transportation service, as to which the carrier owes a duty to the public, and is therefore outside the jurisdiction of the Commission. Cosby v. Richmond Transfer Co., 23 I. C. C. 72, 75.

(c) The Commission has no jurisdiction over alleged unreasonable charges of a transfer company where the railroad carrier does not undertake to make delivery of passenger baggage at residences for a rate of fare stated in a tariff. Cosby v. Richmond Transfer Co., 23 I. C. C. 72, 74.

(d) The Commission has no jurisdiction to order a railroad to give a local baggage transfer company an opportunity to bid against another one for the privilege of soliciting on trains, any more than it would have power to compel a railroad to place its fruit venders' privilege up at auction, for neither one is transportation under the Act, and over neither one has the Commission jurisdiction. Cosby v. Richmond Transfer Co., 23 I. C. C. 72, 77.

(e) The soliciting of baggage on trains by a transfer company is no part of the transportation service. Cosby v. Richmond Transfer Co., 23 I. C. C. 72, 74.

(f) Unless the railroad carrier undertakes to make delivery at residences a transfer company is the agent of the passenger in transporting the latter's baggage. Cosby v. Richmond Transfer Co., 23 I. C. C. 72, 76.

II. EXCLUSIVE CONTRACT TO SOLICIT.

§2. In General.

IMPORTANT CASES SINCE 1908

(a) Although defendant carriers give to one transfer company, which is controlled by their officers, the exclusive privilege of soliciting baggage transfer on their trains without any monetary consideration, there is no undue discrimination against a competitive company which is willing to pay for such privilege, because defendants owe no duty to provide such service either under statute, common law or custom, and have performed what is required of them when they accept baggage at their depot, transport it and make delivery at destination upon their own terminals. Cosby v. Richmond Transfer Co., 23 I. C. C. 72.

BARGE RATES

IMPORTANT CASES SINCE 1908

(a) Barge rates are available only to shippers who contract for large quantities of coal. Coal to Rhode Island Points, 37 I. C. C. 650, 651.

ALL OTHER CITATIONS

Corona Coal Co. v. Secretary of War, 69 I. C. C. 389, 391.

BASING POINTS AND LINES

I. APPLICATION.
  §1. In general.
II. ESTABLISHMENT.
  §2. In general.
III. REASONABLENESS AND DISCRIMINATION.
  §3. In general.

CROSS REFERENCES

See Breaking of Rates; Classification II; Evidence §5; Passenger Fares and Facilities §3; Percentage Rates; Reasonableness of Rates §2 (1); Routing and Misrouting §4; Thread Rates.

I. APPLICATION.

See Advanced Rates §7 (8); Application of Rates.

§1. In General.

CASES 1887-1908

(a) Combination rates always afford an advantage to the basing point, and entail some disadvantage upon the town to which the combined rates are applied; and when traffic is brought to the two places to be distributed in common territory, the preferences and prejudices resulting from such rates must generally be held unreasonable and undue. Gustin v. Atchison, T. & S. F. R. Co., 8 I. C. C. 277.

(b) In a territory where the basing point system has been in operation since the advent of railroads, rates to a complaining point made by a combination of the through rate to the nearest trade center and the local beyond need not, under the act, be reduced to the basis of every neighboring point of like distance when the other points in the group whose rates are sought have the advantage of water or other competition. Commercial and Industrial Asso. of Union Springs, Ala., v. L. & N. R. R., 12 I. C. C. 372.

(c) In a territory under the basing-point system, rates to a complaining point made by a combination of the through rate to the nearest trade center and the local beyond need not, under the construction of the fourth section of the act by the Supreme Court, be reduced to the basis of every neighboring point of like distance, when the other points have the advantage of water or other competition. Commercial and Industrial

Ass'n of Union Springs v. L. & N. R. R. Co., 12 I. C. C. 372.

(d) In a territory where the basing point system has been in operation since the advent of railroads, rates to a complaining point made by a combination of the through rate to the nearest trade center and the local beyond need not, under the construction of the fourth section of the act by the Supreme Court, be reduced to the basis of every neighboring point of like distance when the other points in the group whose rates are sought have the advantage of water or other competition. C. & I. Asso. of Union Springs v. L. & N. R. R. Co., 12 I. C. C. 372.

IMPORTANT CASES SINCE 1908

(e) The basing point system of rates under which rates to the basing points, generally commercial centers, were lower than to intermediate points on the same lines, was condemned by the fourth section of the original Act. As this section under the construction given it by the Supreme Court of the United States, did not prove efficacious in correcting the evils sought to be corrected by it, the Congress, under the 1910 amendment, laid an absolute inhibition upon a departure from the long-and-short-haul rule, subject only to the exception that this Commission might in special cases authorize a departure from this rule. Green v. A. & V. Ry. Co., 43 I. C. C. 662, 677.

(f) The appearance in a tariff of arbitraries to be allowed connecting carriers beyond a certain gateway does not define the route to be used in reaching that gateway. Lumber from the Southeast, 50 I. C. C. 191, 193.

(g) Where practicable establishment of in-and-out rates is desirable in lieu of transit arrangements, every point can not be made a rate-breaking point. Cairo Board of Trade v. A. T. & S. F. Ry. Co., 61 I. C. C. 219, 222.

(h) The general, although not universal, practice throughout the southeast appears to be to make rates from local points on independent short lines by adding an arbitrary to the rate from the junction point. Swift Lumber Co. v. F. & G. R. R. Co., 61 I. C. C. 485, 487.

(i) As a general rule rates on grain through primary markets break into definite inbound and outbound components, and commission has expressed approval of this method of constructing them. Routing on Grain and Grain Products, 81 I. C. C. 725, 728.

ALL OTHER CITATIONS

Scott Paper Co. v. P. R. R. Co., 26 I. C. C. 601, 603; Davis Bros. Lumber Co., Ltd., v. C. R. I. & P. Ry. Co., 26 I. C. C. 257, 259; State of Kansas v. A. T. & S. F. Ry. Co., 27 I. C. C. 673, 689; Commercial Club of Duluth v. B. & O. R. R. Co., 27 I. C. C. 639, 640, 655; Commercial Club of Omaha v. A. & S. R. Ry. Co., 27 I. C. C. 302; Wisconsin Steel Co. v. P. & L. E. R. R. Co., 27 I. C. C. 152, 157; Board of Trade of Carrollton, Ga., v. C. of Ga. Ry. Co., 28 I. C. C. 154, 165; Mississippi River Case, 28 I. C. C. 47, 48, 50; Interior Iowa Cities Case, 28 I. C. C. 64, 75; Mayor and Council of Vienna v. G. S. & F. Ry. Co., 28 I. C. C. 173, 175; Lagrange Chamber of Commerce v. A. & W. P. R. R. Co., 28 I. C. C., 178, 180; Iowa State Board of Railroad Commissioners v. A. E. R. R. Co., 28 I. C. C. 193, 194; Taylor Dry Goods Co. v. M. P. Ry. Co., 28 I. C. C. 205, 213; Columbia Chamber of Commerce v. S. Ry. Co., 28 I. C. C. 339, 340, 342; Elgin Commercial Club v. B. & M. R. R., 28 I. C. C. 380, 381; Town of Pelham v. A. C. L. R. R. Co., 28 I. C. C. 433, 434; Springfield Commercial Ass'n. v. P. R. R., 28 I. C. C. 511, 514; Grain Rates in C. F. A. Territory, 28 I. C. C. 549, 555, 556; Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 571; Wichita Board of Trade v. A. & S. Ry. Co., 29 I. C. C. 376, 377; Atlanta Freight Bureau v. N. C. & St. L. Ry., 29 I. C. C. 476, 481, 490; Rates on Bananas from Gulf Ports, 30 I. C. C. 510, 512; Cheek & Sons v. C. P. Ry. Co., 31 I. C. C. 265, 267, 270; Adleta Paper Co. v. C. & N. W. Co., 31 I. C. C. 347, 348; Five Per Cent Case, 31 I. C. C. 351, 402, 31 I. C. C. Rates on Sugar, 495, 505; Colonial Salt Co. v. C. B. & Q. R. R. Co., 31 I. C. C. 559, 571; Greenbaum Co. v. L. & N. R. R. Co., 31 I. C. C. 699, 704; U. S. v. N. C. & St. L. Ry. Unrep. Op. A-691; Drury Coal Co. v. I. C. A. R. Co. Unrep. Op. A-765; Atha Tool Co. v. N. C. & St. L. Ry., Unrep. Op. A-919; Massie & Pierce Lumber Co. v. N. & W. Ry., 33 I. C. C., 14, 19; Mixed Car Dealers Asso. v. D., L. & W. R. R. Co., 33 I. C. C., 133, 137; Eastern Fruit Growers' Asso. v. B. & O. R. R. Co., 33 I. C. C. 343, 349; Northern Pine Mfrs. Asso. v. C. & N. W. Ry. Co., 33 I. C. C. 360, 361; The Tap Line Case, 34 I. C. C. 116,

118; Ennis Milling Co. v. C., R. I. & P. Ry. Co., 34 I. C. C. 197, 199; Indianapolis Chamber of Commerce v. C., C. C. & St. L. Ry. Co., 34 I. C. C. 267, 268; Goldfield Cases, 34 I. C. C. 360, 364; Second Industrial Railways Case, 34 I. C. C. 596, 604, 607; Small & Co. v. I. C. R. R. Co. Unrep. Op. 2045; Lehigh Portland Cement Co. v. B. & O. S. W. R. R. 35 I. C. C. 14, 17; Rates on Grain Milled in Transit, 35 I. C. C. 27, 29; Excelsior from St. Paul, Minn., 36 I. C. C. 349, 363; Milburn Wagon Co. v. L. S. & M. S. Ry. Co., Unrep. Op. 2192; Northern Colorado Coal Co. v. C. W. & E. Ry. Co., 38 I. C. C. 73, 76; Public Service Comm. of Wash. v. A. & V. Ry. Co., 42 I. C. C. 54, 58, 59; Beaumont Lumber Co. v. St. L. & S. F. R. R. Co., 42 I. C. C. 472, 474; Export Grain from Indiana, 42 I. C. C. 527; Eastern Iron and Steel Case, 43 I. C. C. 5, 9; Hormel & Co. v. G. W. R. R. Co., 43 I. C. C. 23, 28; Southern Rice Growers' Asso. v. T. & N. O. R. R. Co., 43 I. C. C. 90, 94; Big Muddy Coal & Iron Co. v. I. C. R. R. Co., 43 I. C. C. 157, 159; S. P. Co. Ownership of Atlantic S. S. Lines, 43 I. C. C. 168, 175; Coal and Coke from New Mexico Points, 43 I. C. C. 681; Wisconsin Rate Cases, 44 I. C. C. 602, 613; Utah-Idaho Millers and Grain Dealers Asso. v. D. & R. G. R. R., 44 I. C. C. 714, 723; C. F. A. Class Scale Case, 45 I. C. C. 254, 257, 258, 265; Arizona Corp. Comm. v. A. T. & S. F. Ry., 45 I. C. C. 436, 440; Goodner-Malone Co. v. M. O. & G. Ry., 45 I. C. C. 531, 532; Interior Iowa Cases, 46 I. C. C. 39, 43; Western Trunk Lines Iron and Steel, 47 I. C. C. 109, 111; Dimmitt,Caudle-Smith Live Stock Comm. Co. v. C. B. & Q. R. R., 47 I. C. C. 287, 310; National Live Stock Exch. v. C. B. & Q. R. R., 47 I. C. C. 380, 382, 397; Increased Rates, 1920, 58 I. C. C. 220, 253; Grain Rates from Minnesota and Wisconsin, 68 I. C. C. 665, 674; Proportional Rates on Grain and Grain Products, 69 I. C. C. 205; United Light & Rys. Co., v. Director General, as Agent, 69 I. C. C. 414, 418; Grain, Grain Products, and Feeds, 78 I. C. C. 209, 213.

II. ESTABLISHMENT.

§2. In General.

CASES 1887-1908

(a) Carrier need not give the merchants of town on its line the privilege of shipping their goods from the point of purchase to their own locality and from there to the place of sale of the goods, at the same rate as would have been charged from the point of purchase to the point of ultimate delivery. Crews v. Richmond & D. R. Co., 1 I. C. R. 703.

(aa) Taking the though rate to recognized "basing points," and adding thereto that local rate which will give the lowest combination, is not a proper method of determining a rate, as it treats continuous traffic as consisting of two kinds of service. Hamilton v. Chattanooga R. & C. R. Co. (Com.) 482; Perry v. Florida C. & P. R. Co. (Com.), 3 I C. R. 740.

(b) The system of rate making, under which a comparatively few places, arbitrarily selected, are designated competitive points, or basing points, and given preferential rates, while adjacent and less distant points are classed as local and made to pay very much higher rates, is at variance with all the equality provisions of the act, including that which requires all rates to be reasonable and just. Cordele Machine Shop v. L. & N. R. Co., 6 I. C. C. 361, 376.

IMPORTANT CASES SINCE 1908

(c) The line of demarcation between the so-called rate-breakihg points and other points was not always natural or real, but purely artificial and arbitrary. Many grain centers are now rate-breaking points because the carriers have made them so by giving them reshipping rates and not because of special characteristics which do not exist at other points. On the other hand, many centers possessing all the attributes of rate-breaking points have been denied reshipping rates. Buffalo Grain Cases, 46 I. C. C. 570, 582.

(d) Rates should not be erected as a barrier between a consuming point and a source of supply, but should in general be a medium for effecting the movement of traffic. Coal to South Dakota, 47 I. C. C. 750, 754.

(e) And the Commission has said that when distances are relatively great and transfer at rate-breaking points is not attended by unusual costs, the combination basis, using local rates, ordinarily is abnormal and unscientific and often discriminatory. Intermediate Rate Asso. v. Director General, 61 I. C. C. 226, 246.

(f) The Commission has recognized the general desirability of having rates on grain and grain products make and

break on important primary markets. This method of making rates does not afford such markets unreasonable preference nor subject points where transit arrangements apply to undue prejudice. Grain, Grain Products and Feeds, 78 I. C. C. 209, 213.

(g) Where practicable grain rates should break on recognized markets. Grain, Grain Products, and Feed from Chicago, 81 I. C. C., 209. On other hand, the commission has declined to approve increased joint rates on grain, proposed chiefly for purpose of equalizing them with combinations on primary markets, where such increased rates would be unreasonable. Grain, Grain Products, and Feeds, 78 I. C. C., 209; Grain and Grain Products from Minnesota Points, 81 I. C. C. 338. Grain and Grain Products to Texas, 83 I. C. C. 695, 699.

ALL OTHER CITATIONS

Globe Milling Co. v. C., M. & St. P. Ry. Co., 24 I. C. C. 594, 596; Commercial Club of Duluth v. B. & O. R. R. Co., 27 I. C. C. 639, 647, 650, 655, 657; Toledo Produce Exchange v. A. A. R. R. Co., 27 I. C. C. 536, 541; Sioux City Terminal Elevator Co. v. C. M. & St. P. Ry. Co., 27 I. C. C. 457, 463; Topeka Traffic Assn. v. A. & V. Ry. Co., 27 I. C. C. 428, 431; Iowa State Board v. A. E. R. R. Co., 28 I. C. C. 193, 200; Interior Iowa Cities Case, 28 I. C. C. 64, 73; Mississippi River Case, 28 I. C. C. 47, 48; Mayor and Council of Vienna v. G. S. & F. Ry. Co., 28 I. C. C. 173, 174; La Grange Chamber of Commerce v. A. & W. R. R. Co., 28 I. C. C. 178, 182; Columbia Chamber of Commerce v. S. Ry. Co., 28 I. C. C. 339, 344; Arizona Corporation Commission v. A. T. & S. F. Ry. Co., 28 I. C. C. 428, 430; Town of Pelham v. A. C. L. R. R. Co., 28 I C. C. 433, 438; Springfield Commercial Asso. v. P. R. R. Co., 28 I. C. C. 511, 512; Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co., 28 I. C. C., 563, 565; Wichita Board of Trade v. A. & S. Ry. Co., 29 I. C. C. 376, 378; American Coal & Supply Co. v. C. & N. W. Ry. Co., 30 I. C. C. 492, 498; Kalamazoo Tank & Silo Co. v. M. C. R. R. Co., Unrep. Op. A-601; Rates on Sugar, 31 I. C. C. 495, 501; Atha Tool Co. v. N. C. & St. L. Ry. Unrep. Op. A-919; Class Rates from Porter and Other Stations in Indiana, Unrep. Op., A-940; Reshipping Rates on Grain from Omaha, 32 I. C. C. 590, 594; Commodity Rates to Pacific Coast Terminals, 34 I. C. C., 13, 17; Memphis Freight Bureau v. St. L. I. M. & S. Ry. Co., 39 I. C. C. 224, 230; Nashville Lumbermen's Club v. L. & N. R. R. Co., 40 I. C. C. 59, 60, 61; The Missouri River-Nebraska Cases, 40 I. C. C. 201, 260; Galloway Coal Co. v. A. G. S. R. R. Co., 40 I. C. C. 311, 323; Lumber Rates from Helena, Ark., and Other Points, 41 I. C. C. 565, 569; Southeastern Lumber 42 I. C. C. 548, 555, 556; Wisconsin Rate Rates, 44 I. C. C. 602, 607, 621, 637; C. F. A. Class Scale Case, 45 I. C. C. 254, 287; Western Cement Rates, 48 I. C. C. 201, 251; Natchez Chamber of Commerce v. Y. & M. V. R. R., 49 I. C. C. 700, 701; Toledo Produce Exchange v. N. Y. C. R. R. Co., 50 I. C. C. 515, 521; Farrell & Co. v. C. N. W. Ry. Co., 58 I. C. C. 38, 39; United Paperboard Co. v. L. W., 59 I. C. C. 151, 152; Wheeler Lumber Bridge & Supply Co. v. Director General, as Agent, 59 I. C. C. 6, 10; Edwards & Bradford Lumber Co. v. Director Geenral, as Agent, 64 I. C. C. 503, 506; Grain Products and feeds from Western points, Cairo, Ill, and Memphis, Tenn., to Mississippi river crossings, related points and points east thereof, 78 I. C. C. 209, 213; Hannah Distributing Co., 49 I. C. C. 720; Hudson Mule Co., 63 I. C. C., 6, 9; Douglas & Co., 81 I. C. C. 587, 604; Crossett Lumber Co., 43 I. C. C. 500; Texas Grain Dealers Asso. v. A. & S. Ry. Co., 81 I. C. C. 96, 99. Grain and Grain Products, and Feed from Chicago, 81 I. C. C. 209, 210.

III. REASONABLENESS AND DISCRIMINATION.

See Discrimination; Reasonableness of Rates.

§3. In General.

CASES 1887-1908

(a) The rates on freight from interstate points to Kramer, Ga., via the Chattanooga, Rome & Columbus Railroad, are made by taking the through rate to recognized "basing points," and adding thereto that local rate which will give the lowest combination. This method of determining a rate criticised, and, as applied to such traffic to Kramer, operates as an unjust discrimination against that locality. Hamilton & Brown v. Chattanooga, Rome, & Columbus R. Co., 3 I. C. R. 482.

(b) The competitive and basing point system under which railroad companies operating in the Southern Railway & Steamship Association territories elect distributing centers and competing points

reviewed, again condemned and found to result in unreasonable and unlawful rates to points classed as local, and give favored business rivals unreasonable advantage. S. J. Hill & Bro. v. Nashville, C. & St. L. R. R. Co. et al., 6 I. C. C. 343.

(c) The system of rate making, under which a comparatively few places, arbitrarily selected, are designated competitive points, or basing points, and given preferential rates, while adjacent and less distant points are classed as local and made to pay very much higher rates, is at variance with all the equality provisions of the Act to Regulate Commerce, including that which requires all rates to be reasonable and just. In this case it results in rates to Cordele which are unreasonable and unlawful, prejudicial to complainant, and gives its more favored rivals in Macon, Albany and Americus unreasonable advantages. Cordele Machine Shop v. Louisville & N. R. Co. et al., 6 I. C. C. 361.

(d) Upon complaint the defendants violate the act by charging higher freight rates to Dawson, Ga., than to Eufaula, Ala., and Americus and Albany, Ga., towns in the section of the country surrounding Dawson, and after giving full and due consideration to the conditions and circumstances, including situation of the localities, possible transportation via the Chattahoochie River, railway competition and the competition of markets, and the basing point system of rate making as practiced in the south. HELD: That it is undue preference for the Central of Georgia Ry. to charge any higher rates on freight from New York and other eastern cities to Dawson than those which are maintained from the same points .of shipment to Eufaula That it is undue preference for the Central of Georgia Ry. or the Georgia & Alabama Ry. to charge any higher rates on freight from Nashville, Cincinnati and Chattanooga to Dawson than those in effect from the same points to Albany. That it is undue preference for the C. of Ga., or G. & A., to charge any higher rates from New Orleans to Dawson than those which are in force from New Orleans to Americus or Albany. That so long as the southern basing point system of rate making is ahered to, it is undue preference for the C. of Ga., or G. & A. to charge any higher freight rates to Dawson than those which may be in effect to Americus from any of the points of shipment above mentioned. Board of Trade of Dawson, Ga., v. Central of Georgia Ry. Co., 8 I. C. C. 142.

(e) Defendant instructed its agents to disregard the regular published tariff rates to Gallatin, and to charge the lower combination of rates to and from Nashville. It also had this rule of applying combination rates when less than tariff rates in force at other stations on its line. Instructions to that effect were issued in a separate printed circular, and did not appear, nor were they referred to in any way, upon its regular printed tariffs. HELD: That this practice is unlawful, and that, to be in compliance with the act, any rule which operates to alter, modify or change established rates must be fully and clearly set forth upon the published tariffs of rates and charges to be affected thereby. Spillers & Co. v. Louisville & N. R. Co., 8 I. C. C. 364.

(f) The system of rate-making into Southern territory, under which, on traffic from St. Louis, Chicago and other points, the rates to Danville are the sums of locals to and from the Ohio River, and the rates to Lynchburg are made on a much lower joint-rate basis, is utterly unreasonable. No opinion is expressed as to the system as a general scheme, but if the carriers desire to make rates in that manner they must so adjust their charges as not to annihilate the city of Danville. Rates to Danville must be adjusted with relation to rates to competitive localities, like Lynchburg, and the carriers from the point of origin to destination should prorate in these rates if they participate in either Lynchburg or Danville business. Danville v. Southern R. Co., 8 I. C. C. 409.

(g) Complainant attacked rates on lumber from Saginaw, Mich., to points on the New York & Long Branch R. R. as unreasonable and unjustly discriminatory. Rates from Saginaw are made by adding to the rate to New York, N. Y., an arbitrary of 5c per 100 pounds, while the arbitrary is only 2c when the shipping point is Buffalo, N. Y. Water competition between Buffalo and New York affects the rates to New York, but it justifies no wider difference in the rates from Saginaw and Buffalo to these interior destinations than exists in the rates from these shipping points to New York. HELD: The discrimination is un-

due and in violation of the act. Mershon, Schuette, Parker & Company v. C. R. of N. J., 10 I. C. C. 456.

(h) Defendant's rate of $1.25 per 100 pounds on oranges in carloads carried from southern California to points on and east of the Missouri River is unreasonable and unjust. Consolidated Forwarding Co. v. Southern P. Co., 10 I. C. C. 590.

IMPORTANT CASES SINCE 1908

(i) A basis which imposes comparatively high rates for short distances and comparatively low rates for long distances can not be sustained on the ground that the business had developed thereunder and has become adjusted thereto. Milk and Cream Rates to New York City, 45 I. C. C. 412, 429.

(j) To the effect that basing or proportional tariffs must be specific, and that tariffs may specify basing points or factors for a combination rate is not limited to proportional rates. American Agricultural Co. v. H. & B. V. Ry. Co., 57 I. C. C. 177, 178.

(k) When distances are relatively great, and when transfer at rate breaking points is not attended by unusual costs, the combination basis, using local rates, ordinarily is abnormal and unscientific and often discriminatory. Andrews Brothers v. A., C. & Y. Ry., 74 I. C. C. 448, 459.

(l) Complainant attacked rates on all commodities except fresh fruit between points on the Boise Valley Traction Co., an electric line in Idaho to interstate destinations, as unjust and unreasonable to extent they exceeded rates from the trunk line junction point from which blanket rates apply. No evidence was introduced with respect to the unreasonableness per se of the rates. Defendant does not, and can not without cooperation of the traction line, establish the rates from those points. The traction line is willing to join in establishing the blanket rates from the points which it serves provided it continues to receive its full revenue for its local haul. HELD, rates attacked not unreasonable or unduly prejudicial, complaint dismissed. State of Idaho v. O. S. L. R. Co., 83 I. C. C. 4.

ALL OTHER CITATIONS

Lumbermen's Exchange of St. Louis v. A. & S. R. R. R. Co., 24 I. C. C. 220, 223; In Re Investigation and Suspension of Advances in Rates on Apples, 24 I. C. C. 38, 42; Superior Commercial Club v. G. N. Ry. Co., 25 I. C. C. 342, 345; In Re Advances on Livestock, 25 I. C. C. 63, 65; In Re Lumber Rates from the South, 25 I. C. C. 50, 56; Davis Bros. Lumber Co., Ltd., v. C., R. I. & P. Ry. Co., 26 I. C. C. 257, 259; St. Louis, Springfield & Peoria R. R. v. P. & P. U. Ry. Co., 26 I. C. C. 226, 233; Sioux City Terminal Elevator Co. v. C., M. & St. P. Ry. Co., 27 I. C. C. 457, 463; Aransas Pass Channel & Dock Co. v. H., G. & S. A. Ry. Co., 27 I. C. C. 403, 404; Missouri River-Illinois Wheat and Flour Rates, 27 I. C. C. 286, 291; Wisconsin Steel Co. v. P. & L. E. R. R. Co., 27 I. C. C. 152, 157; Mississippi River Case, 28 I. C. C. 47, 57; Cedar Rapids Commercial Club v. C., R. I. & P. Ry. Co., 28 I. C. C. 76; Board of Trade of Carrollton v. C. of G. Ry. Co., 28 I. C. C. 154, 165; Atlanta Journal Co. v. S. A. L. Ry., 28 I. C. C. 186, 189; Iowa State Board of R. R. Comrs. v. A. E. R. R. Co., 28 I. C. C. 563, 565; Wichita Board of Trade v. A. & S. Ry. Co., 29 I. C. C. 376, 379; Rates on Potash and Other Commodities, 29 I. C. C. 626, 628; Official Classification Rates on Paper, 38 I. C. C. 120, 129; Northern Mercantile Co. v. A. E. R. R. Co., 42 I. C. C. 290, 293; Wisconsin Rate Cases, 44 I. C. C. 602, 606, 642; C. F. A. Class Scale Case, 45 I. C. C. 254, 265, 285, 286; Buffalo Grain Cases, 46 I. C. C. 570, 582; Transcontinental Rates, 46 I. C. C. 236, 273; D. C. S. Live Stock Com. v. C., B. & Q. R. R., 47 I. C. C. 287, 313; Murfreesboro Board of Trade v. L. & N. R. R., 55 I. C. C. 648, 655; Fort Dodge Commercial Club v. Director General, 57 I. C. C. 343, 345; W. H. Ferrell & Co. v. C. N. W., 58 I. C. C. 38, 39; Strasburg Steam Flouring Mills v. S. Ry. Co., 58 I. C. C. 337, 340; Iowa Railroad Commissioners v. Director General, 63 I. C. C. 405; Grain Rates from Minnesota and Wisconsin, 68 I. C. C. 665, 674; Proportional Rates and Grain and Grain Products, 69 I. C. C. 203, 205; Armstrong Cork & Insulating Co. v. Pennsylvania R. R. Co. 73 I. C. C. 279; Wilson & Co. v. Director General, 73 I. C. C. 438; Silica Sand Producers Traffic Asso. v. C., B. & Q. R. R. Co., 73 I. C. C. 588; Chicago Coal Merchants' Asso. v. Director General, as Agent, 73 I. C. C. 161; Ballard & Ballard Co. v. Director General, as Agent, 73 I. C. C. 738; Burns & Knapp v. B., S. & K. R. R., 74 I. C. C. 111; Cancellation of Combina-

tion Rule to the Southwest, 74 I. C. C. 505; Texas Steel Co. v. Director General, 74 I. C. C. 535; Wilson & Co. v. Director General, 74 I. C. C. 547; Cotton and Cotton Linters from Louisiana, Arkansas and Texas to Gulf Ports, 74 I. C. C. 580; Kellogg Toasted Corn Flakes Co. v. A., T. & S. F. Ry., 74 I. C. C. 673; Grain, Grain Products, and Feeds, 78 I. C. C. 209, 213; Roxana Petroleum Corporation v. Director General, 80 I. C. C. 292; Muncie Sand Co. v. Director General, 81 I. C. C. 594.

BILLS OF LADING

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I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Jurisdiction of Commission.

See Infra §6; Interstate Commerce Commission I; Jurisdiction of Commission.

CASES 1887-1908

(a) Bills of lading over connecting lines to points beyond the state, issued by a railroad whose line is entirely within one state, are subjects of interstate commerce. Re Annapolis, W. & B. R. Co., 1 I. C. R. 315.

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(b) The Commission has power and authority under the act (section 12 and the amendment thereto of and the provisions of sec. 15 as amended June 29, 1906, and June 18, 1910), to determine the reasonableness of rules, regulations, and practices of the carriers, and to require them to cease and desist from the enforcement of rules and regulations, and the continuance of practices found unreasonable or unjustly discriminatory, or unduly prejudicial. And herein lies the Commission's power to lay hands upon the "issuance, form and substance" of bills of lading. The act specifically requires carriers subject thereto to issue bills of lading. The Commission has undoubted authority to enforce this requirement in a proper proceding. It can require carriers to file with it the rules and regulations which they write into their bills of lading. It can, by due process, require that uniform rules and regulations be adopted by carriers subject to its jurisdiction. It can determine whether such are, in and of themselves, or as interpreted in the practices of the carriers, reasonable and nondiscriminatory, and, if otherwise, condemn them and prescribe reasonable rules and regulations, in which event the carriers must obey. Bills of Lading, 52 I. C. C. 671, 686.

(c) Carriers challenge the Commissions' power to do more than prescribe the "form" as distinguished from the substance of a bill of lading, but such interpretation would imply that each carrier could insert its own peculiar phraseology in its bill of lading. The intention of Congress to have a uniform bill of lading prescribed by the Commission is clearly indicated in section 25, under which the Commission is also required to "preserve for carriers by water the protection of limited liability provided by law," and this can not be done by specifying color of paper or size of type. Export Bill of Lading, 64 I. C. C. 347, 352.

(d) The conditions of a bill of lading

regarding the liability of the carriers affect "the value of the services rendered to the * * * shipper, or consignee" within the meaning of section 6 of the act. Export Bill of Lading, 64 I. C. C. 347, 352.

(e) The Commission's power to prescribe rules and regulations, not inconsistent with the act, which shall constitute and determine the form of the bill of lading, covers the terms or tenor of that instrument, and is, as the transportation until delivery to the ocean carrier, adequate and complete. And the intent of Congress to require a uniform through export bill of lading and to have the terms thereof prescribed by the Commission seems clear. Export Bill of Lading, 61 I. C. C. 347, 352.

(f) The courts determine the validity of provisions in bills of lading just as they do in the case of other contracts and do not consider whether or not particular provisions, not contrary to the law, should be included or omitted. The Commission must deal with the terms of the bill of lading as rules and regulations which affect the value of the service rendered to the shipper in the same way as it is affected by rules and regulations published in the carriers' tariffs. Export Bill of Lading, 64 I. C. C. 347, 353.

(g) Viewed as an administrative matter, the question of what rules and regulations are or will be reasonable in connection with transportation covered by a bill of lading, depends principally upon the adjustment of the carrier's compensation to the degree of risk, reflected in operating expenses, which it incurs. The fair return as contemplated in section 15a of the act must also be borne in mind. Export Bill of Lading, 64 I. C. C. 347, 354.

ALL OTHER CITATIONS

In the Matter of Bills of Lading, 14 I. C. C. 346, 349; Shaffer & Co. v. C., R. I. & P. Ry. Co., 21 I. C. C. 8, 10; Larkin Co. v. E. & W. T. Co., 24 I. C. C. 645, 647; Western Classification Case, 25 I. C. C. 442, 492; Galveston Commercial Asso. v. A., T. & S. F. Ry. Co., 25 I. C. C. 216, 222, 225; Aransas Pass Channel & Dock Co. v. G., H. & S. A. Ry. Co., 27 I. C. C. 403, 415; Mesilla Valley Produce Exchange, Inc., v. A., T. & S. F. Ry. Co., Unrep. Op. A-229; In Re Bills of Lading, 29 I. C. C. 417; Wolverton v. U. P. R. R. Co., 31 I. C. C. 23, 24; Alaska S. S. Co. v. U. S., 259 Fed. 713; Decker & Sons v. Director General, 55 I. C. C. 453, 455; First Nat. Bank of Ripley, Tenn. v. Tchula Commercial Co. (Miss. 1923) 742.

§2. Recommendation of Certain Forms.

IMPORTANT CASES SINCE 1908

(a) The Commission must deal with the terms of the bill of lading as rules and regulations which affect the value of the service rendered to the shipper in the same way it is affected by rules and regulations published in the carriers' tariffs. In the Matter of Bills of Lading, 64 I. C. C. 347, 353.

(b) Viewed as an administrative matter, the question of what rules and regulations are reasonable, or will be reasonable for the future, in connection with the transportation covered by the bill of lading, depends principally upon the adjustment of the carriers compensation to the degree of risk which it incurs. That degree of risk is reflected in operating expenses. The greater the risk, the greater is the value to the shipper of service rendered, which should be rewarded correspondingly. A lesser compensation is appropriate in cases where the carrier is to a large extent relieved from the full liability of common carrier. In the Matter of Bills of Lading. 64 I. C. C. 347, 353.

(c) Viewed as an administrative matter, the question of what rules and regulations are or will be reasonable in connection with transportation covered by a bill of lading, depends principally upon the adjustment of the carrier's compensation to the degree of risk, reflected in operating expenses, which it incurs. The fair return as contemplated in section 15a of the act must also be borne in mind. Export Bill of Lading, 64 I. C. C. 347, 354.

(d) The desirability of uniform bills of lading is acknowledged by all. Uniformity necessarily involves subordination of some individual views to the general good. In the Matter of Bills of Lading, 64 I. C. C. 357, 363.

(e) Previous decision, 64 I. C. C. 357, Domestic Bills of Lading and Live Stock Contract. First sentence of section 7 of domestic bills of lading and section 3 of uniform livestock contract changed as follows: "The owner or consignee shall pay the freight and average, if any, and all other lawful charges accruing on said property." The word "duplicate" before the word "Original" also eliminated from

the face of the uniform domestic bill of lations were prescribed for a through "Original" in the livestock contract. Domestic Bill of Lading and Live Stock Contract, 66 I. C. C. 63.

(f) In 64 I. C. C. 347, rules and regulations were prescribed for a through export bill of lading, effective February 15, 1922, postponed until March 15, 1922. Case was set for further hearing on application of the United States Shipping Board who presented four amendments. HELD: Renumber paragraph 3 as paragraph 3 (a) and change $100 to read $250. Add a new paragraph numbered § (b) to read: Notice of loss, damage, or delay must be given in writing to the carrier receiving the goods for transportation between Port A and Port B within 30 days after the removal of the goods from the custody of such carrier, or, in case of failure to make delilvery, within 30 days after the goods should have been delivered, provided, that if such loss or damage is apparent at the time of the removal of the goods from the custody of the carrier, the notice of loss, damage, or delay must be given before the goods are so removed, in which case notation of the loss or damage made on the receipt given to the carrier for the goods shall constitute the notice herein required. Written claim must be filed with such carrier within nine months after giving the aforesaid written notice. Unless such notice is given and the claim filed as above provided, the carrier shall not be liable. No suit to recover for such loss, damage, or delay shall be maintained unless instituted within one year after the giving of the written notice of loss, damage or delay above provided for. Add a new paragraph numbered 3 (c) to read: "The carrier shall not be entitled to the benefit of any insurance that may have been effected by the shipper upon the goods shipped thereunder." Substitute the following paragraph 14 for the present paragraph 14 of the export bill of lading: "The property covered by this bill of lading is subject to all conditions expressed in the regular form of port bill of lading in use by the steamship company on the date of execution of this document and on file, in accordance with the rules and regulations of the United States Shipping Board and for the Interstate Commerce Commission, but if any of such conditions are in conflict with conditions 1-15 of part 11 of this bill of lading the latter conditions shall control." Export Bill of Lading, 66 I. C. C. 687.

ALL OTHER CITATIONS

In the Matter of Bills of Lading, 14 I. C. C. 346, 349, 350; Bills of Lading, 29 I. C. C. 417; The Cummins Amendment, 33 I. C. C. 682, 685. 686; Judson v. Minneapolis & St. L. R. Co. (Minn. 1915), 154 N. W. 506; In the Matters of Bills of Lading, 52 I. C. C. 671; Alaska S. S. Co. v. United States, 259 Fed. 713; Perishable Freight Investigation, 56 I. C. C. 449, 599; Domestic Bills of Lading and Livestock Contract, 64 I. C. C. 357; In the Matter of Bills of Lading, 64 I. C. C. 354.

II. DUTY OF CARRIER TO ISSUE.

§2½. In General.

See Through Routes and Joint Rates §12.

CASES 1887-1908

(a) One railroad company has a right to issue bills of lading for freight and through tickets for passengers over a connecting road, although there is no contract between the companies. Ore. Short Line & V. N. R. Co. v. N. P. R. Co., 3 I. C. R. 205.

(b) Common carriers may, within the limits of fairness and impartiality, consult their own interests in making contracts for the carriage of goods. Cleveland, C., C. & I. R. Co. v. Closser (Ind), 3 I. C. R. 387.

(c) It is irregular not to issue bills of lading. Shiel & Co. v. Ill. Central R. R. Co., 12 I. C. C. 210.

IMPORTANT CASES SINCE 1908

(d) The Commission has repeatedly held that the obligation rests upon carrier's agent to refrain from executing bills of lading which are contradictory and therefore impossible of execution. American Bridge Co. v. N. & W. Ry., 47 I. C. C. 235, 236.

(e) It is the duty of a carrier to issue a bill of lading free from ambiguity or uncertainty. Gill Andrews Lumber Co. v. Director General, 57 I. C. C. 493, 494.

(f) The fact that the P. & P. U., does not issue bills of lading for shipments originating on its rails and routed via tenants from Peoria or East Peoria has little significance, as originating carriers which perform switching services only do not usually issue bills of lading. Minne-

apolis & St. Louis R. R. Co. v. P. & P. U. Ry., 68 I. C. C. 412, 416.

ALL OTHER CITATIONS

Aransas Pass Channel & Dock Co. v. G., H. & S. A. Ry. Co., 27 I. C. C. 403, 415; Parlin & Orendorff Plow Co. of St. Louis v. U. S. Exp. Co., 26 I. C. C. 561, 562; Aton Piano Co. v. C., M. & St. P. Ry. Co. (Wis. 1913), 139 N. W. 743, 745; Jung & Sons Co. v. L. & N. R. R. Co., 31 I. C. C. 455, 457; Mobile Chamber of Commerce v. M. & O. R. R. Co., 32 I. C. C. 272, 281; Louisiana State Rice Milling Co. v. M., L. & T. R. R. & S. S. Co., 34 I. C. C. 511, 513; Western Trunk Line Rules, 34 I. C. C. 554, 577; Adams v. Croninger, 226 U. S. 409, at page 504, 33 Sup. Ct. 148, 57 L. Ed. 314, 44 L. R. A. (N. S.) 257; De Rochemont v. Boston & M. R. Co., 157 N. Y. S. 177, 180; Atwood & Co. v. C., B. & Q. R. R. Co., 42 I. C. C. 385, 387; Davis v. Norfolk & Sou. R. R. (N. C. 1916), 90 S. E. 123; Evans Lumber Co. v. C. of G. Ry. Co., 43 I. C. C. 476, 480; Morris & Co. v. Southern Exp. Co. 189 N. Y. S. 26.

§3. Rail-and-Water Transportation.

See Export Rates and Facilities II; Rail and Water.

IMPORTANT CASES SINCE 1908

(a) There is no legal obligation on a rail carrier to give a through bill of lading covering movement by water beyond its line. Such practice is, however, of great advantage to shippers, and if given in the name of one boat line, should be given in the name of others who are similarly circumstanced. A railroad may entirely destroy the export traffic of a port by refusing to issue through bills of lading; and to say that it may exercise this great power wantonly and arbitrarily is contrary to the spirit and letter of the act. Mobile Chamber of Commerce v. M. & O. R. R. Co., 23 I. C. C. 417, 424, 425.

(b) If a rail carrier makes a rate and issues a bill of lading for ship-side delivery at a port, that rate, and a similar bill of lading, should be open to all who conform to the reasonable conditions of the carriers. A railroad cannot adopt a policy or practice which will put its facilities and its rates at the exclusive service of one line of steamships, or of one set of shippers patronizing that line. Mobile Chamber of Commerce v. M. & O. R. R. Co., 23 I. C. C. 417, 426, 427.

(c) Eastern carriers are required to honor through bills of lading issued by western carriers via an independent lake line. Flour City S. S. Co. v. L. V. R. R. Co., 24 I. C. C. 179, 190.

(d) It is of first importance to the handling of the Texas cotton crop that through bills of lading be issued. Galveston Commercial Asso. v. A., T. & S. F. Ry. Co., 25 I. C. C. 216, 221, 222.

§4. At Transit Points.

IMPORTANT CASES SINCE 1908

(a) When carriers are parties to a milling-in-transit privilege, it is proper for the inbound carrier to issue and sign the bills of lading for the outbound movements, because, the records of the inbound shipments being in its possession, in no other way could the transit privilege be protected against abuse. Brook-Rauch Mill & Elevator Co. v. St. L., I. M. & S. Ry. Co., 21 I. C. C. 651, 652.

§5. One Lading for Several Shipments.

See Cars and Car Supply §7; Demurrage §6; Follow-Lot Shipments.

IMPORTANT CASES SINCE 1908

(a) Two separate bills of lading were taken out by complainant covering two cars of machinery shipped on the same day to the same consignee. Under rule 8 of the Western Classification, defendants assessed charges thereon on the basis of the minimum carload weight for each. HELD: That under the rule, the established rate for a carload can only apply on the entire lot when the shipments are covered by one bill of lading, that this rule having been considered and approved in prior cases cannot be held unreasonable, and the charges were properly assessed. Goodman Mfg. Co. v. C., B. & Q. R. R. Co., 21 I. C. C. 583.

(b) Complainant loaded first car to visible capacity and forwarded shipments under separate bills of lading, but failed, through oversight, to comply with tariff requirements or make cross reference to the separate shipments in the actual billing which would indicate that commodities were offered as a single shipment. HELD: Follow-lot rule not applicable and charges legally applicable not found unreasonable. United Verde Extension Mining Co. v. Director General, 57 I. C. C. 483.

(c) Complainant attacks as unreasonable charges on two cars loaded with

pipe bends and fittings from Philadelphia, Pa., to Clarkdale, Ariz. Shipments comprised various parts of a circulating steam system, were loaded into two cars and moved under separate bills of lading, neither of which made reference to the other, over the B. & O., C. B. & Q., and Santa Fe. Parts loaded in one of the cars consisted of 49,950 pounds of wrought steel pipe, 2,300 pounds of bolts, and 50 pounds of packing. Those in the other car consisted of 11,085 pounds of wrought steel pipe, 6,255 pounds of iron steam separators, 1,610 pounds of fittings and 50 pounds of gauges, charges collected on the first car based on actual weight and commodity rate of $1.08 applicable to pipe fittings and connections; on the other car minimum weight of 30,000 pounds rate $1.75 applicable to mining machinery. Sole claim of complainant is that the commodities loaded in the second car constituted a part lot of those loaded in the first car and that the charges thereon should be governed by the follow lot rule of the applicable tariff, but he failed not only to comply with the literal requirements of the rule, but also failed to make cross reference to the separate shipments in the actual billing or to take any step which would indicate that all the commodities were offered as a single shipment. HELD: Rate charged not unreasonable, but there was an overcharge which should be refunded based on the legal tariff rates. United Verde Extension Mining Co. v. Director General, 57 I C. C. 483.

(d) It is testified for complainant that the first car was loaded to visible capacity, that the forwarding of the shipments under separate billing was due to oversight of the shipper, and that the rule was complied within every other particular. Defendants concede that the second car was handled in the identical manner in which it would have been handled had the rule been fully complied with. Nevertheless, it is apparent that to grant the relief asked would be tantamount to the waiver of an essential requirement of the rule, as the shipper failed not only to comply with its literal requirements, but also failed to make cross reference to the separate shipments in the actual billing or to take any step which would indicate that all the commodities were offered as a single shipment. United Verde Extension Mining Co. v. Director General, 57 I. C. C. 483, 484.

(e) Three separate l. c. l. shipments loaded in one car were billed to three consignees at two destinations, and three separate bills of lading and three separate freight bills were issued. Failure of carriers, after shipment left point of origin, to divert to one of the consignees as a c. l. shipment or to provide by rule for such diversion, found not unreasonable or otherwise unlawful Consolidated Rendering Co. v. B. & M. R. R., 77 I. C. C. 101.

(f) Two cars were furnished by carrier for its convenience in lieu of larger car ordered. Shipment moved under bill of lading for each car, second bill bearing notation in reference to first: Part car lot UP 121567—weight and charges ahead." Contention that since "two-for-one" rule in tariff required as condition precedent that but one bill of lading be issued, it was not applicable to this shipment. HELD: Since second bill of lading referred to first for weight and charges, this was a substantial compliance with requirement. Stone-Fisher Co. v. Director General, as Agent, 77 I. C. C. 369, 370, 371.

ALL OTHER CITATIONS

Vulcan Steam Shovel Co. v. M. P. Ry. Co., 18 I. C. C. 265; Consolidated Water Power Co. v. S. P., L. A. & S. L. R. R. Co., 20 I. C. C. 169; Scudder v. T. & P. Ry. Co., 22 I. C. C. 60, 61; Sheldon & Co. v. Wabash R. R. Co., 38 I. C. C. 569, 570.

III. CONSTRUCTION.

§6. In General.

CASES 1887-1908

(a) There is nothing in the interstate commerce law which vitiates bills of lading, or which, by reason of an allowance of a rebate to the agents of the owners or consignees of goods, if actually made, would invalidate the contract of affreightment or exempt a railroad company from liability on its bills of lading. Merchants Cotton Press & S. Co. v. Insurance Co. of North America, 4 I. C. R. 499.

IMPORTANT CASES SINCE 1908

(b) The billing should show what has been charged for transportation and what has been charged for the transit. Mixed Car Dealers Asso. v. D., L. & W. R. R. Co., 33 I. C. C. 133, 140.

(c) Bill of lading constitutes a receipt for the property and a contract for its carriage. The Cummins Amendment, 33 I. C. C. 682, 685.

(d) A contention that where articles included in a shipment are not specifically stated in the bill of lading to constitute household goods it would be proper to consider each item as an individual shipment, is met by the fact that the articles are offered as one shipment and move under one bill of lading in which only the aggregate weight is shown. Perdue v. B. & O. S. W. R. R., 47 I. C. C. 210, 211.

(e) An important function of the bill of lading is to give formal expression to the stipulations and conditions under which the carrier seeks to obtain a modification or limitation of the liability that otherwise would be imposed upon it under the common law. While the limitations of the carrier's liability must be agreed to by the shipper and the agreement be invested with the sanctity of a valid contract, neither by common law nor by federal statute in this country is any particular form of contract or solemnity of execution required. Contracts between shipper and carrier, however, are almost invariably evidenced by the more or less formal bill of lading, written or printed, which serves three distinct functions: First, a receipt for the goods; second, a contract for their carriage; and, third, documentary evidence of title to the goods. As a receipt for the goods, it recites the place and date of shipment; describes the goods, their quantity, weight, dimensions, identification marks, condition, etc., and sometimes their quality and value. As a contract, the bill names the contracting parties, specifies the rate or charge for transportation, and sets forth the agreement and stipulations with respect to the limitations of the carrier's common-law liability in the case of loss or injury to the goods and other obligations assumed by the parties or to matters agreed upon between them. That part of the bill which constitutes a receipt may be treated as distinct from the part incorporating the contractual terms. Porter, Law of Bills of Lading § 14, citing Myer v. Peck, 1 Tiffany (28 N. Y.), 590; Higgins v. U. S. M. S. S. Co., 3 Blatchf. (U. S. C. C.), 282. Ordinarily parol evidence will not be admitted to vary the terms or legal effect of a bill of lading, considered as a contract between parties to it, although it seems that, as a receipt for the goods, it may be contradicted by oral testimony. The Delaware, 14 Wall 579. It is sufficient if the shipper accepts the carrier's bill of lading without himself signing it. It becomes binding upon him by his acceptance, he being presumed to know and accept the conditions of the written bill of lading. The bill of lading is regarded as representative of the goods while they are in the carrier's possession. It is not a negotiable instrument in the common acceptation of the term, but it may be, and frequently is, made negotiable in form and thus becomes invested with peculiar attributes of great practical importance commercially. Bills of Lading, 52 I. C. C. 671, 681.

(f) Carrier's contention that bills of lading must govern in determining the rate legally applicable, and that shipper can not show by parol evidence that shipments were of something other than as described by it or its agent in the transportation contract contained in the bills of lading, found to be without merit. Harris Bros. Co. v. Director General, as Agent, 60 I. C. C. 428, 430.

(g) It would be difficult, if not impossible, to prevent the unjust discrimination and undue prejudice forbidden by the act if carriers could vary the terms of the contract of transportation at will in dealing with different shippers of the same commodity. Export Bill of Lading, 64 I. C. C. 347, 352.

(h) It is well settled that under the Interstate Commerce Act it is not the bill of lading alone which constitutes the contract between the shipper and the carrier, but it is the bill of lading, plus the schedule and tariffs filed as required by law. American Sugar Refining Co. v. D., L. & W. R. R. Co., 207 Fed. 733, 125 C. C. A. 251; D'Utassy v. Sou. Pac. Co., 161 N. Y. S. 222.

(i) Recitals in a bill of lading for an interstate shipment, signed by both parties, that alternate rates, based upon specified values, are offered by the carrier's published freight rates, constitute admissions by the shipper and sufficient prima facie evidence of a choice of rates, and cast upon him the burden of proving, in case he wishes to contradict his admissions, that the carrier had not complied with the requirements of controlling federal legislation respecting the filing and publishing of its rate schedules. Cincinnati, N. O. & T. P. Ry. Co. v. Rankin, 36 Sup. Ct. 555; 241 U. S. 319; 60 L. Ed. 1022.

(j) Congress has so asserted, by the

Carmack Amendment, its power over the subject of interstate shipments, the duty to issue bills of lading, and the responsibilities thereunder, as to preclude the application to an interstate commerce shipment of a local and exceptional rule of law which invests the innocent holder of a bill of lading with rights not available to the shipper, such as the right to rely on erroneous recitals in the bill of lading as to the date of the carrier's receipt of the goods. Atchison, T. & S. F. R. Co. v. Harold, 36 Sup. Ct. 665, 668; 241 U. S. 371; 60 L. Ed. 1050.

(k) The question as to the proper construction of a bill of lading for an interstate shipment issued under the Carmack Amendment is a Federal one which will sustain the appellate jurisdiction of the Federal Supreme Court over a state court. Georgia, F. & A. R. Co. v. Blish Milling Co., 36 Sup. Ct. 541; 241 U. S. 190; 60 L. Ed. 948.

(l) A bill of lading is both a receipt and a contract of carriage and delivery. King v. Barbarin, 249 Fed. 303.

(m) Since it is required by the Interstate Commerce Act that a bill of lading or receipt for an interstate shipment must be issued by the carrier, the consignor of an interstate shipment must be presumed to know the terms of the bill of lading. New York Cent. & H. R. R. Co. v. York & Whitney Co. (Mass. 1918), 119 N. E. 855.

(n) Bills of lading or waybills are mere incidents of service which in no wise determine its character whether linehaul or switching. Western Meat Co. v. Director General, as Agent, 78, I. C. C. 77, 80.

ALL OTHER CITATIONS

Wyman, Partridge & Co. v. B. & M. R. R., 15 I. C. C. 577, 582; Blinn Lumber Co. v. S. P. Co., 18 I. C. C. 430, 432; Yorke Furniture Co. v. S. Ry. Co. (N. C. 1913), 78 S. E. 67, 68; In Re Suspension of Western Classification No. 51, 25 I. C. C. 442, 492; Galveston Commercial Asso. v. A., T. & S. F. Ry. Co., 25 I. C. C. 216, 223; Concentration of Cotton, 26 I. C. C. 585, 590; Pole Stock Lumber Co. v. G. & S. I. R. R. Co., 26 I. C. C. 451, 454; Swift & Co. v. P. R. R., 29 I. C. C. 464, 466; Port Arthur Rice Milling Co. v. T. & F. S. Ry. Co., 28 I. C. C. 697, 700; Scattergood & Co. v. C., M. & St. P. Ry. Co., Unrep. Op. A-412; Louisiana State Rice Milling Co. v. M., L. & T. R. R. & S. S. Co., 34 I. C. C. 511, 515; Loomis v. N. Y. C. & H. R. R. Co. (N. Y. 1915), 108 N. E. 837, 838; Larkin Co. v. E. & W. Transp. Co., 34 I. C. C. 106, 109; Sheldon & Co. v. Wabash R. R., 38 I. C. C. 569; Coal & Coke Ry. Co. v. Buckhannon River 87 S. E. 376; D'Utassy v. Southern Pacific Co., 161 N. Y. S. 222; Aradlou v. New York, N. H. & H. R. Co. (Mass. 1916), 114 N. E. 297, 299; Columbian Iron Works v. S. Ry., 45 I. C. C. 173, 174; Bers v. Erie R. R., 163 N. Y. S. 114; Pa. R. R. v. Townsend (N. J. 1917), 100 Atl. 855; Cudahy Packing Co. v. Bixby (Mo. 1918), 205 S. W. 865; Clark v. Southern Ry. Co. (Ind. 1918), 119 N. E. 539; Strahs v. New York Cent. R. Co., 184 N. Y. S. 362; Big Sandy & C. R. Co. v. Ball (Va. 1922), 113 S. E. 722; Taylor v. Central of Georgia Ry. Co. (Ga. 1923), 121 S. E. South & Central American Commercial Co., Inc. v. Panama R. Co. (New York, 1923) 142 N. E. 666; J. F. Twanley, Son & Co. v. Chicago Great Western R. Co., (Nebr., 1923), 196 N. W. 319.

§7. Statement of Weight.

See Weights and Weighing.

CASES 1887-1908

(a) Where a bill of lading specified the rate per 100 pounds to be paid for the goods carried, but did not state the weight of the goods, but the weight was readily ascertainable, HELD: That the sum to be paid for freight was sufficiently specified in the bill of lading to accomplish the object of the act. Little Rock & Fort Smith R. Co. v. Hanniford, 1 I. C. R. 58.

(b) The material part of a bill of lading on the subject of the freight rate is that which fixes the rate per 100 pounds. Weighing the freight is purely a mechanical process, and may be done at the point of shipment, or at the point of delivery. Where the weight of the merchandise is uniformly the same, the carrier or the consignee may ask to have the weight verified up to the moment of delivery, and it is the weight disclosed by the scales, and not the weight marked on the bill of lading, that controls. Baird v. St. Louis, I. M. & S. R. Co., 4 I. C. R. 422.

IMPORTANT CASES SINCE 1908

(c) When a car is weighed at origin and the weight stated in the bill of lading, the shipper has a right to rely on that weight, subject to correction only by proof of the correct weight. Duluth

Log Co. v. C., St. P., M. & O. Ry. Co., 16 I. C. C. 38, 39.

(d) The bill of lading, as a receipt between the original parties, is prima facie evidence of the truth of the statements contained therein. Recitals of quantity and weight of the articles received are not, however, conclusive and the carrier is not estopped from showing that the amount or quantity stated was never in fact delivered for transportation. In Re Suspension of Western Classification No. 51, 25 I. C. C. 442, 491.

(e) Complainant attacked the charges assessed on a shipment of cast-iron service boxes shipped from Chattanooga, Tenn., to Jacksonville, Fla., as unreasonable and discriminatory. The bill of lading contained the following notation: "1 car C. I. service boxes—weight 30,000 lbs., rate 15c." The actual weight was only 16,000 lbs. Charges were imposed at the carload rate of 15c per 100 lbs., minimum 30,000 lbs., and complainant contended that they should have been collected at the rate of 21c, l. c. l., applied to the actual weight, the notation in the bill of lading having been inserted through error of an inexperienced shipping clerk. But it did not appear that the carriers had been advised of the error. Complainant had ordered a 40-ft. car, and the packages were not marked with name and address of the consignee. HELD: That the charges attacked were not shown to have been unreasonable or unlawful. Complaint dismissed. Columbian Iron Works v. S. Ry., 45 I. C. C. 173.

§7½. Shippers Load and Count Provision.

IMPORTANT CASES SINCE 1908

(a) The bill of lading act authorizes common carriers to insert in bills of lading the words "shippers weight load and count" or other words of like import, to indicate that the goods were loaded by the shipper and the description made by him, and if such notation be true the carrier is absolved from liability for damages caused by improper loading, or by the nonreceipt or misdescription of the goods. The Commission has declined to condemn the carriers' practice of issuing shippers load and count bills of lading. San Francisco Dairy Produce Exchange v. American Railway Express, 78 I. C. C. 737, 739.

(b) Carrier's practice of noting "shipper's load and count" on receipts for c. l. shipments of eggs, butter, cheese, and dressed poultry found not unreasonable. Issuance of unqualified receipts would necessitate checking packages as loaded into car to assure absolute accuracy, and would entail additional expense upon carrier. If carrier be required to issue unqualified receipts for dairy products, it is reasonable to assume that shipments of other commodities would demand and be entitled to similar treatment. San Francisco Dairy Produce Exch. v. Am. Ry. Exp. Co. 78 I. C. C. 737.

§8. Statement of Shipping Point.

IMPORTANT CASES SINCE 1908

(a) Where no evidence is submitted by defendant carrier to show that the point of origin stated in the bill of lading was not the actual point of origin, the charge must be assessed according to the rate from the point of origin therein stated. Duluth Log Co. v. C., St. P., M. & O. Ry. Co., 16 I. C. C. 38, 39.

§9. Conflicting Provisions.

See Conflict of Rates; Conflicting Provisions; Routing and Misrouting §3, §3½.

IMPORTANT CASES SINCE 1908

(a) So the insertion in the bill of lading of a certain rate makes it the duty of the initial carrier to inquire of the shipper what route is desired before shipping by a route involving a higher rate. Bruner Co. v. S. Ry., 40 I. C. C., 549, 551.

(b) Where a shipper tenders a bill of lading containing routing instructions and a specific rate, and the rate does not apply via the route designated, it is the duty of the carrier's agent to call shipper's attention to the fact that the rate specified can not be accorded via the route designated and to secure further instructions. Conf. Rule 286 (f). Earle Fruit Co. v. O. S. L. R. R., 46 I. C. C. 510, 511.

§9 (½). In General.

See Conflict of Rates.

IMPORTANT CASES SINCE 1908

(a) The obligation lawfully rests upon the carrier's agent to refrain from executing a bill of lading which contains provisions that can not lawfully be complied with or provisions which are contradictory, and therefore impossible of execution. Hutton & Bourbonnais Co. v. S. Ry., 50 I. C. C. 434, 435.

(b) It is the duty of the agent of a carrier to refrain from executing bills of lading containing contradictory provisions. Republic of France v. M. K. & T. Ry., 77 I. C. C. 383, 384.

(c) It is duty of carrier to refrain from executing bills of lading containing provisions which can not be complied with or provisions which are contradictory. Conf. Ruling 474-c. Dixie Portland Cement Co. v. Director General, as Agent 83 I. C. C. 417, 419.

(d) Conference ruling 474 provides in effect that if a carrier accepts a bill of lading containing provisions which are conflicting or impossible of execution it is liable for all damage resulting from that act. Empire Lumber Co. v. Director General, 88 I. C. C. 424, 425.

§9. (1) Between Rate and Route.

See Routing and Misrouting §3.

IMPORTANT CASES SINCE 1908

(a) It is the affirmative duty of a carrier to apply the rate named in the bill of lading when a route carrying such a rate is available, and in case there is an inconsistency between a rate and a route when both are named in the bill of lading furnished by the shipper, the carrier should request of the shipper which one is to be followed, and if the initial carrier fails to inquire of the shipper and routes the freight over a route which carries a higher rate than shown in the bill of lading, it is responsible for misrouting. Block-Pollock Iron Co. v. H. E. & W. T. Ry. Co., 19 I. C. C. 505.

(b) On shipments moving during Federal control, some of the bills of lading contained instructions as to both rate and route, and others as to rate only. Rate named was not applicable over any route of the originating carrier, but applied in connection with a competing line to which shipper might have tendered shipments. HELD, following Mulkey Salt Co., 66 I. C. C. 441, shipments misrouted where both of the carriers at point of origin were federally controlled, since they were "being operated under a unified and coordinated national control and not in competition." Reparation awarded. American Hominy Co. v. Director General, as Agent, 74 I. C. C. 204.

(c) When both rate and route are inserted by the shipper in the bill of lading and they do not coincide it is the duty of the initial carrier's agent to ascertain from the shipper before forwarding the shipment whether he desires that the instructions as to the rate or the route shall govern, and the carrier is responsible for any damages which may result from the failure of its agent to follow his course. Conference Ruling 474(c). American Hominy Co. v. Director General, as Agent, 74 I. C. C. 204, 205.

(d) Shipper specified rate and route in bills of lading, and shipments moved via such route. Rate designated did not apply via route of movement, but was applicable over other routes. HELD: When both rate and route are inserted by shipper in bill of lading and they do not coincide, it is the duty of initial carrier's agent, before forwarding shipments, to inquire of shipper which he desires to govern. Moreover, it is the duty of the agent to refrain from executing bills of lading containing contradictory provisions. Conf. Ruling 474 (c). Shipments found misrouted and reparation awarded. Republic of France v. M. & T. Ry. Co. of T., 77 I. C. C. 383.

ALL OTHER CITATIONS

Gibson Fruit Co. v. C. & N. W. Ry. Co., 21 I. C. C. 644, 645; Isbell-Brown Co. v. G. T. W. Ry. Co., Unrep. Op. 226; American Agricultural Chemical Co. v. Bangor & Aroostook R. R. Co., 28 I. C. C. 398, 400; Bruner Co. v. S. Ry. Co., 40 I. C. C. 549, 551; Union Saw Mill Co. v. St. L. I. M. & S. Ry., 40 I. C. C. 661, 666; Riverside Western Oil Co. v. Midland Valley R. R. Co., 42 I. C. C. 589; Rudiger, Assignee v. I. C. R. R. Co., 43 I. C. C. 149; Earle Fruit Co. v. O. S. L. R. R., 46 I. C. C. 510, 511; American Bridge Co. v. N. & W. Ry., 47 I. C. C. 235, 236; Republic of France v. M., K. & T. Ry. Co. of T., 77 I. C. C. 384.

§9. (2) With Tariff.

See Tariffs.

IMPORTANT CASES SINCE 1908

(a) A provision in a bill of lading being outside the tariff announcement, was in no sense a limitation upon the right of the shipper to have his commodity transported in the manner, and at the rate, specified in the rate schedule. Woodward & Dickerson v. L. & N. R. R. Co., 15 I. C. C. 170, 172; decision of Commission sustained, 187 Fed. 874; 191 Fed. 705.

(b) In previous cases and conference rulings Commission has held that when both rate and route are inserted by

shipper in bill of lading and they do not coincide, it is the duty of initial carrier's agent to ascertain from shipper before forwarding shipment whether instructions as to rate or route shall govern. Bangor National Slate Co. v. L. V. R. R. Co., Unrep. Op. A-794.

(c) Notation of two rates on bill of lading put the initial carrier's agent upon inquiry, and it was his duty to ascertain the wishes of the shipper. Beloit Iron Works v. C. M. & St. P. Ry. Co. Unrep. Op. 1896.

§9. (3) With Shipping Ticket.

See Shipping Ticket.

IMPORTANT CASES SINCE 1908

(a) Where bills of lading and shipping orders are prepared by the shipper and the shipper notes upon the bill of lading certain instructions which it fails to note on the shipping order, the carrier cannot be held liable for misrouting if it complies with the instructions shown on the shipping order. American Agricultural Chemical Co. v. B. & A. R. R. Co., 28 I. C. C., 398 401.

(b) When a shipper prepares a bill of lading providing for the carriage of property to a particular destination and marks a different and erroneous address on the package, the carrier will not be held responsible for the freight charges incurred in transporting the property to the destination shown on the package, although the correct destination is shown on the bill of lading. American Agricultural Chemical Co. v. Bangor & Aroostook R. R. Co., 28 I. C. C. 398, 401.

ALL OTHER CITATIONS

Evans & Howard Fire Brick Co. v W. R. R. Co., 26 I. C. C. 152, 153; American Agricultural Chemical Co. v. B. & A. R. R. Co., 28 I. C. C. 398, 401.

§9½. Inspection.

IMPORTANT CASES SINCE 1908

(a) Wire fence from Adrian, Mich., intended for delivery at San Angelo, Texas, delivered at Menard, Tex., was misrouted. The bill of lading was defective, its provisions impossible of execution, and it was the duty of initial carrier's agent to call upon consignor for further instructions before forwarding shipment. Peerless Wire Fence Co. v. Wabash R. R. Co., 38 I. C. C. 721, 722.

(b) Bill of lading contained the following clause: "Hold Chicago for inspection. Allow inspection." The shipment was not held and the shipment reached its original destination before reconsignment instructions were received. HELD, charges collected were not unreasonable. Miller & Co. v. C. St. P. M. & O. Ry. Co., Unrep. Op. A462.

ALL OTHER CITATIONS

Thompson v. Hiberian Bank & Trust Co. (La., 1920), 86 So. 652.

§10. Route Designated by Shipper.

See Routing and Misrouting §7.

IMPORTANT CASES SINCE 1908

(a) No stipulation in the bill of lading can operate to exempt a carrier from the duty imposed by sec. 15 of the Act to route the shipment as directed by the shipper. Weyl-Zuckerman & Co. v. C. M. Ry. Co., 27 I. C. C. 493, 495.

(b) Where bills of lading and shipping orders are prepared by the shipper, and the shipper notes upon the bill of lading certain instructions which it fails to note on the shipping order, the carrier cannot be held liable for misrouting if it complies with the instructions shown on the shipping order. American Agricultural Chemical Co. v. B. & A. R. R. Co. 28 I. C. C., 398, 401.

(c) When a shipper prepares a bill of lading providing for the carriage of property to a particular destination, and marks a different and erroneous address on the package, the carrier will not be held responsible for the freight charges incurred in transporting the property to the destination shown on the package, although the correct destination is shown on the bill of lading. Brackett Co. v. G. N. Exp. Co., 29 I. C. C., 667, 668.

(d) Where the bill of lading specified a legal rate of 10 cents, and there was only one route over which the shipment could be made at such rate, carrier was sufficiently apprised of the route desired by shipper. Ex Parte Louisville & N. R. Co., (Ala. 1918), 79 So. 139.

(e) Where goods are tendered with a bill of lading showing the route, but no rate, and the goods are moved as routed, and the consignee pays the legal rate over that route, and thereafter files a claim or demand against the carrier, alleging that a lesser rate was the full lawful rate over another and different route, and that the carrier had contracted with him through its agents to meet this competitive rate, and a refund is made to the consignee, such payment, made either by mistake of the carrier or through the

illegal act of an agent of the carrier, may be recovered in a proceeding brought for that purpose. C. of G. Ry. Co. v. Curtis (Ga. App. 1914), 82 S. E. 318.

(f) Shipper inserted in bill of lading wrong car number. Returned upon discovery of the error. Carriers collected the published rate from point of origin to destination and return. Not in violation of Act, and complaint dismissed. Swedish Iron & Steel Corporation v. Bush Terminal Co., Unrep. Op. A-323.

ALL OTHER CITATIONS

Chicago Sewer Pipe Co. v. Director General, 73 I. C. C. 511.

IV. LIMITATION OF LIABILITY.

See Limitation of Liability; Loss and Damage §9; Released Rates.

§11. In General.

IMPORTANT CASES SINCE 1908

(a) The "shipper's load and count" provision is not such a limitation upon carriers' liability as is contemplated by the prohibitions of the Cummins Amendment. It does not appear that this rule operates to limit the liability of the carrier for the full value of the property shipped, but, in its application to a claim for loss because of alleged failure to deliver the whole amount transported, has the effect of placing the burden upon the shipper who loads on his private sidetrack to prove that the amount specified was loaded and that a less amount was taken out of the car by the consignee; whereas in the case of a receipt not so qualified the burden is upon the carrier to prove that the amount specified in the bill of lading was either not in fact loaded, or was delivered, or otherwise to settle for the full value thereof. Louisiana State Rice Milling Co. v. M. L. & T. R. R. & S. S. Co., 34 I. C. C. 511, 513.

(b) Bill of lading provisions with respect to filing of claims or institution of suits on account of loss, damage, or delay found not to prohibit payment of meritorious claims seasonably filed with the carrier, after the two year and one day period has elapsed, but in that they do not accord the shipper the right to a reasonable period after declination of a claim within which to institute suit, where carrier fails to promptly adjust claims, found unreasonable, Discriminatory, and unduly prejudicial. Reasonable provision prescribed. Decker & Sons v. Director General, 55 I. C. C. 453.

(c) Defendants may reasonably and properly provide that the period prescribed within which suit shall be instituted after the declination of a claim shall date from the definite declination in writing of the claim. Decker & Sons v. Director General, 55 I. C. C. 453.

(d) Contention that section 10 of the uniform bill of lading permits a waiver of any of the terms or conditions of the bill of lading, and that carriers have waived the two year and one day period by having paid certain claims after more than two years and one day had elapsed, although suit had not been instituted, not sustained. Decker & Sons v. Director General, 55 I. C. C. 453, 457.

(e) While the limitations in bill of lading must be strictly adhered to and may not lawfully be waived, the provisions of the Cummins amendment do not evidence any intent on the part of Congress to erect a statute of limitations barring payment of seasonably filed claims after any given period. Decker & Sons v. Director General, 55 I. C. C. 453, 458.

(f) No ruling ever made by the Commission prohibiting carriers from paying claims reasonably filed, on the ground that shipper permitted two years and one day to elapse without instituting suit. Decker & Sons v. Director General, 55 I. C. C. 453, 461.

(g) The conditions of a bill of lading regarding the liability of the carriers affect "the value of the service rendered to the * * *, shipper or consignee" within the meaning of section 6 of the act. Export Bill of Lading, 64 I. C. C., 347, 352.

(h) The greater the risk incurred by carriers in connection with transportation covered by bills of lading, the greater the value to the shipper of the service rendered, which should be rewarded correspondingly. A lesser compensation is appropriate in cases where the carrier is to a large extent relieved from full liability. Export Bill of Lading, 64 I. C. C. 347, 354.

ALL OTHER CITATIONS

Pierce Co. v. Wells Fargo & Co., 189 Fed 561, 565; Shaffer & Co. v. C., R. I. & P. Ry. Co., 21 I. C. C. 8; Weyl-Zuckerman & Co. v. M. Ry. Co., 27 I. C. C. 493, 495; Coal Rates on the Stony Fork Branch, 26 I. C. C. 168, 174; Adams Express Co. v. Croninger, 226 U. S. 491,

33 Sup. Ct. 148; C. St. P. M. & O. Ry. Co. v. Latta, 226 U. S. 519, 33 Sup. Ct. 155; C. B. & Q. Ry. Co. v. Miller, 226 U. S. 513, 33 Sup. Ct. 155; M. K. & T. Ry. Co. v. Harriman, 227 U. S. 657, 33 Sup. Ct. 397; Norcross Bros. Co. v. L. & N. R. R. Co., 29 I. C. C. 109, 111; N. Y. P. & N. Ry. Co. v. Peninsula Produce Exchange (Md. 1914), 89 Atl. 433, 436; Peninsula Produce Exchange v. N. Y. P. & N. Ry. (Ind., 1914), 89 Atl. 437, 438; G. C. & S. F. Ry. Co. v. Brackett- Fielder Mill & Grain Co. (Tex. Civ App., 1914), 162 S. W. 1191, 1192; I. & G. N. Ry. Co. v. Rathblath (Tex. Civ. App., 1914), 167 S. W. 751; Larkin Co. v. E. & W. Transp. Co., 34 I. C. C. 106, 110; Brockman Commission Co. v. Missouri Pac. Ry. Co., (Mo. 1916), 188 S. W. 920; Perdue v. B. & O. S. W. R. R., 47 I. C. C. 210.

§11½. Miscellaneous Provisions.

IMPORTANT CASES SINCE 1908

(a) "Shipper's load and count" provision not such a limitation of carrier's liability as is contemplated by Cummins amendment. Louisiana State Rice Milling Co. v. M. L. & T. R. R. & S. S. Co., 34 I. C. C., 511, 513.

(b) In case cars move through to destinations or distant transfer points, the billing is based on "Shipper's Load and Count." Trap or Ferry Car Service Charges, 34 I. C. C., 516, 527.

(c) Rule providing that the notation "shipper's load and count," must be entered on bill of lading covering shipments loaded by shippers without check by carrier, may be canceled. Western Trunk Line Rules, 34 I. C. C., 554, 574, 575.

(d) Complainants' tonnage not sufficient to warrant refrigerator or heated car service, and notation on bills of lading exempting carriers from damage caused by freezing not found unlawful. Longo Fruit Co. v. I. T. System, 38 I. C. C. 487, 489.

(e) Where a shipper has complied with the carrier's requirements with respect to duly filing a claim, he is entitled to a reasonable period after the declination of the claim within which to institute suit if he so desires. Decker & Sons v. Director General, 55 I. C. C. 453, 460.

(f) The right of a carrier to require reasonable notice of claims against it is well recognized. Decker & Sons v. Director General, 55 I. C. C. 453, 459, 460.

V. ORDER-NOTIFY SHIPMENTS.

See Demurrage §7.

§12. In General.

IMPORTANT CASES SINCE 1908

(a) An order-notify shipment is notification to the carrier that title to the consignment is retained in the consignor until delivery of the bill of lading properly endorsed. Ordinarily the order-notify bill of lading is forwarded to the banks with sight draft attached for the value of the shipment and the person notified at destination can only obtain possession of it by payment of the draft. The carrier cannot, without incurring liability, deliver such a shipment until the bill of lading is properly surrendered. Harlow, Trustee, v. Washington Southern Ry. Co., 26 I. C. C. 511.

(b) Complainant, a manufacturer of roofing tile, assailed as unreasonable and discriminatory, defendants' rule embodied in a circular of instructions to freight agents, requiring agents to decline to receive shipments of freight "to order" with instructions to notify parties residing elsewhere than at the point to which shipment is made, except export shipments and shipments of cotton, cotton linters or regins. Traffic in the Southeast is handled largely on card waybills, containing condensed information as to point of origin, destination, consignees, etc., and confusion would result from showing thereon a notification point other than that of destination. The exception as to export traffic was established because such traffic is usually promptly unloaded at the ports for delivery to water carriers. The exception as to cotton, etc., grew out of a practice among New England cotton mills when there were no mills in the South, of considering a general office for a group of mills as a common destination point. HELD, that the rule was not unreasonable, nor discriminatory because of the exception thereto. To make an exception of roofing tile, however, would be to discriminate against other like kinds of traffic. The rule should be filed with the Commission, modified so as to require agents to accept shipments, as a common carrier cannot decline traffic offered to it, and the exceptions as to cotton should be eliminated. The carrier may provide that it will not execute a bill of lading which

contains a provision for notifying a person at a point other than the destination of the shipment. Ludowici-Celadon Co. v. A. C. L. Ry. Co., 28 I. C. C. 693.

(c) Carriers may provide rule that bill of lading will not be executed which contains a provision for notifying a person at a point other than the destination of shipment. Ludowici-Celadon Co. v. A. C. L. R. R. Co., 28 I. C. C. 693, 696.

(d) By the so-called Pomerene bill, or bills of lading Act, approved August 29, 1916, and made effective January 1, 1917, relating to bills of lading in interstate foreign commerce, it is provided that a bill in which it is stated that the goods are consigned to a specified person is a "straight" bill, and one in which it is stated that the goods are consigned or destined to the order of a person is an "order" bill. The primary purpose of this law is to enlarge and enhance the negotiability features of "order" bills of lading and by definitely fixing the law with respect to negotiability, and the imposition of greater responsibility upon carriers, to afford greater protection to those who in the course of commercial transaction handle and deal in such bills. The "order" bill, which is made negotiable by this law, differs from the straight bill in common usage, and from the form to be prescribed to the commission, only in the fact that by endorsement printed on the face of the bill it is denominated an "order" bill. Bills of Lading, 52 I. C. C. 671, 690.

(e) Modification of provision to the effect that the issuance of bills of lading for freight consigned to shipper's order at one point, notify consignee at another point, except where consignee is located at a prepay station or off-line, suggested. Consolidated Classification Case, 54 I. C. C. 14.

(f) To require "notify consignees" to surrender original bills of lading as a condition precedent to an order, designating place of unloading when carrier is able to make delivery, would burden this class of shippers without saving to carrier, other than that which could be affected by providing that such orders may be given, without surrender of original bill or execution of an indemnity bond, by party designated on billing as the notify consignee, or any party able to establish his identity as the assignee of such notify consignee. Reconsignment and Diversion Rules, 58 I. C. C. 568, 576.

(g) While rule providing that order designating delivery must be accompanied by a surrender of bill of lading, or execution of suitable indemnity bond, may be entirely reasonable as related to ordinary reconsignments, where new bill of lading is issued upon surrender of original bill there can not be any warrant in law for requiring surrender of a bill of lading unless carrier is able to make delivery of the freight covered by such bill. Reconsignment and Diversion Rules, 58 I. C. C. 568, 576.

(hi) Rule proposing that shipments covered by "order notify" bills of lading, placed on hold tracks awaiting surrender of bill of lading, or for inspection before delivery, necessitating subsequent movement to delivery point, will be considered as reconsignments within switching limits before placement found justified, provided that surrender shall not be a condition precedent to placement or giving of order designating placement, except where delivery designated is other than local team tracks, original bills must be surrendered or indemnity bond executed or satisfactory assurance given carrier. Reconsignment and Diversion Rules, 58 I. C. C. 568, 577.

(j) Where the consignee of order notify bill has long been in business he must have established credit with carriers and no greater burden should be imposed on him than on the consignee of a shipment under a regular bill of lading. In other words, the order notify billing, which is recognized as a business necessity, ought not to be used as a means of imposing additional burdens on consignors or consignees where no additional service or obligation is placed on the carrier. Reconsignment and Diversion Rules, 58 I. C. C. 568, 577.

(k) Order notify billing, which is recognized as a commercial necessity, ought not to be used as a means of imposing additional burdens on consignors or consignees where no additional service or obligation is placed on the carrier. Diversion and Reconsignment Rules, 61 I. C. C. 385, 390.

(l) No reason is perceived why order notify shipments placed for inspection upon the request of consignee or in conformity with billing instructions, and which require a subsequent movement, should not be subject to the same rule and charges as "straight" consignments placed for inspection. Diversion and Re-

consignment Rules, 61 I. C. C. 385, 392.

(m) In order to facilitate the movement of order notify cars through hold yards to the place of unloading, if within the switching limits, carriers should accept disposition orders prior to their arrival without requiring the surrender of the bills of lading, providing the place designated for unloading is a public team track. A. B. Alpirn v. Director General, 62 I. C. C. 486, 487.

(n) Inasmuch as these were order notify shipments, complainants title thereto depended upon possession of the bills of lading properly endorsed, and defendant was justified in declining to accept disposition orders until the bills had been surrendered or other satisfactory assurance given. A. B. Alpirn v. Director General, 62 I. C. C. 486, 487.

(o) Request received too late to accomplish diversion, and shipment arrived at originally billed destination, where it was placed upon public delivery tracks. Refused by order notify consignee and subsequently reconsigned. HELD, fact that this was an order notify shipment did not preclude carrier from placing car for unloading prior to surrender of bill of lading in absence of instructions to the contrary, and as tariff provided that if a car was placed at original destination and reforwarded without being unloaded it would be subject to rates to and from reconsignment point, combination charged found not unreasonable or unlawful. Sullivan Lumber Co. v. Director General, as Agent, 66 I. C. C. 119.

(p) Shipments moved to ports of exit on shipping receipts or domestic bills of lading, which were exchanged, in conformity with the governing tariffs, for through export bills of lading. Shipments were all consigned "order notify" consignees at foreign ports, but export bills contained no direction to notify any party at ports of exit. Demurrage and storage charges assessed but not paid found illegal. There were no parties to be notified at the ports and no parties were notified of the arrival of the shipments or that carriers were ready to deliver. United States Steel Products Co. v. Director General, as Agent, 73 I. C. C. 505.

(q) Shipments moved to San Francisco, Calif., under "order notify" bills of lading, for export, and were unloaded into private warehouse at consignee's request. Shipments subsequently exported. Tariff provided export rate where domestic bills of lading exchanged for export bills at port of exit. HELD, delivery to warehouse at consignee's order tantamount to delivery to consignee, and carrier justified in demanding surrender of negotiable bills of lading for its protection. Domestic rates assessed found applicable. Rolph, Mills & Co. v. Director General, as Agent, 74 I. C. C. 751, 752, 753.

(r) Provision in a bill of lading to notify one other than the consignee does not warrant the carrier in delivering the shipment, save by order of the lawful holder of the bill of lading. King v. Barbarin, 249, Fed. 303.

(s) A car billed "to order" is notification to the carrier that title to the property remains in the consignor until delivery of the bill of lading, properly endorsed. And such a rule is not found unreasonable. Scattergood & Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A412.

(t) Following Ludlowici-Celadon Co. v. A. C. L. R. R. Co., 28 I. C. C., 693, rule of western classification under which carrier declines to execute order bills of lading for shipments consigned to one point with instructions to notify another party at another point, not found unreasonable. Michigan Steel Boat Co. v. A. T. & S. F. Ry. Co., Unrep. Op A—832.

(u) Rule of western classification under which carrier declines to issue order bills of lading for shipments consigned to one point with instructions to notify another party at another point, not found unreasonable. Michigan Steel Boat Co. v. A. v. A. T. & S. F. Ry. Co., Unrep. Op. A-832.

VI. REPARATION AND DAMAGES.

See Reparation.

§13. In General.

IMPORTANT CASES SINCE 1908

(a) An error of the T. & P. Ry. Co. in refusing to issue the regular bill of lading as required by its tariff found to have resulted in the exaction of unreasonable charges on cottonseed oil from Louisiana and Texas to Chicago. Damages awarded. Seaboard Refining Co. v. A. G. S. R. R. Co., 25 I. C. C. 702.

(b) Shipper's agent, without knowledge of specially quoted rate, signed bill of lading bearing higher rate. Reparation awarded on account of unreasonable

rate charged. Hill Grain Co. v. I. C. R. R. Co., 42 I. C. C. 321.

(c) Bill of lading for brass ingots, described by shipper as "scrap brass," altered enroute to read "brass ingots." Charges not found unreasonable or unlawful. Great Western Smelting & Refining Co. v. A. T. & S. F. Ry. Co. Unrep. Op. 1900.

(d) Plaintiff shipped goods from Vancouver, Wash., to Canton, Ohio, via the S. P. & S. Ry. and Penn. R. R., and forwarded the bill of lading to the consignee. The latter returned the bill of lading to plaintiff with notice that it would not receive the goods; whereupon plaintiff gave notice to the S. P. & S. Ry., of the consignee's action, surrendered to it the bill of lading, and directed a return of the goods. The S. P. & S. Ry. communicated such to the Penn. R. R., but the latter failed to observe it and eventually delivered the goods to the consignee, and the goods were lost to plaintiff. Plaintiff brought action against the S. P. & S. Ry. for the damages. HELD, that plaintiff was the lawful holder of the bill of lading within the provisions of the Carmack Amendment; that the Penn. R. R. in delivering the goods to consignee without productions of the bill, did so at its peril; and that the S. P. & S. Ry., as initial carrier, was liable in damages. Coovert v. S. P. & S. Ry. Co. (Wash. 1914), 141 Pac. 324.

§14. Correcting of Bill of Lading.

IMPORTANT CASES SINCE 1908

(a) Carrier's contention that bills of lading must govern in determining the rate legally applicable, and that shipper can not show by parol evidence that shipments were of something other than as described by it or its agent in the transportation contract contained in the bills of lading, found to be without merit. Harris Bros. Co. v. Director General, as Agent, 60 I. C. C. 428, 430.

ALL OTHER CITATIONS

Domestic Bill of Lading and Live Stock Contract 66 I. C. C. 63; Stoppage of Goods in Transit, 66 I. C. C. 423; Great Western Smelting & Refining Co. v. A. T. & S. F. Ry. Co., Unrep. Op. 1900.

§15. Filing With Commission.

IMPORTANT CASES SINCE 1908

(a) The courts determine the validity of provisions in the bill of lading just as they do in the case of other contracts, and do not consider whether or not particular provisions, not contrary to the law, should be included or omitted. In the matter of bills of lading 64 I. C. C. 347, 353.

(b) Upon petition for modification of the Commission's former report, 64 I. C. C., 357, service of which was made in compliance with rule XV of the Rules of Practice, and to which no objections have been raised, rules and regulations prescribing forms of uniform domestic bill of lading and live-stock contract, so as to eliminate doubt as to the liability of the consignee for charges and remove any opportunity for confusion, approved. Domestic Bill of Lading and Live Stock Contract, 66 I. C. C. 63.

(c) Proposed rule under which shipper is required to execute agreement for stoppage of goods in transit, and where shipper is unknown or irresponsible, the agent must require one or more sureties to sign with him, found not justified. Such rule indefinite as to number of sureties required, reposes too much arbitrary power in agents to decide who is or is not "responsible," compliance therewith might require considerable time and result in loss of right to stop, because of delivery at destination, and terms of agreement are inconsistent with recognition by respondent of any duty to obey the order to stop. Stoppage of Goods in Transit, 66 I. C. C. 423.

(d) There is a presumption that copies of forms of bills of lading in use by interstate carriers have been filed with the Interstate Commerce Commission. Southern Ry. Co. v. Lewis & Adcock Co., (Tenn. 1918), 201 S. W. 131.

ALL OTHER CITATIONS

Harris Bros. Co. v. Director General, as Agent, 60 I. C. C. 428, 429.

§16. Validity of Bill of Lading.

ALL CITATIONS

In the matter of bills of lading, 64 I. C. C. 347, 353.

BLANKET RATES

I. CONTROL AND REGULATION.
§ 1. Jurisdiction of Commission.
II. LEGALITY OF GROUP RATES.
§ 2. In general.
§ 3. Justification.
§ 4. Public benefit.
§ 5. Custom.

III. EXTENSION OF ZONE.
§ 6. In general.
§ 7. Equalizing advantage of location.
§ 8. Proximity to established group.
§ 9. Grading rates.
§ 10. Differentials.
IV. REASONABLENESS
§10½. In general.
§ 11. Reasonableness of group
§ 12. Reasonableness of individual rate.
§ 12a. Relation to section 4.
§ 12½. Relativity of group rate.
(1) In general.
(2) State rates.
V. DISCRIMINATION.
§ 13. In general.
VI. REMEDY FOR UNLAWFUL GROUPING.
§ 14. In general.
§ 15. Scope of complaint.
VII. EVIDENCE.
§ 15½. In general.
§ 16. Burden of proof.
§ 17. Extent of zone.
§ 18. Comparisons.
§ 19. Competition.
§ 19¼. New decisions of Commission.
§ 19½. Reparation.
VIII. REGROUPING.
§ 20. In general.

CROSS REFERENCES

See Classification §20; Differentials; Distance Rates; Percentage Rates; Prorating Territory; Switch Tracks and Switching IV.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Jurisdiction of Commission.

See Interstate Commerce Commission I.

CASES 1887-1908

(a) Complainant attacked rates on pig iron from furnaces in the state of New York and from furnaces in Ohio and Pennsylvania to New England points as unjust, unreasonable and discriminatory. HELD, rates from Poughkeepsie, N. Y. are in themselves, as well as relatively, the same in substance as rates charged other manufacturers of pig iron at the producing furnaces in New York. The cost of the production of pig iron at a furnace situated at Poughkeepsie is much greater than at Youngstown, Ohio, or Birmingham, Ala., or at other points west and south; and while the aggregate charge to New England mills is a great deal lower than the aggregate rate charged on these western and southern irons to the same mills, yet it is not sufficiently so to overcome the difference in the cost of production; The Commission can not order the defendant to lower these rates from Poughkeepsie to points on the B. & A., one half, and to Holyoke, Mass., one half, in order to overcome the difference in the cost of production of pig iron now existing against complainant. Complaint dismissed. Poughkeepsie Iron Co. v. N. Y. C. & H. R. Co., 3 I. C. C., 248.

IMPORTANT CASES SINCE 1908

(b) While the Commission has authority to deal with group rates, it is doubtful if it can entirely ignore substantial differences in distances upon short hauls. Anadarko Cotton Oil Co. v. A., T. & S. F. Ry. Co., 24 I. C. C., 327, 330.

(c) While under the Act, as amended by the Hepburn Act of June 29, 1906, the Interstate Commerce Commission may have power to enter upon a plan looking toward a system of rates wherein the rates, for longer and shorter hauls, will taper downward according to distance, provided such tapering is both comprehensive and symmetrically applied, it has no power by the use of differentials to artificially divide up the country into trade zones, tributary to given trade and manufacturing centers so as to give the Commission power to pre-determine what the trade and manufacturing centers shall be. Orders of the Interstate Commerce Commission in 14 I. C. C., 299 and 15 I. C. C., 555, enjoined. C., R. I. & P. Ry. Co. v. I. C. C., 171 Fed. 680, 683 Reversed 218 U. S. 88, 30 Sup. Ct. 651. 54 L. ed. 946.

(d) Seventeen carriers applied to the Commission for relief from the provisions of the 4th section, their applications covering the whole territory from the Atlantic seaboard to the Pacific coast and the Gulf of Mexico, embracing practically the entire country. They asked authority to continue all rates on the tariffs presented, from Atlantic to Pacific and contrariwise, and to and from interior points, lower than rates concurrently in effect from and to intermediate points. The Commission refused to grant their petitions unquali-

fiedly, but entered an order permitting in some respects a charge of a lower rate for the longer haul than was asked for the shorter, provided a proportionate relation was maintained between them, the proportion to be upon the basis of percentages which were fixed. For the purpose of the order the Commission adopted in substance a division of the entire territory into separate zones, which division had been resorted to by the carriers for the purpose of establishing the rates in relation to which the petitions were filed. The carriers contended that under the 4th section as amended by the Act of June 18, 1910, the Commission was limited to ascertaining the existence of competition and to authorizing the carrier to meet it, without any authority to do more than exercise its general powers concerning the reasonableness of rates at all points. HELD, that under the 4th section as amended, the Commission is not only authorized to consider competitive conditions and their relation to persons and places, but also the right to do that by which alone it could be exerted, namely, the establishment of zones and percentages. United States v. A., T. & S. F. Ry. Co., 34 Sup. Ct. 986, 994; 234 U. S. 476; 58 L. ed.—; reversing 191 Fed. 856, enjoining the orders of the Commission in the so-called Intermountain Cases.

(e) Interstate Commerce Commission's order requiring railroads to cease unfair discrimination, in charging higher through rate from one point than from other points within blanket territory held not violative of the due process clause, because lower rate would be confiscatory as to one of the connecting roads, since the order could be complied with by increasing the lower rate from the other points, or by increasing such road's share of the rate. United States v. Illinois Cent. R. Co. 44 Sup. Ct. 189.

ALL OTHER CITATIONS

Railroad Commission of Nevada v. S. P. Co., 19 I. C. C., 238, 255; Lawrence-Wardenburg Co. v. S. P. Co., 20 I. C. C., 638, 639; Arlington Heights Fruit Exchange v. S. P. Co., 22 I. C. C., 149, 155; Waukesha Lime & Stone Co. v. C., M. & St. P. Ry. Co., 26 I. C. C., 515, 518; Newport Mining Co. v. C. & N. W. Ry., 33 I. C. C., 645, 657.

II. LEGALITY OF GROUP RATES.

See Legality of Group Rates.

§2. In General.

CASES 1887-1908

(a) The propriety of the application of the principle of grouping is properly open to challenge in every case and every case must be justified upon its own facts and peculiar circumstances. Howell v. New York, Lake Erie & Western R. Co., 2 I. C. R. 162.

(b) The system of grouping is not of itself necessarily illegal; it only becomes illegal when it can be shown that illegal results flow from it, in the infliction of actual injury. Howell v. New York, Lake Erie & Western R. Co., 2 I. C. R., 162.

(c) Group rates may be properly made from a large number of mines practically composing a coal mining district extending across the State of Illinois to points in Western Wisconsin, Minnesota, and Dakota, the distance from each part of the group by some route being substantially a fair equivalent of the distance from other points, and the commercial necessities being substantially the same for all. Rend. v. Chicago & Northwestern R. Co., 2 I. C. R., 313.

(d) The group rate so established is properly extended to coal shipped to the same territory locally from Chicago, on account of the operation of the fourth section of the Act, some of the lines passing through the mining district en route from Chicago to the points of distribution. Rend v. Chicago & Northwestern R. Co., 2 I. C. R., 313.

(e) A group rate for a particular district upon a commodity for which a large demand exists, and intended to place producers in the district upon an equality among themselves and with producers of the same commodity from other districts, all competing in a common market, is not unlawful merely on account of differences in the geographical location of different producers and their respective distances from the market. Imperial Coal Co. v. Pittsburgh & L. E. R. Co., 2 I. C. R., 436.

(f) The practice of making one rate on the same product over a large district is only justifiable under special and exceptional circumstances and is not to be encouraged when the difference in the transportation expense from the various parts of such district is considerable and substantial. Newland v. Northern P. R. Co., (Com.), 4 I. C. R., 474.

(g) The practice of making one rate on the same product over a large district is only justifiable under special and exceptional circumstances, and is not to be encouraged when the difference in the transportation expense from the various parts of such district is considerable and substantial. Newland v. Northern P. R. Co., 6 I. C. C., 131; Evans v. Union P. R. Co., 520.

(h) The rule that while the aggregate rate should increase, the rate per ton per mile should decrease as distance increases is not one required by the statute and is subject to qualifications and exceptions. Group rates extending over considerable areas disregard that rule and yet such rates are not considered illegal unless they operate to subject some shipper, locality or species of traffic to undue and unreasonable advantage. Hilton Lumber Co. v. Wilmington & W. R. R., 9 I. C. C., 17, 31.

IMPORTANT CASES SINCE 1908

(i) The Commission has often approved blanket rates. It undoubtedly should, in so far as it consistently can, approve such a rate upon citrus and deciduous fruits from California. That feature of the rate is highly satisfactory to the grower, and brings this article into more general use at remote points than would otherwise be possible. In passing upon the reasonableness of the blanket rate, the Commission must undoubtedly offset the rate to the nearer point against that to the more distant point, but where the application of such a rate clearly results in imposing unjust and unreasonable transportation charges at the nearer point this fact cannot be ignored or excused simply because a rate less than is just is granted at the more distant points. Commercial Club of Salt Lake City v. A. T. & S. F. Ry. Co., 19 I. C. C. 218, 226.

(j) Group adjustments are not unlawful so long as the discriminations between the groups and between the several points in the same group are not undue. An undue degree of inequality may be shown only by substantial evidence dealing with the situation as a whole, and mere comparisons of distance, without other material and supporting facts adduced of record, do not justify a further division of the grouping. Galion Iron Wks. & Mfg. Co. v. B. & O. R. R., 47 I. C. C. 136, 139, 140.

(k) Carriers must not discriminate in disregarding distance and other factors and blanket an extensive territory served by their own lines, and in some instances by independent lines as well, and refuse to accord similar treatment to points served by other proprietary or nonproprietary lines within the general geographical and distance limits of the blanket territory. Pacific Lumber Co. v. N. W. P. R. R., 51 I. C. C. 738, 759.

(l) The Commission has never held that it is necessary, in order to preserve advantages of location, that rates should be based rigidly on mileage or on cost of service. There are limits of reasonableness in the making of rates which admit of a certain degree of flexibility in their adjustment for the sale of convenience and simplicity or for the purpose of meeting commercial and competitive conditions. Out of such conditions rate blankets grow, and there is nothing unlawful in their construction, provided they are well balanced and their advantages and disadvantages fairly distributed. Portland Traffic & Transportation Asso. v. Director General, 69 I. C. C. 165, 170.

(m) Most adjustments of rates on a group basis result in some inequalities when distance alone is considered, but such inequalities are not of necessity unreasonable and unjust. Weirton Steel Co. v. Monongahela Ry. Co., 77 I. C. C. 622, 626.

(n) Group rates disregard distance to some extent, and it is not infrequent that localities within a group suffer thereby. Ohio-Michigan Coal Rates, 80 I. C. C. 663, 677.

(o) The commission has consistently refrained from breaking up a group where it has not been made to appear that party seeking such action is actually damaged by discrimination which results from the group rate. Newport Mining Co., 33 I. C. C., 645, 657, and cases cited. Perry County Coal Corp. v. E. St. L. & S. Ry. Co., 80 I. C. C. 711, 715.

ALL OTHER CITATIONS

Commercial Club of Hattiesburg v. A. G. S. R. R. Co., 16 I. C. C. 534, 545, 546; Avery Manufacturing Co. v. A. T. & S. F. Ry. Co., 16 I. C. C. 20, 24; Ferguson Saw Mill Co. v. St. L. I. M. & S. Ry. Co., 18 I. C. C. 396, 399; Northwestern Leather Co. v. O. R. R. & N. Co., 21 I. C. C. 66, 67; Traugott Schmidt & Sons v. M. C. R. R. Co., 23 I. C. C.

684, 687; Transportation Bureau of Wichita v. St. L. & S. F. R. R. Co., 23 I. C. C. 679, 680; Thropp v. P. R. R. Co., 23 I. C. C. 497, 499; Mutual Rice Trade & Development Ass'n v. I. & G. N. R. R. Co., 23 I. C. C. 219, 223, 224; In Re Transportation of Wool, Hides and Pelts, 23 I. C. C. 151, 164; In Re Wool, Hides and Pelts, 25 I. C. C. 675, 678; Taylor v. N. & W. Ry. Co., 25 I. C. C. 613, 616; Texas Common Point Case, 26 I. C. C. 528, 529, 538; Waukesha Lime & Stone Co. v. C. M. & St. P. Ry. Co., 26 I. C. C. 515, 518, 519; Transcontinental Commodity Rates, Westbound, 26 I. C. C. 456, 461; Rates on Newsprint Paper v. Sault Ste. Marie, 26 I. C. C. 13, 19; Chicago-Duluth Grain Rates from Southern Mills, 27 I. C. C. 216, 217; Lumber Rates from Southern Mills, 27 I. C. C. 189; Iowa State Board v. A. E. R. R. Co., 28 I. C. C. 193, 198; Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 576; Pub. Utilities Com. of Idaho v. O. S. L. R. R., 33 I. C. C. 103, 106; Oklahoma Cottonseed Crushers Assn. v. M. K. & T. Ry., 35 I. C. C. 94, 106; Wisconsin & Arkansas Lumber Co. v. St. L., I. M. & S. Ry. Co., 33 I. C. C. 33, 37; Brown v. V. R. R. Co., 41 I. C. C. 317, 320; Eastern and Western Lumber Company v. O. W. R. R. & N. Co., 41 I. C. C. 545, 550; LaCrosse Shippers' Asso. v. C. & I. L. Ry., 43 I. C. C. 520, 523; Sergeant Glass Co. v. Penn. R . R. 43 I. C. C. 622, 624; The New York Harbor Case, 47 I. C. C. 643, 712; Western Trunk Line Potatoes, 50 I. C. C. 407, 411; Sheboygan Asso. of Commerce v. C. & N. W. Ry. Co., 55 I. C. C. 140, 144; National Tube Co. v. L. T. R. R., 55 I. C. C. 469, 479; Silica Sand Producers' Asso. v. Director General, as Agent, 58 I. C. C. 549, 552; Inland Empire Shippers League v. Director General, 59 I. C. C. 321, 339, 341; James A. Coad v. C. St. P. M. & O. Ry. Co., 64 I. C. C. 178, 180; Sand and Gravel from Michigan City, 64 I. C. C. 512, 514; Clinton Paving Brick Co. v. Director General, 66 I. C. C. 338, 344; Belber Trunk & Bag Co. v. W. J. & S. R. R., 66 I. C. C. 490, 493, 494; Hagerstown Chamber of Commerce v. W. M. Ry. Co., 74 I. C. C. 741; Milwaukee Chamber of Commerce v. B. & Q. R. R. Co., 78 I. C. C. 110, 117, 118.

§3. Justification.

CASES 1887-1908

(a) The practice of making one rate on the same product over a large district is only justifiable under special and exceptional circumstances and is not to be encouraged when the difference in the transportation expense from the various parts of such district is considerable and substantial. Newland Hauschild & Reeder v. N. P. R. R. Co., 4 I. C. C. 474, 480.

(aa) The practice of making one rate on the same product over a large district is only justifiable under special and exceptional circumstances, and is not to be encouraged when the difference in the transportation expense from the various parts of such district is considerable and substantial. Evans v. U. P. R. R. Co., 6 I. C. C. 520, 546.

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(b) Blanket rates put in competition producers throughout the producing district, and provide a guaranty against exorbitant prices or undue profits. Wisconsin & Arkansas Lumber Co. v. St. L., I. M. & S. Ry. Co., 33 I. C. C., 33, 38.

(c) Where, under the pleadings the rate from every point in a blanket to every destination involved is put in issue, testimony pointing out that the blanket has been developed more by adding points nearer to the destinations than by adding points further away, is relevant and material and therefore admissible. Oklahoma Cottonseed Crushers' Assn. v. M. K. & T. Ry. Co., 39 I. C. C. 497, 500.

(d) While the Commission has in some instances approved group adjustments and other plans initiated by the carriers to provide a common rate for shippers differently located, it has uniformly condemned attempts on the part of the carriers to use their transportation rates as a means of equalizing commercial conditions. Utah-Idaho Millers & Grain Dealers Assn. v. R. R. Co., 42 I. C. C. 648, 656.

(e) The chief justification for a rate zone is that it places all producers on the same footing in a given market. Blanket or group rates in many cases are of great advantage to the public without serious injustice to any interest, though there is of necessity more or less disregard of distance and varying degrees of inequality. The New York Harbor Case, 47 I. C. C., 643, 712, 713.

(f) Blanket or group rates very often

grow out of commercial, competitive, or transportation conditions. In some instances natural or geographical conditions, such as rivers and state lines, form the boundaries of rate groups. Many districts with a characteristic traffic, such as lumber, grain or fruit, under current tariffs are divided into one or more rate groups. Areas underlaid with coal, ore or other minerals are often broken up into rate zones according to their grade or quality. Blanket or group rates resting on such conditions have many times been commended by the Commission, because, although they usually involve some disregard of distance, they nevertheless promote a healthy competition and put producers and consumers on a more or less equal basis. But rate groups ordinarily should be neither broader nor narrower than is required by the conditions on which they are based. Humphrey Brick & Tile Co. v. Penn. R. R., 50 I. C. C. 457, 464.

(g) Whether or not rates in any district should be grouped so as to equalize points on trunk lines and their connections in that district is essentially a ratemaking matter involving exercise of judgment. National Tube Co. v. L. T. R. R., 55 I. C. C. 469, 479.

(h) The Commission has recognized the system of group-rate making as proper, within limits, except where shippers or consignees are really damaged by the rates thus afforded while others are correspondingly benefited, and has generally refrained from breaking up a group where it has not been made to appear that the party seeking such action is actually damaged by the discrimination that results from the group rate. South Dakota Ry. Commissioners v. A. & W. Ry. Co., 74 I. C. C. 295, 306, 307.

(i) Commercial competition and the conditions under which industries are compelled to conduct their business as distinguished from transportation conditions are important considerations in the adjustment of group rates. Melcroft Coal Co. v. Indian Creek Valley Ry., 81 I. C. C. 251, 258.

ALL OTHER CITATIONS

Ferguson Saw Mill Co. v. St. L. I. M. & S. Ry. Co., 18 I. C. C. 396, 398; Sawyer & Austin Lumber Co. v. St. L. I. M. & S. Co., 21 I. C. C. 464, 466; Suffern Grain Co. v. I. C. R. R. Co., 22 I. C. C. 178, 181; Waukesha Lime & Stone Co. v. C., M. & St. P. Ry. Co., 26 I. C. C. 515, 518, 519; Kaufman Commercial Club v. T. & N. O. R. R. Co., 31 I. C. C. 167, 170; Public Utilities Commission of Idaho v. O. S. L. R. R. Co., 33 I. C. C. 103, 106; American Sand & Gravel Co. v. C. & N. W. Ry., 48 I. C. C. 1, 2, 4; Natchez Chamber of Commerce v. L. & A. Ry., et al., 52 I. C. C. 105, 124.

§4. Public Benefit.

See Evidence §44½.

IMPORTANT CASES SINCE 1908

(a) It is by no means certain that postage-stamp rates, as applied to the distribution of the products of the Pacific Coast states, are not upon the whole for the general public good. Arlington Heights Fruit Exchange v. S. P. Co., 22 I. C. C. 149, 156.

(b) If the cost of mining coal is considered by the carriers in fixing the rates from one district, the same consideration cannot lawfully be denied by the same carriers serving another district in which there are mines operating under the same conditions. San Toy Coal Co. v. A. C. & Y. Ry., 34 I. C. C. 93, 98.

(c) The fact that on one commodity moving outbound, several points constitute a single group is pertinent in considering the reasonableness of an adjustment on another commodity moving inbound under which such points are divided into two or more groups, but such a showing is not convincing, even though it appear that the second commodity is used largely in the manufacture of the first, in the absence of proof of substantial similarity of conditions, transportation and otherwise, surrounding their movement, for it might be that competition has influenced the establishment of an adjustment on the one which it would not be just to the carriers to require on the other. Alpha Portland Cement Co. v. B. & O. R. R., 34 I. C. C. 414, 421.

(d) The practice of embracing many points within the same group or zone has been so generally adopted by the carriers and so frequently recognized as proper that its general propriety can hardly be challenged. Not only does this practice greatly simplify the publication of tariffs, to the convenience of both the carriers and the public, but the application of a common rate to a number of points in the same general territory effects an equality of opportunity which is usually most desirable; and this is

particularly true where the points in question produce and ship the same commodity or derive their raw materials from the same sources. The New York Harbor Case, 47 I. C. C. 643, 712.

(e) Grouping or blanket arrangements are of great advantage to the public, and once established groups should not be lightly or unnecessarily disturbed. But the Commission has never approved a group rate that resulted in undue prejudice to any part of the group; and whether or not the grouping of points constitutes undue or unjust discrimination must be determined from the facts in each case. The New York Harbor Case, 47 I. C. C. 643, 713.

(f) Blanket or group rates resting on commercial, competitive, transportation, natural or geographical condition, or characteristic traffic, have many times been commended by the Commission, because although they usually involve some disregard of distance, they nevertheless promote a healthy competition and put producers and consumers on a more or less equal basis. Humphrey Brick & Tile Co. v. P. R. R., 50 I. C. C. 457, 464.

(g) The system of group rate making has been recognized as proper, within limits, except where shippers or consignees are really damaged by the rates thus afforded while others are correspondingly benefited, and the Commission has generally refrained from breaking up a group where it has not been made to appear that the party seeking such action is actually damaged by the discrimination that results from the group rate. South Dakota Railway Commissioners v. A. & W. Ry., 74 I. C. C. 295, 306.

(h) The Commission has frequently recognized the principle that group or blanket adjustments of rates are justified upon the theory that they are of benefit to commerce. Under such adjustments obviously some shippers will be farther from a given point than others in the same blanket. Union Sulphur Company v. A. & W. R. Co., 81 I. C. C. 382, 390.

ALL OTHER CITATIONS

Chicago Lumber & Coal Co. v. Tioga Southeastern Ry. Co., 16 I. C. C. 323, 334; American Coal Co. v. B. & O. R. R. Co., 17 I. C. C. 149, 155; In Re Transportation of Wool, Hides and Pelts, 23 I. C. C. 151, 164; Hammerschmidt & Farnzen Co. v. C. & N. W. Ry. 30 I. C. C. 71, 81; Lumber Rates—Southern Ry. Points to Eastern Points, 31 I. C. C. 244, 253; Wisconsin & Arkansas Lum. Co. v. St. L. I. M. & S. Ry., 33 I. C. C. 33, 37, 38; Memphis Freight Bureau v. St. L. I. M. & S. Ry. Co., 39 I. C. C. 303, 308; Royal Milling Co. v. G. N. Ry., 47 I. C. C. 263, 266; Western Trunk Line Potatoes, 50 I. C. C. 407, 411; St. Louis Chamber of Commerce v. B. & O., 57 I. C. C. 639, 651; Inland Empire Shippers League v. Director General, 59 I. C. C. 321, 341; Salt from Louisiana Mines to Chicago, 66 I. C. C. 81, 93.

§5. Custom.

See Custom; Evidence §19½.

CASES 1887-1908

(a) While like or "group" rates are frequently applied to cities considerably further apart than are Omaha and Council Bluffs, the usage in this regard is not so uniform and well established as to make an exception at those cities even prima facie unlawful. Commercial Club of Omaha v. Chicago & N. R. Co., 7 I. C. C. 386.

IMPORTANT CASES SINCE 1908

(b) In transportation of low-grade commodities that move in large quantities it is a long-established custom to group or blanket a number of stations or a large expanse of territory. Kansas City Transportation Bureau v. A. T. & S. F. Ry. Co., 16 I. C. C. 195, 204.

(c) Where points are properly grouped with respect to rates to common markets, distances are fairly to be computed on the average distances of the points in the group. State of Iowa v. Wabash Ry., 46 I. C. C. 703, 709.

(d) The practice of embracing many points within the same group or zone has been so generally adopted by the carriers and so frequently recognized as proper by the Commission that its general propriety can hardly be challenged. New York Harbor Case, 47 I. C. C. 643, 712.

(e) The system of rate making by joining various points into a given group, and establishing the same rate from each point in the group to any given destination, has long been followed by the carriers. This system has contributed largely to the development of the natural resources of the country. It has served to put various producers of a given product in the same territory on an equality as to products destined to any common point of consumption. This system could

not exist if distance were made the primary factor. Inland Empire Shippers League v. Director General, 59 I. C. C. 321, 339.

ALL OTHER CITATIONS

Moise Bros. Co. v. C. R. I. & P. Ry. Co., 16 I. C. C. 550, 556; City of Spokane v. N. P. Ry. Co., 19 I. C. C. 162, 177; Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 226; Hutchinson Traffic Bureau v. A. T. & S. F. Ry., 40 I. C. C. 160, 163.

III. EXTENSION OF ZONE.

§6. In General.

CASES 1887-1908

(a) Competition between carriers from producing points in the Middle West and the Atlantic Seaboard over the right to serve different portions of the State of Texas was finally adjusted by making the rates to all parts of the common-point territory the same, with a few exceptions; but Amarillo, situated in the Pan Handle of Texas, 142 miles north and west of Quanah, the last common-point station of one of the defendants, does not properly fall within the competitive lines, and therefore complainants' contention that Amarillo should be placed in Texas common-point territory should not be sustained. Nobles Bros. Gro. Co. et. al. v. F. W. & D. C. Ry. Co. et al., 12 I. C. C. 242.

(b) Amarillo, Tex., put in Burnt District group as to commodity rates from Kansas City, but not as to class rates from St. Louis. Nobles Bros. Grocer Co. v. Ft. W. & D. C. Ry. Co., 12 I. C. C. 242.

(c) Lancaster, Tex., transferred from group 2 to group 1 of Texas destination points. Farmers, Mechanics & Shippers Club v. A. T. & S. F. Ry. Co., 12 I. C .C. 351.

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(d) Relative distances alone are not controlling. Commercial competition and the interests of consumers also are pertinent considerations. Consumers may properly have the widest possible market consistent with justice to the carriers, and to that end and also in their own interests carriers may, within reasonable limits, as a matter of traffic policy, accord competing producing centers located at different distances from common centers of consumption identical rates. Carriers may not, of course, disregard all differences in distances. Groups cannot be extended indefinitely, and the discrimination inherent in all group adjustments must not be undue. Groups long maintained, however, are presumably fair and are not to be disrupted unless substantial justice clearly requires it. Dissatisfied producers deprived of the benefit of their proximity to common markets must show that they are actually injured and by an unjust and unlawful discrimination. Galloway Coal Co. v. A. G. S. R. R. Co., 40 I. C. C. 311, 321.

(e) It does not follow that because a point is grouped with other points on some commodities it should be grouped on all commodities. Alton Merc. Co. v. I. C. R. R., 48 I. C. C. 668, 669.

(f) In establishing the boundary lines of groups, carriers should follow some measure of principle, such as radical or operating distance, competition, character of freight, physical features of the country, and the location of transportation lines. Humphrey Brick & Tile Co. v. P. R. R., 50 I. C. C. 457, 462.

(g) There is no requirement of law that origin and destination groups shall be coextensive in area. Except, perhaps, in the adjustment of transcontinental rates it may be said to be the usual practice for origin group rates to apply to destination points singly or groups of only a few together. St.Louis Chamber of Commerce v B. & O., 57 I. C. C. 639, 648.

(h) The commission has consistently refrained from breaking up a group where it has not been made to appear that party seeking such action is actually damaged by discrimination, which results from the group rate. Newport Mining Co., 33 I. C. C., 645, 657, and cases cited. Perry County Coal Corp. v. E. St. L. S. Ry. Co. 80 I. C. C. 715.

(i) Groups of long standing are presumably fair and ought not to be disrupted unless substantial justice requires it. Galloway Coal Co., 40 I. C. C., 311, 320, and cases there cited. Perry County Coal Corp. v. E. St. L. S. Ry. Co. 80 I. C. C. 715.

(j) In absence of proof of tangible injury to complainants or of positive evidence that rates are unjustly discriminatory or unduly prejudicial, a group adjustment should not be disturbed. Phelps Dodge Corp., 57 I. C. C., 714, 720, and

cases cited. Perry County Coal Corp v. E. St. L. S. Ry. Co. 80 I. C. C. 715, 716.

(k) In any group adjustment lines must be drawn somewhere, and the difference in distance between the most distant point in one group and the least distant point in the next more distant group must be comparatively small. Indiana Public Service Commission v. A. T. & S. F. Ry. 88 I. C. C. 709, 718.

ALL OTHER CITATIONS

Hitchman Coal & Coke Co. v. B. & O. R. R. Co., 16 I. C. C. 512, 520, 521; Corporation Commission of N. C. v. N. & W. Ry. Co., 19 I. C. C. 303, 309; Clyde Coal Co. v. P. R. R. Co., 23 I. C. C. 135, 138; Johnson & Son v. C. & O. Ry., 24 I. C. C. 698; Texas Common Point Case, 26 I. C. C. 528, 529, 533, 538; Waukesha Lime & Stone Co. v. C. M. & St. P. Ry. Co., 26 I. C. C. 515, 518, 519; Rates on News Print Paper from Sault Ste. Marie, Ont., 26 I. C. C. 13, 19; In Re Advances on Sugar, 27 I. C. C. 122, 124; Mitchell Coal & Coke Co. v. Penn. R. R. Co., 33 Sup. Ct. 916, 923, 230 U. S. 247; Iowa State Board of Railroad Commissioners v. A. E. R. R. Co., 28 I. C. C. 193, 195, 198, 199; Columbia Chamber of Commerce v. S. Ry. Co., 28 I. C. C. 339, 343, 346; Grain Rates in C. F. A. Territory, 28 I. C. C. 549, 555; Poehlman Bros. Co. v. C., M. & St. P. Ry. Co., 30 I. C. C. 89; Empire Coke Co. v. B. & S. R. R. Co., 31 I. C. C. 573; Rogers & Prinky v. B. & O. R. R. Co., 30 I. C. C. 32, 33; Seattle Shingle Co. v. C., M. & St. P. Ry. Co., 30 I. C. C. 364, 369; Hammerschmidt & Franzen Co. v. C. & N. W. Ry. Co., 30 I. C. C. 71, 82; Standard Vitrified Brick Co. v. C., B. & Q. R. R. Co., 32 I. C. C. 208; Class and Commodity Rates from Stations in Maine, 31 I. C. C. 18, 21; Fruit Exchange v. S. P. Co., 31 I. C. C. 159, 161; Rice Rates from Helena, Ark., 31 I. C. C. 614, 615; Stuart's Draft Milling Co. v. S. Ry. Co., 31 I. C. C. 623, 628; Wisconsin & Arkansas Lumber Co. v. St. L., I. M. & S. Ry. Co., 33 I. C. C. 33, 35; Pacific Fruit Exchange v. S. P. Co., 32 I. C. C. 48, 49; Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 619; Swift & Co. v. C., G. W. R. R. Co., Unrep. Op. A-789; McAlester Fuel Co. v. M., K. & T. Ry. Co., Unrep. Op. A-839; Rates on Lumber from Southern Points, 34 I. C. C. 652, 659; Rates on Asphaltum, Barley, Beans and Canned Goods, 33 I. C. C. 480, 485; Rates on Lumber from Southern Points, 34 I. C. C. 652, 659; National Dock & Storage Warehouse Co. v. B. & M. R. R., 38 I. C. C. 643, 649, 650; Stonega Coke & Coal Co. v. L. & N. R. R., 39 I. C. C. 523; Interstate Packing Co. v. C., M. & St. P. Ry. Co., 41 I C. C. 396, 398; Oshkosh Excelsior Mfg. Co. v. C., M. & St. P. Ry. Co., 41 I. C. C. 419, 421; Northern Mercantile Co. v. A. E. R. R., 42 I. C. C. 290, 293; Albrecht v. N. P. Ry., 51 I. C. C. 601, 603; Waco Chamber of Commerce v. A., T. & S. F. Ry., 51 I. C. C. 668; Texas Cottonseed Crushers Asso. v. G., C. & S. F. Ry. Co., 53 I. C. C. 627; Cambria Co. v. Director General, as Agent, 60 I. C. C. 459, 463; Grain and Products from Indiana and Kentucky, 74 I. C. C. 375; Newport Mining Co., 33 I. C. C. 645, 657; Phelps Dodge Corp., 51 I. C. C. 714, 720; Rio Grande Chamber of Commerce v. St. L., B. & M. Ry. Co., 81 I. C. C. 703, 707, 711, 712, 717; Big Mandy Coal & Mining Co. v. L. R. R. Co., 78 I. C. C. 445, 450; Anaconda Copper Mining Co. v. Director General, as Agent, 78 I. C. C., 549, 552; Rules for Protective Service on Perishable Freight, 83 I. C. C. 275, 279.

§7. Equalizing Advantage of Location.

See Equalization of Rates §3.

CASES 1887-1908

(a) A group rate for a particular district upon a commodity for which a large demand exists, and intended to place producers in the district upon an equality among themselves and with producers of the same commodity from other districts, all competing in a common market, is not unlawful merely on account of differences in the geographical location of different producers and their respective distances from the market. Imperial Coal Co. v. P. & L. E. R., 2 I. C. C. 436, 443.

(b) The same rate over a district quite extensive denies to the producer near the market the advantages of his location, for which he receives no compensation in the fact that such rate was established to enable a railroad company to sell its lands more distant from markets at better prices. Newland, Hauschild & Reeder v. N. P. R. R. Co., 4 I. C. C. 474, 480.

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(c) It is improper to place a particular commodity in a given zone without due regard to geographical boundaries of production. Ferguson Saw Mill Co. v. St. L., I. M. & S. Ry. Co., 18 I. C. C. 391, 394.

(d) Because carriers have constructed a system of rates on a zone or blanket system is not sufficient reason to justify the collection of unreasonable charges to any point. Every city is entitled to the advantage of its location and may not lawfully be subjected to high freight charges, merely because carriers, for reasons of convenience or otherwise, include it with a number of other points in surrounding territory, which latter points are not similarly situated. Corporation Commission of North Carolina v. N. & W. Ry. Co., 19 I. C. C. 303, 309.

(e) When general rate adjustments, in and between large territories, which contemplate substantial justice between all shippers generally, result in individual instances of disproportionate inequality, they fail in their purpose, and their strict observance in such cases upon no other ground than the arbitrary theory of their existence should yield to the extent necessary to prevent injustice. Alpha Portland Cement Co. v. B. & O. R. R. Co., 22 I. C. C. 446, 449.

(f) The bulk of the rice crop of the United States is produced in Texas, Louisiana and Arkansas, and New Orleans has been the leading milling and marketing point. The milling interests for Houston and Texas mill cities attacked the rates on clean rice from Texas milling points to the Southwest, to Central Freight Association territory, to Illinois territory, and to the Pacific Coast territory, as discriminatory against them when compared with the corresponding rates from New Orleans. To the Southeast the through rates were combinations made of a local carload rate of 15c from Houston, and Texas points east thereof, or 19c from Texas points west thereof, to New Orleans, and in most instances a local any quantity rate from New Orleans. To Central Freight Association territory (east of the Illinois-Indiana state line) there were joint rates applying from Houston, which were 10c on carloads, and 20c on less-than-carloads, higher than the corresponding rates to New Orleans. To Illinois territory the rates from Houston were 5c on carloads, and 10c on less-than-carloads, higher than from New Orleans. To the Pacific Coast the rates from Houston were the same as from New Orleans. New Orleans is on the average about 150 miles nearer to Illinois points, and about 200 miles nearer Central Freight Association territory points than are the Texas milling centers. Houston is 350 miles nearer the Pacific Coast than New Orleans, but the rice rates, like all other rates to the Pacific Coast, are blanketed, so that all Louisiana and Texas points have the same rate to all coast markets. In hauls to the Pacific Coast only one carrier is involved, while in hauls from Houston to the Southwest at least two carriers participate. The average haul from the rice belt to the Coast approximates 2,000 miles. The rates from Texas points to the Southeast were combination rates based on New Orleans or other Mississippi gateways. It appeared that each of the local rates included in the through rates had been lowered by competition either of markets or of other carriers. The local rates from New Orleans were in most instances any-quantity rates. The shipments from Texas points to the Southeast were made only in carload lots. Generally speaking, the carload rates that apply from the river to southeastern points were relatively lower than the any-quantity rates. On Texas shipments no terminal service was performed at New Orleans, while on a local shipment, in and out, such service would be substantial. HELD: As to the rates applying to Illinois and Central Freight Association territory, New Orleans possesses natural advantages entitling it to lower rates than Texas points; that while the Texas points are nearer Pacific Coast points than New Orleans, they are not entitled to lower rates because the rates are blanketed over a large territory, and, hence, can be justified, which they might not be were the haul shorter, as is the case to Central Freight Association territory; that the through carload rates of which any-quantity rates are factors from Texas points to the Southeast are unreasonable and discriminatory because the New Orleans shipper in less-than-carload lots gets the same rate as the Texas shipper of carloads, and in addition has a substantial terminal service performed for him, and that joint carload rates from Texas milling points to this territory should be at least 5c less than the lowest combination of locals contemporaneously in effect to and from Mississippi River points. Mutual Rice Trade & Devel. Assn., Houston, v. I. & G. N. R. R., 23 I. C. C. 219.

(g) Carriers have followed the principle that whenever distance between cer-

points constitutes a relatively small percentage of distance between any of those points and ultimate market, such originating points should be grouped for rate-making purposes. Rates on News Print Paper from Sault Ste. Marie, Ont., 26 I. C. C. 13, 19.

(h) Complainant attacked rate on coarse grain and sorghum grain from all points in Texas to all points in Mississippi Alabama, Georgia, South Carolina and Jacksonville, Fla., as unreasonable and in violation of the fourth section and unduly prejudicial as compared with rates from points in states north of Texas. The rates from points in Texas to the above destinations are published from groups of origin to specific points of destination via the Mississippi River crossings, Memphis, Vicksburg and New Orleans, and are in nearly all instances combinations on the river crossings or joint rates equal to or based upon the lowest combination on the river. For much of the traffic the distance is shorter via Vicksburg. The establishment of joint rates from Texas groups to points in the southwest would result in a demand for a like adjustment from other territories, from which the rates for many years have been made by combination on the river crossings, thus facilitating the equalization of the various grain markets by rates inbound and outbound which result in the same through rates through all markets. Texas grain shippers are in competition with those in other states. No reason appears why a proportional rate from Vicksburg to points in a large portion of the southeast, applicable only to grain originating in Texas, the same as from Memphis, should necessarily affect the rates on grain from Ohio and upper Mississippi river crossings, through which no grain moves from Texas. HELD: Rates attacked from Texas groups 1 and 3 to points in question unreasonable to extent the component from Texas to Vicksburg exceeds 28c, rates from other groups to be made by arbitraries over. Texas Grain Dealers' Asso. v. A. & S. Ry., 81 I. C. C. 96.

ALL OTHER CITATIONS

Hydraulic Press Brick Co. v. Vandalia R. R. Co., 15 I. C. C. 175, 176; Indianapolis Freight Bureau v. C., C., C. & St. L. Ry. Co., 16 I. C. C. 56, 71; Railroad Commissioners of Florida v. S. A. L. Ry., 16 I. C. C. 1, 2; Saginaw Board of Trade v. G. T. Ry. Co., 17 I. C. C. 128, 132, 138; Ferguson Saw Mill Co. v. St. L., I. M. & S. Ry. Co., 18 I. C. C. 391, 396, 399; Railroad Commission of Nevada v. S. P. Co., 19 I. C. C. 238; In Re Advances in Rates by Carriers on Cement Plaster, 21 I. C. C. 591, 545; Southwestern Missouri Millers Club v. M. K. & T. Ry; 22 I. C. C. 422, 424; Pierce v. P. & L. E. R. R. Co., 23 I. C. C. 89, 91; Texas Cement Plaster Co. v. St. L. & S. F. R. R. Co., 26 I. C. C. 508; Federal Milling Co. v. M. & St. P. & S. Ste. M. Ry. Co., 27 I. C. C. 696; Clinton Mfrs. & Shippers' Asso. v. C. & A. R. R. Co., 27 I. C. C. 230, 232, 233; Trans-Continental Rates from Group F, 28 I. C. C. 1; Kansas Wholesale Grocery Co. v. A. & W. Ry. Co., 32 I. C. C. 139; Chamber of Commerce, Moss Point, Miss., v. V. & N. R. R. Co., 57 I. C. C. 112; Authority to Increase Rates, 58 I. C. C. 220, Ex Parte 74, 302.

§8. Proximity to Established Group.

CASES 1887-1908

(a) Group rates of 70 cents on second-class articles and 44 cents on third-class applying within a distance of 271 miles from Prichard, Ala., to Verona, Miss., on shipments over an extreme distance of 640 miles to East St. Louis, and which in the next 200 miles fall to 30 cents second class, and 22 cents third class. HELD: Prima facie unreasonable and unjustly discriminating against points within the group which are nearer to East St. Louis and unlawful as to shipments from Verona. Rea v. Mobile & Ohio R. Co., 7 I. C. C. 43.

(b) Complainant attacked rates on classes from eastern territory to Amarillo, Tex., as unreasonable in that they were higher than those in effect to Texas common points. Competition between carriers from producing points in the Middle West and the Atlantic Seaboard over the right to serve different portions of the state of Texas was finally adjusted by making the rates to all parts of the common point territory the same, with a few exceptions; but Amarillo, situated in the Pan-Handle of Texas, 142 miles north and west of Quanah, the last common point station of one of the defendants, does not properly fall within the competitive lines, and complainants' contention that Amarillo should be placed in Texas common point territory should not be sustained. HELD: Complaint dismissed. A certain defined territory in the northern part of Texas, commonly

known as the Burnt district, takes from Kansas City and other Missouri River points lower rates than are made to the balance of the state, in recognition of greater proximity to these Texas points; the class rates from Kansas City to Fort Worth, representative of the Burnt district, are higher than from Kansas City to Amarillo, though Amarillo is less than the average distance to the Burnt district, and that the Santa Fe system is rebuilding its road to Amarillo, which will soon be situated upon its main line. HELD: The present class rates from Kansas City to Amarillo are unreasonable and unjust and the commodity rates between said points should not exceed those from Kansas City to Fort Worth; but the class rates from St. Louis to Amarillo may properly be higher than from St. Louis to Fort Worth. Nobles Bros. Grocer Co. v. Ft. W. & D. C. Ry., 12 I. C. C. 242.

(c) Amarillo, situated in the Pan-Handle of Texas, 142 miles north and west of Quanah, the last common-point station of one of the defendants, does not properly fall within the competitive lines of carriers from producing points in the Middle West and the Atlantic seaboard, and therefore should not be placed in Texas common-point territory. Nobles Bros. Grocer Co. v. Ft. W. & D. C. Ry. Co., 12 I. C. C. 242.

(d) Application to place Amarillo, Texas, in Texas common-point territory, denied. Noble Bros. Grocer Co. v. Ft. W. & D. C. Ry. Co., 12 I. C. C. 242.

(e) Complainant attacked rates, commodity, charged on wheat, carloads, from Oklahoma City, Okla., to Gainesville and Fort Worth, Tex., as unreasonable. Short line distances are 140 miles to Gainesville and 202 miles to Fort Worth, rate charged 28½c. Rates to the Texas territory in question are made on the group basis and in previous decisions the Commission has refused to make any changes therein, but the communities involved in this case are in such proximity that they are entitled to have established between one another a reasonable rate. In the fixing of this charge the Commission may properly have reference to the fact that the group system prevails from points farther north, and that this is transition territory. HELD: Rate attacked unreasonable to extent it exceeded 20c to Gainesville and 22c to Fort Worth. W. O. Mitchell v. A., T. & S. F. Ry., 12 I. C. C. 325.

(f) Santa Barbara, Cal., not entitled to benefit of rates to Pacific terminals. Commercial Club of Santa Barbara v. Southern Pacific Co., 12 I. C. C. 495.

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(g) The proximity of one city to competing points in the same region makes higher rates thereto unlawful. Frederick & Kempe Co. v. N. Y., N. H. & H. R. R. Co., 18 I. C. C. 481, 484.

(h) But granting there must be a line drawn somewhere to mark the limits of the application of blanket rates, and that it does not follow, because industries in certain territories are given stated rates, carriers must extend the same rates to all factories of the same kind wherever located; nevertheless, it is indefensible that shippers immediately outside the favored zone should be denied as favorable rates to coveted markets as are accorded throughout a considerable portion of the country to competitors producing the same class of goods, selling in the same manner, and no more advantageously located geographically or commercially. Southern Furniture Mfrs. Assn. v. S. Ry. Co., 25 I. C. C. 379, 386.

(i) And the boundary line to mark the limits of application of blanket rates may not be so artificially drawn as to subject shippers immediately outside the favored zone to unjust discrimination. Southern Furniture Mfrs. Assn. v. S. Ry. Co., 25 I. C. C. 379, 386.

(j) Where an extensive group of origin lies close to an extensive group of destination the points lying nearest each other in both groups are subject to the highest ton-mile charges, and points lying on opposite extremes of the two groups enjoy the lowest ton-mile charges. Wisconsin & Arkansas Lumber Co. v. St. L., I. M. & S. Ry. Co., 41 I. C. C. 642, 647.

(k) A rate from points located on or near the line forming the boundary of a rate group of any considerable extent, if considered alone, is frequently subject to unfavorable comparisons with rates from points in close proximity just across the line. However, the group plan has often met the requirements of commercial conditions and rate uniformity and a group adjustment of long standing should not be lightly or unnecessarily disturbed. Orange Rice Mill Co. v. T. & N. O. R. R., 49 I. C. C. 250, 254.

(l) It is true that all groupings for rate purposes are more or less arbitrary. Group lines generally have the appearance of injustice to some plant just across the line. Belber Trunk & Bag Co. v. W. J. & S. W. R. R., 66 I. C. C. 490, 494.

ALL OTHER CITATIONS

Great Western Portland Cement Co. v. M., K. & T. Ry. Co., Unrep. Op. 559; Clemons Horst Co. v. S. P. Co., Unrep. Op. 291; Oregon & Wasington Lumber Mfrs. Assn. v. U. P. R. R. Co., 14 I. C. C. 1, 18; Jones Lumber Co. v. C. & N. W. Ry. Co., 15 I. C. C. 427, 428; Philip v. C., M. & St. P. Ry. Co., 16 I. C. C. 418, 419; Great Western Oil Co. v. A., T. & S. F. Ry. Co., 16 I. C. C. 505, 506; American Agricultural Chemical Co. v. Erie R. R. Co., 16 I. C. C. 320, 322; Big Blackfoot Milling Co. v. N. P. Ry. Co., 16 I. C. C. 173, 175; Decisions of Commission Sustained, Phila. & R. Ry. Co. v. I. C. C., 174 Fed. 687; American Coal Co. v. B. & O. R. R. Co., 17 I. C. C. 149, 154, 157; Du Pont De Nemours Powder Co., v. Penn. R. R. Co., 17 I. C. C. 544, 546; Davenport Commercial Club v. Y. & M. V. R. R. Co., 20 I. C. C. 19; Gamble-Robinson Fruit Co. v. N. P. Ry. Co., 20 I. C. C. 421; Aipha Portland Cement Co. v. B. & O. R. R. Co., 22 I. C. C. 446, 451, 455; Clyde Coal Co. v. P. R. R. Co., 23 I. C. C. 135; Brown v. B. & M. R. R., 27 I. C. C. 47; Clinton Mfrs. & Shippers Assn. v. C. & A. R. R. Co., 27 I. C. C. 230; Texas Common Point Case, 26 I. C. C. 528, 534, 538; Mayor and Council of Douglas v. A., B. & A. R. R. Co., 28 I. C. C. 445, 452, 453; Alton Board of Trade v. C. & A. Ry. Co., 28 I. C. C. 589; Mesilla Valley Produce Exchange, Inc., v. A., T. & S. F. Ry. Co., Unrep. Op. A-229; Arizona Corporation Commission v. A. & N. M. Ry. Co., 29 I. C. C. 424; Seattle Shingle Co. v. C., M. & St. P. Ry. Co., 30 I. C. C. 364; Lake Superior Paper Co. v. D. S. S. & A. Ry. Co., 30 I. C. C. 403; Gulf Lumber Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A-447; Southern Hardwood Traffic Bureau v. I. C. R. R. Co., 31 I. C. C. 6; Class and Commodity Rates from Stations in Maine, 31 I. C. C. 18, 20; Kaufman Commercial Club v. T. & N. O. R. R. Co., 31 I. C. C. 167; Schrager Coal Co. v. D., L. & W. R. R. Co., 32 I. C. C. 87; Glass Mfrs. Assn. v. B. & O. R. R. Co., 32 I. C. C. 218; Goodner-Malone Produce Co. v. D. & R. R. R. Co., 32 I. C. C. 414; Empire Coke Co. v. B. & S. R. R. Co., 31 I. C. C., 573, 578; Northern Pine Mfrs. Asso. v. C. & N. W. Ry., 33 I. C. C. 360; Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 619; Monon Coal Co. v. C. & E. I. R. R., 34 I. C. C. 221; Eastern Oregon Lumber Producers' Asso. v. O. W. R. R. & Nav. Co., 36 I. C. C. 526; Pitt Gas Coal Co. v. P. R. R., 37 I. C. C. 240; Monroe Grocer Co. v. N. Y., N. H. & H. R. R. 39 I. C. C. 561; Burlington Sand & Gravel Co. v. C., M. & St. P. Ry., 40 I. C. C. 90; Connor Lumber & Land Co. v. A. C. & Y. Ry., 40 I. C. C. 111; Eastern Oregon Lumber Producers' Asso. v. C., B. & Q. R. R. Co., 39 I. C. C. 316, 319, 320; Galloway Coal Co. v. A. G. S. R. R. Co., 40 I. C. C. 311 320; Brown V. Vandalia R. R. Co., 41 I. C. C. 317; Interstate Packing Co. v. C., M. & St. P. Ry. Co., 41 I. C. C. 396, 398; Hutchinson Traffic Bureau v. A., T. & S. F. Ry., 40 I. C. C. 619, 637; Natchez Chamber of Commerce v. L. & A. Ry. et al., 52 I. C. C. 105, 124; Alkire-Smith Auto Co. v. A. T. & S. F. Ry. 52 I. C. C. 507; Board of Trade of Portsmouth v. A. C. R. R., 57 I. C. C. 78; Sheboygan Assn. of Corn v. C. & N. W. Ry., 55 I. C. C. 140, 144; Fourth Section Departures via Cadillac, Mich., 57 I. C. C. 418, 422; J. D. Hollingshead Co. v. Director General, 62 I. C. C. 147; Swift Lumber Co. v. F. & G., 61 I. C. C. 485; Farley & Loetscher Mfg. Co. v. Director General, 62 I. C. C. 721; American Splint Corp. v. Director General, 74 I. C. C. 19; Eureka Flint & Spar Co. v. N. Y., N. H. & H. R. R., 80 I. C. C. 57; Morrill Hiffins Co. v. Director General, 80 I. C. C. 117; Lubrite Refining Co. v. D. G. C. Ry., 80 I. C. C. 515; Rules for Protective Service on Perishable Freight 83 I. C. C. 275, 276; Chicago Coal Merchants Asso. v. Director General, 89 I. C. C. 137.

§9. Grading Rates.

See Distance Rates.

CASES 1887-1908

(a) The method of grouping stations and grading stations for a continuous haul of freight by a railway carrier is one that is very common in this country and is not necessarily illegal, unless the results that flow from it are illegal. Business Men's Asso. of Minnesota v. C., St. P., M. & O. Ry., 2 I. C. C. 41, 48.

(b) Complainant attacked rates charged on potatoes from Cadillac, Mich., via Grand Rapids, Mich., to Texas common points as unreasonable and unjustly prejudicial. A combination rate of 72c on

potatoes in carloads from Cadillac, Mich., via Grand Rapids, Mich., to Texas common points, made effective since this proceeding was instituted, was a reduction of 5c in the rate complained of, and was a substantial satisfaction of the complaint; but it appeared that local rates in force to and from the Mississippi River were charged on said shipments from Cadillac; while defendants operating west of that river, accepted less than their said charges west of the river on like shipments, which originated at Grand Rapids, Mich., and other points in so-called Detroit-Cleveland territory. HELD: That without approving defendants' system of shrinking rates, complainant dismissed. Freeman v. A., T. & S. F. R. Co., 7 I. C. C. 202.

IMPORTANT CASES SINCE 1908

(c) Occasionally, when sufficient justification appeared, the Commission has broken up a blanket and graded rates to the communities involved. So it HELD: That the blanket system of making rates on wool from the west and eastern points should be broken up and graded rates established. In Re Transportation of Wool, Hides and Pelts, 23 I. C. C. 151, 165.

(d) Rates for long hauls, particularly on low grade traffic, are often blanketed over extensive territories, and even if the rates to the coast were found to be reasonable maximum rates it would not necessarily follow that all of them should be graded. Intermediate Rates Association v. Director General, 61 I. C. C. 226, 245.

(e) Necessarily points on the farther edge of a group have more favorable rates relatively, than under a distance scale, and points on the nearer edge have less favorable rates. Corporation Commission of N. C. v. Director General, 62 I. C. C. 64, 70.

ALL OTHER CITATIONS

Corn Belt Meat Producers' Assn. v. C., B. & Q. Ry. Co., 14 I. C. C. 376, 393, 394; Indianapolis Freight Bureau v. C., C., C. & St. L. Ry. Co., 16 I. C. C. 254, 264; Kalispell Lumber Company v. G. N. Ry. Co., 16 I. C. C. 164, 171; R. R. Com. of Tenn. v. Ann Arbor R. R., 17 I. C. C. 418, 420, 421; Coal Rates from Virginia Mines, 30 I. C. C. 635, 642; San Toy Coal Co. v. A., C. & Y. Ry. Co., 34 I. C. C. 93, 96; Second Industrial Railway Case, 34 I. C. C. 596, 604; Rates on Lumber from Southern Points, 34 I. C. C. 659; Bonner's Ferry Lum. Co. v. G. N. Ry. Co., 38 I. C. C. 268; Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co., 39 I. C C. 224, 244.

§10. Differentials.

See Differentials.

CASES 1887-1908

(a) Upon complaint that a rate of 75 cents per hundred pounds on cotton from Dallas, Tex., to New Orleans, La., is unreasonable and should not exceed 55 cents per hundred pounds, it appeared that such rate also applied as a common-point rate from substantially all the cultivated portion of Texas, and that reduction of the rate from Dallas would involve corresponding reductions from nearly the whole State; that the rate to New Orleans is determined by adding a differential of 10 cents to the rate to Galveston, and that such differential is reasonable; that the Texas Railroad Commission fixes the Galveston rate and has reduced such rate from 65 to 60 cents during the pendency of this proceeding, such action resulting, under maintenance of the differential, in like reduction of the rate to New Orleans; that about 65 per cent of Texas cotton passes through Galveston and about 25 per cent through New Orleans, and reducing only the New Orleans rate would result in diverting more of the traffic from the port of Galveston. HELD: That while the rate from Dallas to New Orleans does not appear to be altogether reasonable, the Commission is not satisfied, in view of the control exercised and the action taken by the Texas Commission, that it ought to interfere with the present adjustment. Dallas Freight Bureau v. Texas & P. R. Co., 3 I. C. C. 33.

(b) Complainant attacked as unreasonable rates on grain from Wichita and other Kansas points to Kansas City, Mo., to Galveston, Tex., for export, and to various destinations in Texas for domestic consumption. RATES TO THE MISSOURI RIVER: Rates to Kansas City, Kan., are intrastate and therefore not within the jurisdiction of the Commission, and as the rates to Kansas City, Mo., may not be any higher than the rates to Kansas City Kan., which are fixed by the Kansas Commission, the Commission should not interfere with the basis fixed locally in Kansas. EXPORT RATES TO GALVESTON: Prior to January 1, 1907, export rate on wheat from Wichita was 28½c, from Kansas City 17¼c, the Rock Island having a route

through Wichita. Distance from Wichita, 724 miles; from Kansas City through Wichita, 950 miles. The rates from Kansas City are highly competitive, which does not obtain at Wichita. The rates from Wichita to Galveston should not exceed the rate from Wichita to Kansas City, added to the rate from that point, or 30½c. HELD: Rate attacked unreasonable to extent it exceeds 25c. DOMESTIC RATES TO TEXAS POINTS: Texas is divided into four groups, the rates to group 1 being from Wichita, 33c; group 2, 35½c; group 3, 38c, and group 4, 38c. No suggestion was made as to a change in the grouping system. The question arises as the reasonableness of the rates themselves. HELD: Rates to group 4 may properly be 10c higher than the export rate to Galveston, the other groups being graded. Farmers, Merchants & Shippers Club of Kansas v. A., T. & S. F. Ry., 12 I. C. C. 351.

IMPORTANT CASES SINCE 1908

(c) With particular force as applied to grouped points of origin and grouped points of destination, differentials either above or below rates from any given point become less and less important as distance to ultimate destination increases. Williams Co. v. V. S. & P. Ry. Co., 16 I. C. C. 482, 487.

(d) Rates from points located within a group but on a branch line, based on an arbitrary over existing group rates, found unreasonable and unduly prejudicial to extent they exceed rates on like traffic from other points in the same group to same destinations. Relationship of rates prescribed. Western Petroleum Refiners' Asso. v. Director General, as Agent, 59 I. C. C. 38.

(e) When points distributed over an extensive area are grouped and a blanket rate applied to or from all such points, the fact that points lying within that blanket are on a branch line does not argue as strongly that there should be a branch line differential as when the rates are applied on a graded basis. The question of whether or not there should be such a differential in connection with blanket rates depends in a large measure upon how extensive the blanket is. United Verde Mining Co. v. A. T. & S. F. Ry., 88 I. C. C. 5, 9.

ALL OTHER CITATIONS

Portland Lumber Co. v. O. W. R. R. & N. Co., 21 I. C. C. 292; Fox River Valley Mfrs. Assn. v. M. C. R. R. Co., 32 I. C. C. 547; Scott v. C. C. R. R., 38 I. C. C. 467; Natchez Chamber of Commerce v. A. H. T. Ry., 52 I. C. C. 558; Ohio Valley Coal Operators' Asso. v. I. C. R. R., 53 I. C. C. 148; Coal from Norton & Northern Ry. Mines, 58 I. C. C. 739; Illinois Coal Cases, 62 I. C. C. 741; Whitewater Lumber Co. v. A. C. Ry., 61 I. C. C. 563; West Kentucky Coal Bureau I. C., 62 I. C. C. 686; Rail-and-Water Rates from Atlantic Seaboard, 63 I. C. C. 267; Lake Superior Paper Co. v. Director General, 64 I. C. C. 33; Consolidated Coal Co. v. Director General, as Agent, 64 I. C. C. 536; Gaynor Lumber Co. v. Director General, 66 I. C. C. 109; Green Rock Coal Co. v. Director General as Agent, 69 I. C. C. 175; West Kentucky Coal Bureau v. L. & N. R. R. R., 69 I. C. C. 443; Hillebrand Co. v. Director General, as Agent, 69 I. C. C. 740; Democrat Printing Co., v. Director General, 74 I. C. C. 595; Chicago Sewer Pipe Co. v. Director General, 73 I. C. C. 511, Western Coal Rates, 80 I. C. C. 436, 437, 438, 458, 459; Union Sulphur Co. v. A. & W. Ry. Co., 81 I. C. C. 382; Oklahoma Traffic Asso. v. C., R. I. & P. Ry. Co., 81 I. C. C. 577; Rio Grande Chamber of Commerce v. St. L., B. & M. R. Co., 81 I. C. C. 703, 714, 715; Rates on Grain, Grain Products, and Hay, 80 I. C. C. 362; Hamill Coal & Coke Co. v. W. M. Ry., 81 I. C. C. 72; Foster Lumber Co. v. V. & S. R. R. Co., 81 I. C. C. 505; West Kentucky Coal Bureau v. L. & N. R. R. Co., 83 I. C. C. 180; Commercial Coal Co. v. L. & N. R. R. Co., 83 I. C. C. 464, 467; Western Coal Rates, 88 I. C. C. 13; Southern Appalachian Coal Operators' Asso. v. L. & N. R. Co., 83 I. C. C. 136.

IV. REASONABLENESS.

See Percentage Rates; Reasonableness of rates.

§10½. In General.

CASES 1887-1908

(a) On complaint of an unreasonable rate on butter in less carloads from Lincoln, Kan., to Denver, Colo., it appears that defendant's line between those points runs through a sparsely settled country, furnishing comparatively little business to the carrier, and also that the rate is common to numerous towns of importance at an equal or greater distance from Denver, and is maintained by all the roads extending into that territory. HELD: The charge made is not unreasonable. Lincoln Creamery v. U. P. R. Co., 3 I. C. C. 794.

(b) Defendant's rate of $1.25 per 100 pounds on oranges in carloads carried from southern California to points on and east of the Missouri River is unreasonable and unjust. Consolidated Forwarding Co. v. Southern P. Co., 10 I. C. C. 590.

(cd) Texas divided into four groups for wheat rates. Mitchell v. A., T. & S. F. Ry. Co., 12 I. C. C. 324.

(e) The destination points in Texas are divided into groups numbered 1, 2, 3 and 4. At the hearing representatives of the city of Lancaster contended that that city should be transferred from group 2 to group 1, and the contention was upheld. Farmers, Etc., Club v. A., T. & S. F. Ry. et al., 12 I. C. C. 351.

(f) Complainant attacked as unreasonably and unduly discriminatory commodity rates on agricultural implements, axes, sad irons, etc., from St. Louis, Mo., to Dallas, Tex. Traffic moves from interstate points to destination in the Texas common point territory under a system of rates that obtains in no other part of the United States of equal extent. In general, all points in this vast area take the same rates from any given point of origin on or east of the Missouri and Mississippi Rivers. A change in the rates to one common point necessarily involves an extensive disturbance of rates to other common points or might tend to disrupt the common point system upon which commercial conditions in Texas are based. A controversy that questions the reasonableness of rates to one common point ought therefore to be presented in all its aspects, and receive the fullest consideration before action is taken. HELD: Complainant dismissed. Dallas Freight Bureau v. M., K. & T. Ry., 12 I. C. C. 427.

IMPORTANT CASES SINCE 1908

(g) So to justify a blanket the length of the hauls from points within to its edge ought to bear a reasonable relation to the entire haul. Wisconsin & Arkansas Lumber Co. v. St. L., I. M. & S. Ry., 33 I. C. C. 33, 38.

(h) That on one commodity moving outbound several points constitute a single group, while on another moving inbound such points are divided into one or more groups is not convincing, even though the second commodity is used in the manufacture of the first. Alpha Portland Cement Co. v. B. & O. R. R. Co., 34 I. C. C. 414, 421.

(i) The propriety of a group rate in any case must depend upon the conditions upon which it is predicated. Oklahoma Cottonseed Crushers Asso. v. M., K. & T. Ry. Co., 35 I. C. C. 94, 106.

(j) An appearance of inequality in rates at group boundaries is necessarily incident to this method of rate making. In establishing such boundaries, however, it is usual and desirable to follow some measure or principle, such as radial or operating distance, competition, character of freight, physical features of the country, or location of transportation lines. Brown v. V. R. R. Co., 41 I. C. C. 317, 320.

(k) The group system of rate making disregards to some extent, differences in distances and other elements that go to make up the cost of service. Eastern & Western Lumber Co. v. O.-W. R. R. & N. Co., 41 I. C. C. 545, 550.

(l) No group adjustment of commodity rates can bear a uniform relation to the class rates, from each shipping point in a group, unless, as seldom is the case, precisely the same grouping controls the class scale. Western Trunk Line Potatoes, 50 I. C. C. 407, 411.

(m) Where rates are constructed by the use of combinations upon gateways between any two groups, the through rates should be increased by applying to each factor its respective percentage. Increased Rates, 1920, 58 I. C. C. 220, 246.

(n) In passing upon the reasonableness of a blanket rate the Commission must undoubtedly offset the rate to the nearer point against that to the more distant point. But where the application of such a rate clearly results in imposing unjust and unreasonable transportation charges at the nearer point this fact can not be ignored or excused simply because a rate less than is just is granted at the more distant points. Holmes & Hallowell v. G. N., 60 I. C. C. 687, 698.

(o) A proper rate relationship between competitive groups is in many respects of greater importance to the shipping public than the measure of the rate itself. Salt from Louisiana Mines to Chicago, 66 I. C. C. 81, 93.

(p) The principle of group rates, particularly when applied to areas containing natural resources, has long been sanctioned, but such rates have frequently been condemned when the minimum hauls are so disproportionate to the

maximum hauls as to impose unreasonable or otherwise unlawful charges for the shorter distances. Clinton Paving Brick Co. v. Director General, as Agent, 66 I. C. C. 338, 344.

(q) Blanketed areas must be reasonable and must not unjustly discriminate between points similarly situated. Hagerstown Chamber of Commerce v. W. M. Ry., 74 I. C. C. 741, 744.

(r) Most adjustments of rates on a group basis result in some inequalities when distance alone is considered, but such inequalities are not of necessity unreasonable and unjust. Weirton Steel Co. v. M. Ry. Co., 77 I. C. C. 622, 626..

ALL OTHER CITATIONS

Waukesha Lime & Stone Co. v. C., M. & St. P. Ry. Co., 26 I. C. C. 515; Pacific Creamery Co. v. A., T. & S. F. Ry. Co., 29 I. C. C. 405; Youngstown Sheet & Tube Co. v. P. & L. E. R. Co., 29 I. C. C. 428; Stone & Son v. S. Ry. Co., 29 I. C. C. 699; Cedar Rapids Commercial Club v. C., R. I. & P. Ry. Co., 28 I. C. C. 76, 80; In Re Express Rates, 28 I. C. C. 132, 139; Iowa State Board of Railroad Commissioners v. A. E. R. R. Co., 28 I. C. C. 193, 200, 563, 564; Cedar Rapids Commercial Club v. C. R. I. & P. Ry. Co., 29 I. C. C. 539; Pacific Fruit Exch. v. S. P. Ry. Co., 31 I. C. C. 159; Weatherford Cham. of Com. v. M., K. & T. Ry. Co., 31 I. C. C. 665; Class and Commodity Rates to Salt Lake City, Utah, 32 I. C. C. 551; Kaufman Commercial Club v. T. & N. O. R. R. Co., 31 I. C. C. 167, 170; Yarbrough & Bellinger Co. v. L. & N. R. R. Co., Unrep. Op. A-733; Mount Pleasant Fertilizer Co. v. L. & N. R. R. Co., Unrep. Op. A-748; Lindsay & Co. v. N. P. Ry. Co., 32 I. C. C. 287; Wisconsin & Arkansas Lumber Co. v. St. L., I. M. & S. Ry. Co., 33 I. C. C. 33 ,38; Arizona Corp. Comm. v. A., T. & S. F. Ry. Co., 34 I. C. C. 158, 162; Corp. Comm. of New Mexico v. A., T. & S. F. Ry. Co., 34 I. C. C. 292, 297; Rates on Lumber from Southern Points, 34 I. C. C. 663; Northbound Rates on Hardwood, 34 I. C. C. 708, 710; Cape Girardeau Portland Cement Co. v. St. L. & S. F. R. R. Co., 35 I. C. C. 109, 114; Ladd & Co. v. G. S. W. Ry., 36 I. C. C. 179, 183; Pfister & Vogel Leather Co. v. P. Co., Unrep. Op. 2120; Peet Bros. Mfg. Co. v. A., T. & S. F. Ry. Co., 36 I. C. C. 208, 214; Oklahoma Traffic Assn. v. A. & S. Ry. Co., 36 I. C. C. 329, 345; City of Astoria v. S. P. & S. Ry. Co., 38 I. C. C. 16, 27; Curtis & Gartside Co. v. A., T. & S. F. Ry. Co., 38 I. C. C. 276, 277; Brush Creek Mining & Mfg. Co. v. L. & N. R. R., 39 I. C. C. 449; Major Stave Co. v. M. D. & G. R. R. Co., 39 I. C. C. 573, 578; City of Memphis v. C., R. I. & P. Ry. Co., 39 I. C. C. 256, 273; Lena Lumber Co. v. C., R. I. & P. Ry., 40 I. C. C. 515; Iron and Steel to Colorado Points, 41 I. C. C. 76, 81; Iron Ore Rate Cases, 41 I. C. C. 181, 214, 215, 220, 221; Brown v. V. R. R. Co., 41 I. C. C. 317, 320; Pacific Creamery Co. v. S. P. Co., 42 I. C. C. 93; Lumber from Indiana Stations, 43 I. C. C. 117, 119; La Crosse Shippers' Asso. v. C., I. & L. Ry. Co., 43 I. C. C. 520, 523; Sergeant Glass Co. v. P. R. R. Co., 43 I. C. C. 622, 624; Northwestern Cooperage & Lumber Co. v. M., St. P. & S. Ste. M. Ry., 43 I. C. C. 629; Cadillac Lumber Co. v. A. A. R. R., 43 I. C. C. 636; Cameron & Co. v. A., T. & S. F. Ry., 44 I. C. C. 286; Independent Ice, Feed & Fuel Co. v. S. P. L. A. & S. L. R. R., 44 I. C. C. 666; Bituminous Coal to C. F. A. Territory, 46 I. C. C. 66, 143; City of Clarksdale, Miss., v. I. C. R. R., 45 I. C. C. 108, 110; C. F. A. Class Scale Case, 45 I. C. C. 254, 285, 286; Milk and Cream Rates to New York City, 45 I. C. C. 412, 429, 430; Swift & Co. v. U. P. R. R., 47 I. C. C. 49, 50; Galion Iron Works & Mfg. Co. v. B. & O. R. R., 47 I. C. C. 136, 137, 140; Muskogee Produce Co. v. St. L. & S. F. R. R., 47 I. C. C. 239; National Petroleum Asso. v. M., K. & T. Ry., 47 I. C. C. 355; N. Y. Harbor Case, 47 I. C. C. 643, 713, 735; Western Cement Rates, 48 I. C. C. 201, 239; Kaufman & Sons Co. v. C. R. R. of N. J., 48 I. C. C. 465, 466; Storm Lake T. & S. Co. v. L. Ry. & Nav. Co., 50 I. C. C. 198; Allentown Portland Cement Co. v. B. & O. R. R., 49 I. C. C. 502, 507; Illinois Brick Co. v. C. & E. I. R. R., 49 I. C. C. 590; Terrell Commercial Club v. T. & P. Ry., 50 I. C. C. 6; Humphrey Brick & Tile Co. v. P. R. R., 50 I. C. C. 457, 462; Lehigh Valley Coal Sales Co. v. L. V. R. R., 52 I. C. C. 62; Virginia Pine Timber Co. v. N. Y., P. & N. R. R. Co. et al., 52 I. C. C. 249; Lodwick Lumber Co. v. Director General, 53 I. C. C. 218; Texas Cottonseed Crushers' Asso. v. G. C. & S. Ry., 53 I. C. C. 627; Sheboygan Assn. of Com. v. C. & N. W. Ry., 55 I. C. C. 140, 143; National Refining Co. v. Director General, 55 I. C. C. 341; Kansas City Bolt & Nut Co. v. A., T. & S. F. Ry., 55 I. C. C. 441; Inland Steel Co. v. Director General, 55 I. C. C. 462, 466; National Pole Co. v. A., T. & S. F. Ry., 55 I. C. C.

625; Chop v. Director General, 55 I. C. C. 182; McKinney Steel Co. v. N. Y. C. R. R., 55 I. C. C. 449; Illinois Classification, 56 I. C. C. 687; Phelps Dodge Corp. v. Director General, 57 I. C. C. 714, 716, 720; Silica Sand Producers' Asso. v. Director General, 58 I. C. C. 549, 552; Rates on Coal from Norton & Northern Mines, 58 I. C. C. 739, 741; Increased Rates, 1920, 58 I. C. C. 220, 248; California Citrus League v. Director General, 58 I. C. C. 373; Monroe Chamber of Commerce v. A. & S. Ry. Co., 58 I. C. C. 685; Rice Potato Co. v. C., B. & Q. R. R. Co., 58 I. C. C. 757; Empire Refineries, Inc., v. Director General, 59 I. C. C. 215; Texas Refining Co. v. Director General, 59 I. C. C. 548; Hord Alkali Products Co. v. Director General, 59 I. C. C. 574; Chamber of Commerce of Cedar Rapids v. Director General, 59 I. C. C. 624; Leo Greenwald Vinegar Co. v. Director General, 59 I. C. C. 635; Goodman Drilling Co. v. Director General, 61 I. C. C. 164, 167; Lake Superior Paper Co. v. Director General, 61 I. C. C. 709, 710; Corporation Commission of N. C. v. Director General, 62 I. C. C. 64, 70; Cambria Steel Co. v. Director General, as Agent, 60 I. C. C. 459, 463; New England Divisions, 62 I. C. C. 513, 526; Monroe Single Co. v. Director General, as Agent, 62 I. C. C. 714, 717; Walrath & Sherwood Lumber Co. v. Director General, 63 I. C. C. 347; Lumber Rates Between El Paso and Western Points, 64 I. C. C. 12; Coal from Detroit, Toledo & Ironton R. R. Mines, 64 I. C. C. 564, 566; Gaynor Lumber Co. v. Director General, as Agent, 66 I. C. C. 109; Citizens' Coal Mining Co. v. Director General, 66 I. C. C. 271; Belber Trunk & Bag Co. v. W. J. & S. R. R. Co., 66 I. C. C. 490, 494; Iola Cement Mills Traffic Asso. v. Director General, as Agent, 66 I. C. C. 495; Gilmore v. M., K. & T. Ry. Co., 66 I. C. C. 599; Central Illinois Light Co. v. Director General, 66 I. C. C. 624; National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co. 68 I. C. C. 213, 243, 248; Burns & General, 68 I. C. C. 443; Oliphant-Johnson Coal Co. v. C. & E. I. R. R. Co., 69 I. C. C. 1; Green Rock Coal Co. v. Director General, 69 I. C. C. 175, 179; Minnesota & Ontario Paper Co. v. Northern Pac. Ry., 73 I. C. C. 113; Swift & Co. v. Director General, 73 I. C. C. 259; Arizona Copper Co. v. A. & N. W. Ry. Co., 73 I. C. C. 493; Phoenix Chamber of Commerce v. Director General, 73 I. C. C. 514; Pittsburgh Steel Co. v. Director General, 73 I. C. C. 715; Phoenix Chamber of Commerce v. Director General, 74 I. C. C. 31; Magnolia Petroleum Co. v. Director General, as Agent, 74 I. C. C. 133; Empire Cotton Oil v. A. C. L. R. R. Co., 74 I. C. C. 479; Hagerstown Chamber of Commerce v. W. M. Ry. Co., 74 I. C. C. 741; Lehigh Portland Cement Co. v. Director General, 77 I. C. C. 146; Pacific Coast Shippers' Asso. v. Director General, 78 I. C. C. 10; West Coast Lumbermen's Asso. v. A. & S. Ry., 78 I. C. C. 746; E. I. DuPont de Nemours & Co. v. Director General, 80 I. C. C. 46; Gila Water Co. v. A. E. R. R. Co., 78 I. C. C. 15; Carnation Milk Products Co. v. Director General, as Agent, 78 I. C. C. 145; Magnola Provision Co. v. Director General, as Agent, 78 I. C. C. 151; McKell Coal & Coke Co. v. C. & O. Ry. Co., 78 I. C. C. 227; National Fibre & Insulating Co. v. N. & W. Ry. Co., 78 I. C. C. 361; Kanawha Black Band Coal Co. v. C. & O. Ry. Co., 78 I. C. C. 429; Willard Coal Co. v. E. K. Ry. Co., 78 I. C. C. 455; Anaconda Copper Mining Co. v. Director General, as Agent, 78 I. C. C. 549, 552; Iowa Malleable Iron Co. v. Director General, as Agent, 78 I. C. C. 667; Parkersburg Rig & Reel Co. v. W. F., R. & F. W. R. R. Co., 78 I. C. C. 556; Iowa Malleable Iron Co. v. Director General, as Agent 78 I. C. C. 667; Ohio-Michigan Coal Rates, 80 I. C. C. 663, 677; Perry County Coal Corp. v. E. St. L. & S. Ry. Co., 80 I. C. C. 711; Atlas Portland Cement Co. v. C., B. & Q. R. R. Co., 81 I. C. C. 1, 15; Earthernware or Stoneware from Red Wing, 81 I. C. C. 64, 66; Melcroft Coal Co. v. I. C. V. Ry Co., 81 I. C. C. 251; Clay County Coal Asso. v. C. & M. R. R. Co., 81 I. C. C. 414; Dickinson Grocery Co. v. Director General, as Agent, 81 I. C. C. 533; Rio Grande Chamber of Commerce v. St. L., B. & M. Ry. Co., 81 I. C. C. 703, 707; Republic Iron & Steel Co. v. B. & O. R. R. Co., 83 I. C. C. 429, 430; Commercial Coal Co. v. L. & N. R. R. Co., 83 I. C. C. 464, 467; Indiana State Chamber of Commerce v. B. & O. R. R. Co., 83 I. C. C. 591, 595; Midland Coal Co. v. C. R. I. & P. Ry., 87 I. C. C. 533; Kansas City Brick Co. v. K. C. S. Ry., 87 I. C. C. 646; Salt Lake Potash Co. v. A. C. L. R. R., 87 I. C. C. 695; Slogo Coal Corp. v. M. P. R. R., 88 I. C. C. 111; Dixie Portland Cement Co. v. N. C. & St. L. Ry., 88 I. C. C. 147; Interstate Milling Co. v. B. & O. R. R.., 88 I. C. C. 229; Milwaukee Grain Elevator Co. v. Director General 88 I. C. C. 287;

Evansville Chamber of Commerce v. I. C. R. R., 88 I. C. C. 389; Jeremy Fuel & Grain Co. v. Director General, 88 I. C. C. 397; Cement to New England, 88 I. C. C. 605; Babbitt Bros. Trading Co. v. A. T. & S. F. Ry., 88 I. C. C. 614; Southwestern Coal Operators Assn. v. A. W. Ry., 89 I. C. C. 73; Cincinnati Asso. of Purchasing Agents. v. L. & N. R. R. 89 I. C. C. 285.

§11. Reasonableness of Group.

See Reasonableness of Rates.

CASES 1887-1908

(a) Augusta suburban points. Class rates from North Atlantic ports to suburban mills, which, before the absorption of the South Carolina & Georgia Railroad by the Southern Railway Company, were recognized as a group; it appearing that such group is still recognized on shipments in the opposite direction, that the grouping system is still effective to the extent of classing together some of these suburban points which are as far apart as Augusta is from the nearest, and that a restoration of the Augusta rates to these suburban points would divert considerable heavy and bulky freight from water lines on the Savannah River to the defendant lines, held unjust and unreasonable. Quimby v. Clyde S. S. Co., 12 I. C. C. 392.

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(b) The adjustment of a group of rates as a whole might be just and reasonable, even though each rate might not of itself be just and reasonable. Monroe Progressive League v. St. L., I. M. & S. Ry. Co., 15 I. C. C. 534, 538.

(c) While the group or zone principle of rate-making is often of mutual advantage to shippers and carriers and will not ordinarily be disturbed where the rates are reasonable and non-discriminatory, yet the relative situation of contiguous points cannot be wholly disregarded in rate-making, without incurring the risk of creating unjust discrimination or advantage to the favored points. Carriers may lawfully make a rate applicable to a group of points within a defined zone and treat them all as one point for rate-basing purposes, but the proximity of points just without or beyond this zone cannot be ignored when the question of through rates to the latter points comes up for consideration. Hammerschmidt & Franzen Co. v. N. W. Ry. Co., 30 I. C. C. 71, 81.

(d) The grouping of a number of points does not justify the maintenance of a rate which is unreasonable per se from any of such points, but in the absence of a conclusive showing that the rates challenged from a point included in a group are in fact unreasonable it is impracticable to consider the reasonableness of the group rates except as applied from all points in the group. Atlas Portland Cement Co. v. B. & M. R. R., 44 I. C. C. 416, 422.

(e) Complainant attacked the 1½ times first class rate of $5.55 per 100 pounds charged on a less-than-carload shipment of household goods from Fairmont, W. Va., to Portland, Ore., as unreasonable. The western classification rated household goods first class "actual value on each article not to exceed $10 per 100 pounds," otherwise 1½ times first class, "subject to rule 2," which rule required a declaration of value. The carrier's agent had quoted complainant the first class rate of $3.70, but the shipment was delivered to the carrier by a drayman, who signed the bill of lading as complainant's agent. It contained no statement of value. HELD: (1) That it had not been established that any rate other than that attacked would have been applicable had the value been inserted; and (2) that the agent erred in permitting the shipment to move without a notation on the bill of lading stating its value. Complainant dismissed. Perdue v. B. & O. S. W. R. R., 47 I. C. C. 210.

(f) Rate groups ordinarily should be neither broader nor narrower than is required by the conditions on which they are based. Humphrey Brick & Tile Co. v. P. R. R., 50 I. C. C. 457, 464.

(g) In a grouping system it necessarily follows that rates at nearer points to the edge of the group are lower, distance considered, and the revenue per ton mile less than at the other points in the group. South Bend Chamber of Commerce v. Director General, 57 I. C. C. 215, 219.

(h) Consumers may properly have the widest possible market consistent with justice to the carriers, and to that end and also in their own interests carriers may, within reasonable limits, as a matter of traffic policy, accord competing producing centers located at different distances from common centers of consumption identical rates. Carriers may not disregard all differences in dis-

tances. Groups cannot be extended indefinitely, and the discrimination inherent in all group adjustments must not be undue. Monroe Shingle Co. v. Director General, 62 I. C. C. 714, 717.

(i) Groups long maintained are presumably fair and are not to be disrupted unless substantial justice requires it. Monroe Shingle Co. v. Director General, 62 I. C. C. 714, 717.

(j) Commission does not approve a comparatively narrow grouping of points of origin because the length of the group in the direction of the movement was nearly as great as the hauls from the nearest point in the group to the destinations involved. Salt from Louisiana Mines to Chicago, 66 I. C. C. 81, 92.

(k) When points distributed over an extensive rate are grouped and a blanket rate applied to or from all such points, the fact that points lying within that blanket are on a branch line does not argue as strongly that there should be a branch-line differential as when the rates are applied upon a graded basis. Whether or not there should be such a differential in connection with blanket rates depends in a large measure upon how extensive the blanket is. State of Idaho ex rel v. Director General, 66 I. C. C. 330, 336, 337.

(l) The boundaries of a blanket should not be so drawn as to include within it a large number of producing points, while other points similarly situated are excluded, especially when the area of production has clearly defined geographical limits. East Coast Potato Distributors v. N. Y., P. & N. R. R. Co., 77 I. C. C. 607, 610.

(m) In absence of proof of tangible injury to complainants or of positive evidence that rates are unjustly discriminatory or unduly prejudicial, a group adjustment should not be disturbed. Phelps Dodge Corp., 57 I. C. C., 714, 720, and cases cited. Newport Mining Co., 33 I. C. C., 645, 657, and cases cited. Perry County Coal Corp. v. E. St. L. S. Ry. Co. 80 I. C. C. 711, 715, 716.

(n) In considering reasonableness of group rates, distances and ton-mile earnings between selected points can not be regarded as controlling. Reasonableness of such rates must be judged by average conditions. Indiana State of Commerce v. B. & O. R. R. Co., 83 I. C. C. 591, 595.

ALL OTHER CITATIONS

Kennedy & Co. v. V. Ry. Co., Unrep. Op. 530; Florida Fruit & Vegetable Shippers' Etc., v. A. C. L. R. R. Co., 14 I. C. C. 476; Colorado Coal Traffic Assn. v. C. &. S. Ry. Co., 19 I. C. C. 478; Cedar Hill Coal & Coke Co. v. C. & S. Ry. Co., 16 I. C. C. 387, 393; Chicago Lumber & Coal Co. v. T. S. Ry. Co., 16 I. C. C. 323, 334; East St. Louis Walnut Co. v. St. L. S. W. Rv Co. of Texas, 17 I. C. C. 582, 583, 584; Schmidt & Sons v. M. C. R. R. Co., 19 I. C. C. 535, 538; Commercial Club of Salt Lake City v. A., T. & S. F. Ry. Co., 19 I. C. C. 218, 226; In Re Advances in Rates on Cement Plaster, 21 I. C. C. 591, 594; Northwestern Leather Co. v. O. R. R. & N. Co., 21 I. C. C. 66; Sun Co. v. I. S. R. R. Co., 22 I. C. C. 194, 197; Florida Fruit & Vegetable Shippers v. A. C. L. R. R. Co., 22 I. C. C. 11, 17; Arlington Heights Fruit Exchange v. S. P. Co., 22 I. C. C. 149, 152; Schmidt & Sons v. M. C. R. R. Co., 23 I. C. C. 684, 688; In Re Transportation of Wool, Hides and Pelts, 23 I. C. C. 151; In Re Advances on Barley from California Points, 24 I. C. C. 664, 666, 667; In Re Advances on Cement, 24 I. C. C. 209, 211; McCloud River Lumber Co. v. S. P. Co., 24 I. C. C. 89, 94; Taylor v. N. & W. Ry. Co., 25 I. C. C. 613, 615; Switzer Lumber Co. v. K. C. S. Ry. Co., 25 I. C. C. 611, 612; Superior Commercial Club v. G. N. Ry. Co., 25 I. C. C. 342, 345; Wharton Steel Co. v. D., L. & W. R. R. Co., 25 I. C. C. 303, 309; Multnomah Lumber & Box Co. v. S. P. Co., 25 I. C. C. 123, 128; West Virginia Rail Co. v. B. & O. R. R. Co., 26 I. C. C. 622; Waukesha Lime & Stone Co. v. C., M. & St. P. Ry. Co., 26 I. C. C., 515, 519; Victor Mfg. Co. v. S. Ry. Co., 27 I. C. C. 661, 664; Joint Rates with the Washington Western Ry., 27 I. C. C. 63, 634; In Re Advances on Sugar, 27 I. C. C. 122; Arizona Corporation Commission v. A., T. & S. F. Ry. Co., 28 I. C. C. 428; Mesilla Valley Produce Excange, Inc., v. A., T. & S. F. Ry. Co., A-229; Bessemer Refining Co. v. P. Ry. Co., Unrep. Op. A-457; Stuart's Draft Milling Co. v. S. Ry. Co., 31 I. C. C. 623, 628; Wisconsin & Ark. Lum. Co. v. St. L., I. M. & S. Ry., 33 I. C. C. 33, 38, 39, 43; San Toy Coal Co. v. A. C. & Y. Ry., 34 I C. C. 93, 100; Louisiana State Rice Milling Co. v. M., L. & T. R. R. & S. S. Co., 34 I. C. C. 511; Oklahoma Cottonseed Crushers' Asso. v M., K. & T. Ry., 35 I. C. C. 94, 107; San Toy Coal Co. v. A., C. & Y. Ry. Co., 34 I. C. C. 93, 100; Cape Girardeau

Portland Cement Co. v. St. L. & S. F. Ry., 35 I. C. C. 109, 114; Fullerton & Robbe v. L. & N. W. R. R. Co., Unrep. Op. 1869; Bergman & Co. v. C. & N. W. Ry., 37 I. C. C. 71; Pulp & Paper Mfrs. Traffic Asso. v. Belt Ry., 39 I. C. C. 360; Connor Lumber & Land Co. v. A. C. & Y. Ry. Co., 40 I. C. C. 111, 113; Dallas Chamber of Commerce v. A., T. & S. F. Ry. Co., 40 I. C. C. 619, 644; Interstate Packing Co. v. C., M. & St. P. Ry., 41 I. C. C. 396; Wisconsin & Arkansas Lumber Co. v. St. L., I. M. & S. Ry. Co., 41 I. C. C. 642, 647; Alliance Coal & Coke Co. v. C. & S. Ry., 42 I. C. C. 499; Blackwell Lumber Co. v. M. P. Ry., 42 I. C. C. 756; Buffalo Union Furnace Co. v. B. & S. R. R. Corp., 43 I. C. C. 218, 222; Iron Ore Rate Cases, 44 I. C. C. 368, 373; Lake Cargo Coal Rates, 46 I. C. C. 159, 171; Arlington Cotton Oil Co. v. C. of G. Ry., 45 I. C. C. 188; Milk and Cream Rates to New York City, 45 I. C. C. 412; Lake Cargo Coal Rates, 46 I. C. C. 159; Vulcanite Portland Cement Co. v. C. R. R. of N. J., 46 I. C. C. 483; The Grouping of Monessen and Donora, 48 I. C. C. 650, 655; Allentown Portland Cement Co. v. B. & O. R. R., 49 I. C. C. 502; California Walnut Growers Assn. v. A. & R. R. R., 50 I. C. C. 558; Terrell Commercial Club v. T. & P Ry., 50 I. C. C. 6, 11; Michigan Paper Mills Asso. v. N. Y. C., 53 I. C. C. 344; Gulf Lumber Co. v. G. & S. R. Ry., 53 I. C. C. 369; Texas Cottonseed Crushers' Asso. v G. C. & S. F. Ry., 53 I. C. C. 627, 630; Kickapoo Sand and Gravel Co. v. D. G. Ry., 55 I. C. C. 657; Bartlett-Collins Glass Co. v. St. L. & S. F., 56 I. C. C. 236, 245; Beaumont Chamber of Commerce v. A. & V. Ry. Co., 57 I. C. C. 189; I. & S. Coal from Sewell Valley Stations, 58 I. C. C. 261, 264, 265; Peerless Coal Co v. A. T. & S. F. Ry. Co., 57 I. C. C. 274, 280; St. Louis Chamber of Commerce v. B. & O. R. R. Co., 57 I. C. C. 639, 648, 654; Increased Rates, 1920, 58 I. C. C. 220, 248; Coal from Kentucky, Tennessee and Virginia to Northern and Northwestern Points, 60 I. C. C. 166; Nat'l. Fireproofing Co. v. Director General, 62 I. C. C. 49; Farley & Loetscher Mfg. Co. v. Director General, as Agent, 62 I. C. C. 721; Coal from Detroit, Toledo & Ironton R. R. Mines, 64 I. C. C. 564, 566; Arizona Corporation Commission v. A. & E. R. R., 64 I. C. C. 758; Minnesota & Ontario Paper Co. v. N. P. Ry., 66 I. C. C. 571; National Paving Brick Asso. v. A. & V. Ry. Co., 68 I. C. C. 213, 243; Phelps Dodge Corp., 57 I. C. C. 714, 720; Newport Mining Co., 33 I. C. C. 645 657.

§12. Reasonableness of Individual Rate.

See Reasonableness of Rates.

CASES 1887-1908

(a) Investigation by the Commission under a resolution of the Congress as to alleged excessive freight rates and charges on food products. HELD, transportation charges now made on corn and oats between the Mississippi River and eastern cities, based on 20 cents per 100 pounds from Chicago, and 23 cents from East St. Louis to New York City, are less than 4.4 mills per ton per mile and are not excessive. The charge of 20 cents on corn and oats from Missouri River to Chicago and 5 cents less to Mississippi River is excessive and to be reasonable should not exceed 17 cents to Chicago and 12 cents to Mississippi River, east side. The rates on corn and oats in force from stations in Kansas and Nebraska to the Mississippi River east side, and to Chicago are two cents in excess of reasonable rates. Any transportation charges between the Mississippi River and New York City on wheat and flour based on a higher rate than 23 cents from Chicago to New York City is unreasonable, and any rate on wheat and flour carried from any one place to another which is more than 15 per cent above the rate on corn and oats between the same points is unreasonable. The rates of 46 cents on grain and 51 cents on flour and meal between the grain region in Kansas and a large district in Texas are the same for distances shorter than 250 miles and longer than 800 miles, and are unreasonably high for the longer and grossly excessive and extortionate for the shorter distances. In the Matter of Alleged Excessive Freight Rates and Charges on Food Products, 3 I. C. C. 93.

(b) Complainant attacked rates on wheat and barley of 50 and 56 cents from Ritzville, Wash., to St. Paul, Minn., as unreasonable. HELD, in view of the distance of 1,576 miles and the circumstances and conditions surrounding the traffic, rate attacked not unreasonable, complaint dismissed. Buchanan v. N. P. R. Co., 3 I. C. C. 655.

(c) In a total haul of 640 miles a rate which for the first 271 miles is the same and in the next 200 miles falls from 70 to 30 cents upon second-class and

from 44 to 22 cents upon third-class shipments is prima facie unjust and unreasonable and a discrimination against the nearer points in the group. Rea v. Mobile & O. R. Co., 7 I. C. C. 43.

(d) Defendants' present rate of $1 per 100 pounds on lemons in carloads from Southern California to points on and east of the Missouri River is apparently reasonable. Consolidated Forwarding Co. v. Southern P. Co. et al, 10 I. C. C. 590.

(e) Complainant attacked as unreasonable rates charged on citrus fruits from Southern California to points east of the Missouri River and also the minimum weight of 26,000 pounds as unreasonably high. At present forty foot cars are generally in use and the minimum is not unreasonable. Rate charged $1.25 per 100 pounds. This rate has been in effect approximately the whole time since the citrus fruit industry became the subject of any considerable movement by rail to eastern cities. It is as high today as oranges (which constitute the great bulk of citrus fruit shipments) when the shipments aggregate between 20,000 and 30,000 cars annually as it was when but a few hundred cars were moved during the season and when the rate as applied to that movement was low. The citrus fruit business in Southern California has developed into an industry of great magnitude from which the carriers derive a large and growing traffic shipped only in carload lots loaded by shippers and unloaded by consignees, which is steadily offered for shipment and which the carriers can arrange to move during the season from November to August, with the bulk of the crop often moving in train loads in the four months, December to March inclusive. Unquestionably the citrus fruit traffic, as well as other perishable freight requiring care, refrigeration and expedition in transit and the carriage in heavy refrigerator and ventilator cars, does cost the carrier more to transport than ordinary freight. The rate on lemons of $1.25 having been made $1 for most of the shipping season, the transportation rate applied to that commodity does not appear to be unreasonable. The rate of $1.25 upon oranges is unreasonably high and works injustice to growers of that fruit in California. HELD, the rate on lemons of $1 not unreasonable, but rate of $1.25 on oranges unreasonable to extent it exceeded $1.10. Consolidated Forwarding Company v. Southern Pacific Co., 10 I. C. C. 590.

(f) Complainant attacked as unreasonable rates charged on coal from points in Indian Territory to Enid, Okla., as unjust and unreasonable. There are four fields in Indian Territory, Henryette, Lehigh, Sans Bois and the McAlester. The Frisco extends from the Henryetta field to Enid, distance 180 miles. The M. K. & T. extends from the Lehigh field to Guthrie, distance 180 miles, beyond D. E. & G., 55 miles. Ft. S. & W. runs from the Sans Bois field to Guthrie, distance 170 miles, beyond D. E. & G., 55 miles. The M. K. & T., and D. E. & G., afford a route from McAlester field, 290 miles, the short line being via the Rock Island 208 miles, the latter line not being a party to the complaint. From McAlester rates are $2.10 per ton on coal and $1.40 on slack coal; from Sans Bois district, $2.10 on coal and $1.50 on slack coal; from Lehigh district $1.95 per ton on coal and $1.35 on slack coal and from Henryetta district $1.95 on coal and $1.50 per ton on slack coal. While the M. K. & T., has met the rate of the Rock Island in the past from the McAlester field, this Commission ought not to compel it to do so for the future. HELD, rates from McAlester to Enid via M. K. & T., not unreasonable. Rates from Lehigh not unreasonable. Rates from Sans Bois district unreasonable and should not exceed $1.85 for lump and $1.35 for slack. Rates from Henryetta unreasonable to extent they exceed $1.60 on lump and $1.25 on slack, this rate being subsequently published, reparation awarded. W. B. Johnson v. St. L. & S. F. R. R., 12 I. C. C. 73.

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(g) A blanket rate must not be such as to make an unreasonable rate from any given point. Ferguson Saw Mill Co. v. St. L. I. M. & S. Ry. Co., 18 I. C. C. 391, 393.

(h) In making a blanket adjustment, the burden rests on the carrier to provide rates that shall not be unreasonable from any point of origin. Sawyer & Austin Lumber Co. v. St. L. I. M. & S. Ry. Co., 21 I. C. C. 464, 466.

(i) Distance is, of course, a factor to be considered in determining the reasonableness of rates, and when rates are constructed upon this basis and other things are equal it may become a very important factor. When, however, rates

are constructed and maintained upon the group system, and the subject matter is a heavy commodity, like coal, and the differences in distance are relatively inconsiderable, such differences do not, of themselves, compel differences in rates. Victor Mfg. Co. v. S. Ry. Co., 27 I. C. C. 661, 663.

(j) While a commodity rate in excess of the class rate is regarded as unusual, special circumstances and conditions may justify such a departure from the general rule. This is especially true in the case of a commodity rate which applies from or to a number of points that are grouped or blanketed. It might exceed the class rate from one or more points in the blanket and still be reasonable. Rice Rates from Helena, Ark., 31 I. C. C. 614, 615.

(k) While entitled to reasonable rates from its nearest source of supply, proof that rates from some of the points from which blanket rates are maintained, which rates are made to meet competition from nearer points, yield lower tonmile earnings, is insufficient to establish that the rates for the shorter distances are unreasonable or unduly prejudicial. Traffic Bureau, Sioux Falls Commercial Club v. G. N. Ry., 50 I. C. C. 611, 612.

(l) In passing upon the reasonableness of a blanket rate, the rate from or to the nearer point must be offset against the rate from or to the more distant point. Murphey Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-631.

ALL OTHER CITATIONS

Southwestern Missouri Millers' Club v. M. K. & T. Ry. Co., 22 I. C. C. 422, 425; Commercial Club of Salt Lake City v. A. T. & S. F. Ry. Co., 19 I. C. C. 218, 226; McCloud River Lumber Co. v. S. P. Co., 24 I. C. C. 89, 95; Taylor v. N. & W. Ry. Co., 25 I. C. C. 613, 616; Switzer Lumber Co. v. K. C. S. Ry. Co., 25 I. C. C. 611; Wharton Steel Co. v. D. L. & W. R. R. Co., 25 I. C. C. 303, 309; In Re Advances on Cottonseed Products, 25 I. C. C. 237; Memphis Freight Bureau v. I. C. R. R. Co., 27 I. C. C. 507, 514; Wisconsin & Arkansas Lum. Co. v. St. L. I. M. & S. Ry., 33 I. C. C. 33; Lindsay & Co. v. N. P. Ry., 33 I. C. C. 150; Gray Lumb. Co. v. A. T. & N. Ry., 36 I. C. C. 376; Mid-continent Oil Rates, 36 I. C. C. 109, 115; Morris & Co. v. N. P. R. R., 36 I. C. C. 540; West Lum. Co. v. St. L. & S. F. R. R., 38 I. C. C. 401; Gund Brewing Co. v. C. B. & Q. R. R. Co., Unrep. Op. 2114; Memphis Freight Bureau v. St. L. I. M. & S. Ry. Co., 39 I. C. C. 303, 308; McKee & Bliven Button Co. v. I. C. R. R. Co., 39 I. C. C. 627, 628; Dallas Chamber of Commerce v. A. T. & S. F. Ry. Co., 40 I. C. C. 619, 637; Wisconsin & Arkansas Lumber Co. v. S. L. I. M. & S. Ry. Co., 41 I. C. C. 642; Thompson Bros. Lumber Co. v. M. K. & T. Ry., 42 I. C. C. 270; Big Muddy Coal & Iron Co. v. I. C. R. R., 43 I. C. C. 157; Sergeant Glass Co. v. Penn. R. R., 43 I. C. C. 622; West Lumber Co. v. St. L. & S. F. R. R., 44 I. C. C. 657; R. R. Commissioners of Iowa v. A. A. R. R., 46 I. C. C. 20; Spokane Lumber Co. v. C. N. Ry., 48 I. C. C. 627; Kansas Buff Brick Co. v. M. K. & T. Ry., 47 I. C. C. 217; The grouping of Monessen and Donora, 48 I. C. C. 650, 656; Illinois Brick Co. v. C. & E. I. R. R., 49 I. C. C. 590; Hartzell v. C. C. C. & St. L. Ry., 49 I. C. C. 691; Northern Potato Traffic Asso. v. A. T. & S. F. Ry., 50 I. C. C. 528; Midland Coal Co. v. St. L. & S. F. R. R., 51 I. C. C. 313; Crossett Lumber Co., (Ltd.), v. A. & L. Ry., 51 I. C. C. 438; Red River Lumber Co. v. S. P., 53 I. C. C. 321; Hebe Co. v. Director General, 55 I. C. C. 214; Portland Traffic & Transportation Assn. v. O. W. R. R. & N., 56 I. C. C. 410; Utilities Development Corporation v. P. C. & St. L. Ry., 56 I. C. C. 694; Winona Oil Co. v. Director General, 57 I. C. C. 152; Muskogee Wholesale Grocer Co. v. M. K. & T. Ry., 57 I. C. C. 125; Dothan Chamber of Commerce v. Director General, 58 I. C. C. 537, 543; Coal from Norton & Northern Ry. Mines, 58 I. C. C. 739, 741; Harlan County Coal Operation Association, 61 I. C. C. 394; Proposed increased rates from and to El Paso, 61 I. C. C. 689; Cameron Hogg Lumber Co. v. Director General, 62 I. C. C. 218; Chamber of Commerce, Phoenix, Ariz., v. Director General, 62 I. C. C. 368; Phoenix Chamber of Commerce v. Director General, 62 I. C. C. 412; Oklahoma State Shippers Asso. v. Director General, 62 I. C. C. 433; Harlan County Coal Asso. v. L. & N. R. R. Co., 61 I. C. C. 394; Northern Potato Traffic Asso. v. B. & O. R. R. Co., 61 I. C. C. 680, 686, 687; Rock Products Traffic League v. C., B. & Q. R. R. Co., 62 I. C. C. 105; Southern Carbon Co. v. A. & L. M., 62 I. C. C. 733; National Livestock Shippers League v. A. T. & S. F., 63 I. C. C. 107; E. I. Du-

Pont de Nemours & Co. v. Director General, 64 I. C. C. 14; Atlas Portland Cement Co. v. G. T., 64 I. C. C. 21; Peerless Coal Co. v. A., T. & S. F. Ry. Co., 63 I. C. C. 335; Traffic Bureau of Chamber of Commerce of Phoenix, Ariz. v. Director General, 64 I. C. C. 452; Van Dusen Harrington Co. v. Director General, 64 I. C. C. 461; Nevada Public Service Commission v. A. T. & S. F. Ry., 66 I. C. C. 216; Channel Chemical Co. v. A. T. & S. F. Ry., 66 I. C. C. 235; Holmes & Hallowell Co. v. Great Northern Ry. 69 I. C. C. 11; Nyanza Refining Co. v. Director General, 69 I. C. C. 583; Douglas Chamber of Commerce v. Director General, 73 I. C. C. 292; Indiana Board & Filler Co. v. Director General, 73 I. C. C. 601; Farmers Mfg. Co. v. Director General, 73 I. C. C. 613; L. J. Schultz & Co. v. Director General, 73 I. C. C. 647; Goss v. Director General, 73 I. C. C. 649; American Splint Corp. v. Director General, 74 I. C. C. 19; Magnolia Petroleum Co. v. Director General, 74 I. C. C. 133; Southern Acid & Sulphur Co. v. A. & N. M. Ry., 74 I. C. C. 641; Parkersburg Rig & Reel Co. v. M., K. & T. Ry. Co. of Tex., 74 I. C. C. 695; Zion Institutions & Industries v. E. S. & N. Ry., 77 I. C. C. 375; Milwaukee Western Fuel Co. v. Director General, 78 I. C. C. 597; National Refining Co. v. Director General, 81 I. C. C. 342; Dickinson Grocery Co. v. Director General, 81 I. C. C. 533; J. F. Campion v. Director General, 81 I. C. C. 557; Crude, fuel and gas oils from Kansas, Misouri and Oklahoma to Nebraska and South Dakota, 83 I. C. C. 29; MeGeath Coal Co. v. Director General, 83 I. C. C. 165; Wood Iron & Steel Co. v. P. R. R. Co., 83 I. C. C. 503; Wickwire Spencer Steel Corp. v. Director General, 88 I. C. C. 54; Gulfport Fertilizer Co. v. L. & N. R. R. 88 I. C. C. 129; Barker Produce Co. v. S. P. Co., 88 I. C. C. 385.

§12a. Relation to Section 4.

See Long and Short Hauls.
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(a) The group rate established from a coal-mining district extending across the whole State of Illinois is properly extended to coal shipped to the same territory locally from Chicago,, or by way of Chicago from mines in the eastern part of the group, on account of the operation of §4 of the Interstate Commerce Act, some of the lines passing through the mining district en route from Chicago to the points of distribution. Rend v. Chicago & N. W. R. Co. (Com.) 2 I. C. R. 313.

(b) The "blanket rate," as it is called, by which the same rate is charged by the all-rail lines from the City of New York, and from all points in the oil producing regions in the States of Pennsylvania, Ohio and West Virginia, and from all the territory in the United States east of the 97th meridian of longitude, in the carriage of petroleum and and its products to San Francisco, Oakland, Sacramento, Stockton, Marysville, San Jose, Los Angeles and San Diego, in the State of California, is a rate that has its origin in and is based upon actual competition for the carriage of this large traffic, on the one side, by the all-rail lines, and on the other side, by the lines part rail and part water, and also, in some instances, all-water lines, and also in other instances, part-pipe lines and part-water lines, and it is a rate of which petitioner has no right to complain as being a violation of the fourth section of the Act to Regulate Commerce, because it does not appear from the evidence that it is a violation of that section. Rice v. Atchison, Topeka & Santa Fe R. Co., 3 I. C. R. 263.

(c) Unusual grades and difficulty of operation justify an order permitting a certain railroad to charge "fourth-group rates" on milk and cream for distances for which other lines are only entitled to charge the lower "third-group rates." Brockway v. Ulster & D. R. Co., 8 I. C. C. 21.

(d) Petitioners alleged error in that part of the decision and order in Milk Producers' Protective Association v. Delaware, L. & W. R. Co., 7 I. C. C. Rep. 92, which authorizes a line composed of the Ulster & Delaware and West Shore railroads to charge four-group rates on milk and cream shipped to Weehawken from stations on the Ulster & Delaware railroad which would otherwise take the lower rates ordered in that case for third group distances over other lines; such exception having been granted by the Commission on account of unusually difficult grades over the Catskill Mountains and the further fact that all of the milk carried by the Ulster & Delaware is gathered beyond the mountains at distances of 132 to 175 miles from the Weehawken terminal. HELD, that there was no material error in the original decision, and that the petitions should be

dismissed. Brockway v. Ulster & D. R. Co., 8 I. C. C. 21.

§12½. Relativity of Group Rate.

See Relative Rates.

(1) In General.

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(a) A proper rate relationship between competitive groups is in many respects of greater importance to the shipping public than the measure of the rate itself. Salt from Louisiana Mines to Chicago, 66 I. C. C. 81, 93.

(b) Complainant attacked combination rates charged on soft coal, carloads, from points of production in eastern Kentucky, particularly Jenkins and McRoberts, to Davenport, Muscatine, Ottumwa, Iowa City and Fort Dodge, Iowa, as unreasonable and unduly prejudicial. Jenkins and McRoberts are located on opposite sides of a mountain about 1.5 miles apart. The rates from Jenkins in Big Sandy Group 5 and from McRoberts in Group 4 of the L. & N., are the same to Chicago, Peoria and Mississippi River crossings. These group rates are part of a general adjustment of rates from the Crescent. With few exceptions, no joint through rates on coal are maintained from the Ohio mines or the Crescent to the territory west and northwest of Chicago, Peoria and East St. Louis, the general basis for through rates to such territory being the lowest combination to and beyond the various gateways. The principal grievance is that each factor was increased on July 1, 1917, and subsequent dates. HELD, rates attacked not unreasonable, complaint dismissed. United Light & Railways Co. v. Director General, 69 I. C. C. 414.

(c) When a complaint challenges the reasonableness of rates on a commodity from only one point and it appears that, because of competitive or other practical trade or transportation considerations, a number of points of origin of the particular commodity are grouped under common rates, and also that there is a relationship in rates between two or more groups, the Commission must give due consideration to other factors than rate comparisons. The grouping of a number of points does not, of course, justify the maintenance of a rate which is unreasonable per se from any of such points, but in the absence of a conclusive showing that the rates challenged from a point included in a group are in fact unreasonable it is impracticable to consider the reasonableness of the group rates except as applied from all points in the group. Wierton Steel Co. v. Monongahela Ry. Co., 77 I. C. C. 622, 627.

(d) When a complaint challenges the reasonableness of rates on a commodity from only one point and it appears that, because of competitive or other practical trade or transportation considerations, a number of points of origin of the particular commodity are grouped under common rates, and also that there is a relationship between two or more groups, the Commission must give due consideration to other factors than rate comparisons. Atlas Portland Cement Co., 44 I. C. C. 416, 422; Perry County Coal Corporation v. E. St. L. & S. Ry., 80 I. C. C. 711, 715.

(e) Group rates on bituminous coal from O'Fallon and Belleville, Ill., to St. Louis, Mo., found not prejudicial by intrastate rates for short distances from mines in Indiana. Rates for such distances between points in Indiana can not have any definite competitive relationship with rates for equal distances from mines here under consideration to St. Louis, over lines of different carriers, and do not warrant finding of undue preference of Indiana mines and undue prejudice to Illinois mines on traffic to St. Louis. Perry County Coal Corp. v. E. St. L. & S. Ry. Co., 80 I. C. C. 711.

(f) In absence of proof of tangible injury to complainants or of positive evidence that rates are unjustly discriminatory or unduly prejudicial, a group adjustment should not be disturbed. Phelps Dodge Corp., 57 I. C. C. 714, 720, and cases cited. Perry County Coal Corp. v. E. St. L. & S. Ry. Co. 80 I. C. C. 711, 715, 716.

ALL OTHER CITATIONS

Coad v. C., St. P. M. & O. Ry. Co., 64 I. C. C. 178, 180; Consolidated Coal Co. v. Director General, as Agent, 64 I. C. C. 536; Coal from Detroit, Toledo & Ironton R. R. Mines, 64 I. C. C. 564, 566; West Kentucky Coal Bureau v. I. C. R. R., 64 I. C. C. 577; Flanley Grain Co. v. Director Geenral, 66 I. C. C. 126; Columbia Steel Co. v. Director General, 66 I. C. C. 169; Meridian Rate Case, 66 I. C. C. 179; Cannelton Sewer Pipe Co. v. Director General, 73 I. C. C. 27; Wilbur Lumber Co. v. Director General, 73 I. C. C. 152; Monarch Mills v. Central of Georgia Ry. Co., 73 I. C.

C. 425; Constantin Refining Co. v. Director General, 73 I. C. C. 197, 200; Indiana Board & Filler Co. v. Director General, as Agent, 73 I. C. C. 601; Waco Chamber of Commerce v. Director General, as Agent, 73 I. C. C. 708; Alpha Portland Cement Co. v. Pa. R. R. Co., 74 I. C. C. 697; Hagerstown Chamber of Commerce v. W. M. Ry. Co., 74 I. C. C. 741; Mathieson Alkali Works v. C. C. & O. Ry., 77 I. C. C. 150; Craig Mountain Lumber Co. v. N. Ry. Co., 77 I. C. C. 156; Anaconda Copper Mining Co. v. Director General, 78 I. C. C. 549; Atlas Portand Cement Co., 44 I. C. C. 416, 422; Commercial Coal Co. v. L. & N. R. R. Co., 83 I. C. C. 464; Nelson Fuel Co. v. C. & O. Ry. Co., 83 I. C. C. 737; Phoenix Chamber of Commerce v. A. E. R. R., 88 I. C. C. 250; Lincoln Gas Coal Co. v. B. & O. R. R., 88 I. C. C. 379; Public Service Commission of Indiana v. A. T. & S. F. Ry., 88 I. C. C. 709.

§12½ (2) State Rates.

ALL CITATIONS

The Chamber of Commerce of the City of Milwaukee v. C. B. & Q. R. R., 78 I. C. C. 110; Phelps Dodge Corp., 57 I. C. C. 714, 720; Perry County Coal Corp v. E. St. L. & S. Ry. Co., 80 I. C. C. 711, 715, 716.

V. DISCRIMINATION.

See **Discrimination.**

§13. In General.

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(a) Complainant attacked as unreasonable and unjustly discriminatory the rate charged on coal to Providence and East Providence, the latter being 10 cents less. HELD, this is an unjust discrimination and that if it is fair and reasonable for the defendant to make the charge to Valley Falls from the two termini the same, there can be no justification for making different rates to stations beyond, based on the fact that the coal comes from one terminus rather than from the other. The evidence fails to support the contention of defendant that the extra rate upon coal received at Providence is only a fair equivalent for the additional cost of handling it there. That under all the circumstances it is not admissible for defendant to impose on its patrons at Providence, whose investments were made before the East Providence line was constructed, an additional charge because of the inconvenience attending the transaction of its business at that station and for which they are in no way responsible. The defendant had for some time paid the cost of hauling coal shipped by complainant, from complainant's wharf to defendant's freight station in Providence, without any contract obligation to that effect, but now refuses to do so. HELD, that defendant can not be compelled to continue paying for such hauling; that what defendant did for a time as a favor or by way of encouragement, it might discontinue at pleasure, and, that there is nothing in the nature of a binding usage about it. Providence Coal Co. v. Providence & Worcester R. Co., 1 I. C. C. 363.

(b) Complainant attacked rates as unjust and unreasonable for the transportation of milk to New York City. The practice of making a uniform rate upon milk destined for the daily consumption of the New York City market, from all stations within a distance of about 200 miles upon railroads running through the southern counties in New York, west of the Hudson River to Jersey City is not an unjust discrimination in favor of the more distant shipping points, as against those nearer the common terminus. Howell v. N. Y. L. E. & W. R. R., 2 I. C. C. 162.

(c) Complainant attacked as unjust and excessive rates on coal. A rate of 90 cents per ton on coal shipped to Lake Erie, for a district covering a radius of forty miles around Pittsburgh, Pa., embracing a large number of mines of substantially like cost of production and like character of coal, has prevailed since the Act took effect. The coal from the different mines is in competition at Lake Erie, and is transported over several different and competing lines of railroad, all carrying at the same rate. The coal from this district is also in competition with similar coal from the Hocking Valley district in Ohio, and from other districts. The complainant's mines are near the center of the district, and some mines in competition with them are at a greater distance from the lake, varying from 20 to 43 miles. HELD, rate in itself not being unreasonable it does not appear that it subjects the complainants to undue prejudice, or that it gives an unreasonable preference to the more distant mines, complaint dismissed. Imperial Coal Co. v. P. & L. E. R., 2 I. C. C. 436.

(d) Actual undue prejudice or damages of which the rate is the cause must

result to the more favorably situated producers to render a group rate unlawful. Imperial Coal Co. v. Pittsburgh & L. E. R. Co., 2 I. C. R. 436.

(e) It is often impracticable to establish different rates on the same commodity from practically the same locality to the same market, and the owners of mines in the Lehigh anthracite region are subjected to no unreasonable disadvantage from the present grouping of mines based on more than actual distance when shipping east and less than actual distance when shipping west. Coxe Bro. & Co. v. Lehigh Valley R. Co., 3 I. C. R. 460.

(f) Complainant attacked as relatively unreasonable and discriminatory rates on salt from Kansas fields to various points in Western Trunk Line territory as compared with the rates to the same points from the salt fields in Michigan. HELD, that any advantages which inure to Michigan salt manufacturers from rates to points in Iowa, Illinois, Missouri and Nebraska are advantages arising from natural situation, and that the low rate to Missouri River is influenced by conditions which are beyond defendant's control and existed before Kansas salt was discovered. HELD, further, that rates on salt to points south and southwest of Hutchinson, Kas., and St. Louis, Mo., do constitute undue preference in favor of Michigan as against Kansas and that they should be readjusted by the Santa Fe so that, while observing the law as to the long and short haul, the advantages of distance belonging to Kansas shall be given to them in any territory supplied by its lines which lies as near or nearer to Hutchinson than St. Louis. Anthony Salt Co. v. M. P. R. R., 4 I. C. C. 33.

(g) A uniform or blanket rate of 32 cents on milk and 50 cents on cream per can of 40 quarts from all stations to the city in which the market is located, regardless of distance or difference in amount of service rendered, is unreasonable, unjust, and unduly prejudicial and disadvantageous to producers and shippers nearer the points of delivery, and violates the Interstate Commerce Act, §§ 1, 3. Milk Producers' Protective Asso. v. Delaware, L. & W. R. Co., 7 I. C. C. 92.

(h) A uniform or blanket rate on milk and also on cream from all stations on the defendant lines to Weehawken, Hoboken, and Jersey City, N. J., or through Jersey City to New York, N. Y., namely, 32 cents on milk and 50 cents on cream per can of 40 quarts, regardless of distance or difference in amount of service rendered. HELD, to be unreasonable, unjust, and unduly prejudicial and disadvantageous to producers and shippers nearer the points of delivery, and in violation of sections 1 and 3 of the Act to Regulate Commerce. Milk Producers Protective Asso. v. Delaware, L. & W. R. Co., 7 I. C. C. 92.

(i) On complaint that defendants' rates on oak lumber in carloads to Philadelphia are unlawfully higher from Afton, Va., and points east thereof, to and including Gordonsville, Va., than those for the longer distances over the same line from Staunton and Basic City, Va., it appeared that a rate of 14 cents per hundred pounds applied over the whole territory for a period of about nine years between November 1, 1892, and August 1, 1901. Effective competition was shown by defendants' witnesses at Basic City and Staunton, and complainants failed to offer any testimony. Upon the record as made in this case, HELD, that the higher rate from the Afton-Gordonsville group does not constitute unlawful discrimination. George M. Spiegle & Co. v. Chesapeake & O. R. Co., 11 I. C. C. 367.

(j) Group rates must of necessity result in a certain amount of discrimination, but should produce as little as possible. Desel-Boettcher Co. v. K. C. S. Ry. Co., 12 I. C. C. 220.

(k) Change of Siloam Springs, Ark., from Little Rock group on Kansas City Southern Railway to Kansas City group, resulting in an advance of rates on green apples in carloads from 49 cents to 58 cents per 100 pounds to Houston, Tex., not unduly discriminatory. Desel-Boettcher Co. v. K. C. S. Ry. Co., 12 I. C. C. 220.

(l) For the purpose of naming rates to various points in Texas, stations upon the Kansas City Southern Railway are grouped in territories as follows: Coming south from Kansas City all stations up to, but not including Siloam Springs, are in Kansas City territory, while Siloam Springs and stations for a certain distance south are embraced in Little Rock territory. Defendants transferred Siloam Springs from Little Rock territory into Kansas City territory. Complainant alleges that this change, resulting in an advance of the rates on green

apples in carloads from 49 cents to 58 cents per 100 pounds from Siloam Springs to Houston, Tex., are unwarranted. HELD, that group rates must of necessity result in a certain amount of discrimination, but they should produce as little discrimination as possible; and HELD FURTHER, that upon the facts of this case, the change of Siloam Springs from the Little Rock group to the Kansas City group did not result in undue discrimination. Desel-Boettcher Co. v. Kans. City So. Ry. Co., et al., 12 I. C. C. 221.

(m) Complainant attacked as overcharges rates on apples from Siloam Springs, Ark., to Houston, Tex. All stations up to but not including Siloam Springs are in Kansas City territory while Siloam Springs and stations for a certain distance south are in Little Rock territory. Green apples moved under class C. rate of 58 cents from Kansas City territory and 49 cents from Little Rock territory. Distance from Siloam Springs to Houston is 581 miles. The apple producing section on the K. C. S., begins at Goodman, 185 miles south of Kansas City and ends at Siloam Springs, 229 miles from Kansas City. The placement of Siloam Springs in the Kansas City territory brings all the apple producing territory in one rate group. HELD, no unjust discrimination is shown and as the reasonableness of the rate charged is not attacked, complaint dismissed. Desel-Boettcher Company v. K. C. S. Ry., 12 I. C. C. 221.

(n) Group rates must of necessity result in a certain amount of discrimination. Such rates are not for this reason necessarily unlawful, since the discrimination may not be undue; but certainly, in the construction of groups, care should be taken to produce as little discrimination as possible. Desel-Boettcher Co. v. K. C. S. R. Co., 12 I. C. C. 221, 222.

(o) It is evident that every system of group rates must occasion more or less discrimination. The rate to the nearer edge is of necessity discriminatory. This discrimination grows relatively more in proportion as the distance from the group decreases, and plainly there must come a point when the point of origin is so near the group that the discrimination will become undue. W. O. Mitchell v. A. T. & S. F. Ry., 12 I. C. C. 325, 326.

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(p) A carrier cannot lawfully so group its mines with respect to rates as to unduly discriminate against any locality. The duty imposed by law is to give equal treatment to all shippers who are in position to demand it, and this includes the right to reach competitive markets on relatively equal terms. Where the same carrier serves two districts which by their location, the character of their output and distance from markets, are in substantially similar circumstances and conditions, it cannot lawfully prefer one to the other in any manner whatsoever. Black Mountain Coal Land Co. v. S. Ry. Co., 15 I. C. C. 286, 292.

(q) It is evident that every system of rate group must occasion more or less discrimination. The rate to the nearer edge of the group as compared with the more distant edge is of necessity discriminatory. This discrimination grows relatively more in proportion as the distance from the group decreases, and there must come a point when the place of origin is so near the group that the discrimination will become undue. Kaufman Commercial Club v. T. & N. O. R. R. Co., 31 I. C. C. 167, 170.

(r) Carriers, in blanketing a given territory under a common rate, must avoid unjust discrimination. The boundaries of a blanket should not be so drawn as to include within it a large number of producing points while other points similarly situated are excluded; and this is especially true when the area of production has clearly defined geographical limits. Scott v. C. C. R. R., 38 I. C. C. 467, 471.

(s) A broadening of competitive fields by the creation of large groups is often helpful, both in the development of commerce and in the development of traffic; but when carriers on their own initiative and with the desire to stimulate the movement of traffic in all directions undertake to lay aside transportation conditions and to create a rate relationship based largely, if not altogether, on commercial factors, they must do it consistently so as to avoid artificial and undue advantages for some shippers to the prejudice and disadvantage of others. Pardee Works v. C. R. R. of N. J., 39 I. C. C. 162, 165.

(t) Groups can not be extended indefinitely, and discrimination inherent in all group adjustments must not be undue. Groups long maintained, however,

are presumably fair and are not to be disrupted unless substantial justice clearly requires it. Galloway Coal Co. v. A. G. S. R. R. Co., 40 I. C. C. 311, 320.

(u) In various cases the Commission held group rates subject to the condition that they do not result in undue preference or prejudice. An appearance of inequality in rates at group boundaries is necessarily incident to this method of rate making. In establishing such boundaries, however, it is usual and desirable to follow some measure of principle such as radial or operating distance, competition, character of freight, physical features of the country, or location of transportation lines. Brown v. Vandalia R. R. Co., 41 I. C. C. 317, 320.

(v) Blanketed areas must be reasonable and must not unjustly discriminate between points similarly situated. Hagerstown Chamber of Commerce v. W. M. Ry. Co., 74 I. C. C. 741.

(va) Carriers in blanketing a given territory under a common rate must avoid undue prejudice, and the boundaries of a blanket should not be so drawn as to include within it a large number of producing points, while other points similarly situated are excluded, especially when the area of production has clearly defined geographical limits. East Coast Potato Distributors v. N. Y., P. & N. R. R. Co., 77 I. C. C. 607, 610.

(vb) In absence of proof of tangible injury to complainants or of positive evidence that rates are unjustly discriminatory or unduly prejudicial, a group adjustment should not be disturbed. Phelps Dodge Corp., 57 I. C. C., 714, 720, and cases cited. Galloway Coal Co., 40 I. C. C. 311, 320 and cases there cited. Perry County Coal Corp. v. E. St. L. & S. Ry. Co. 80 I. C. C. 715, 716.

(w) The Commission has consistently refrained from breaking up a group where it has not been made to appear that the party seeking such action is actually damaged by discrimination which results from the group rate. Perry County Coal Corporation v. E. St. L. & S. Ry., 80 I. C. C. 711, 715.

(x) Where through rate charged by a railroad from certain points in blanket territory on its branch lines and certain independent short lines was lower than the rate charged from a point within the territory on another independent short line, though the cost of transportation from such point was no greater, the Interstate Commerce Commission could include such independent short line in an order to cease and desist from the discrimination though it did not join in making the lower rates from other points, since by joining in establishing a through rate it became a party to the discrimination. United States v. Illinois Cent. R. Co. 44 Sup. Ct. 189.

(y) Where a railroad company established blanket rates on its main and branch lines within certain territory for transportation of lumber, but did not grant blanket rate to points on connecting lines, except where necessary to meet competition, the Interstate Commerce Commission was warranted in finding that the refusal to grant the same through rate to point on independent short line wholly dependent on the railroad, where cost of transportation and other conditions were the same, constituted unfair discrimination, in violation of Act to Regulate Commerce, §3 (Comp. St. §8565), though the higher rate was reasonable, and the only motive of the railroad in making the discrimination was that of self-interest, in view of Transportation Act 1920 (Comp. St. Ann. Supp. 1923, §10071¼ et seq.). United States v. Illinois Cent. R. Co. 44 Sup. Ct. 189.

ALL OTHER CITATIONS

Rhinelander Paper Co. v. N. P. R. R. Co., 13 I. C. C. 633, 634, 637; Nebraska State Railway Comm. v. U. P. R. R. Co., 13 I. C. C. 349, 355; Indianapolis Freight Bureau v. C., C. & St. L. Ry. Co., 15 I. C. C. 504, 513; Muskogee Traffic Bureau v. A., T. & S. F. Ry. Co., 17 I. C. C. 169, 173; Saginaw Board of Trade v. Grand Trunk Ry. Co., 17 I. C. C. 128, 136; Southwestern Missouri Millers' Club v. M., K. & T. Ry. Co., 22 I. C. C. 422, 424, 425; Stiritz v. N. O., M. & C. R. R. Co., 22 I. C. C. 578, 581; Traugott Schmidt & Sons v. M. C. R. R. Co., 23 I. C. C. 684; Thropp v. P. R. R. Co., 23 I. C. C. 497, 498, 499; Santa Rosa Traffic Assn. v. S. P. Co., 24 I. C. C. 46; Switzer Lumber Co. v. K. C. S. Ry. Co., 25 I. C. C. 611, 612; Waukesha Lime & Stone Co. v. C., M. & St. P. Ry. Co., 26 I. C. C. 515, 519; Texas Cement Plaster Co. v. St. L. & S. F. R. R. Co., 26 I. C. C. 508, 509; Betcher Lumber Co. v. C., M. & St. P. Ry. Co., 26 I. C. C. 335; Consolidated Fuel Co. v. A., T. & S. F. Ry. Co., 27 I. C. C. 554, 557, 558; In Re Advances on Sugar, 27 I. C. C. 122, 124; Lebanon Commercial Club v. L. & N. R. R. Co., 28 I.

C. C. 301; Springfield Commercial Association, 28 I. C. C. 511; Pardee Works v. C. R. R. Co. of N. J., 29 I. C. C. 500; Colonial Salt Co. v. C., B. & Q. R. R. Co., 31 I. C. C. 559; Chamber of Commerce of Houston v. H. E. & W. T. Ry. Co., 32 I. C. C. 203, 205; Stock & Sons v. L. S. & M. S. Ry. Co., 31 I. C. C. 150, 153; Rates on Sugar, 31 I. C. C. 495, 501; Anson, Gilkey & Hurd Co. v. S. P. Co., 33 I. C. C. 332, 337; Public Utilities Com. of Idaho v. O. S. L. R. R., 33 I. C. C. 103; Chamber of Commerce, Houston, Tex., v. I. G. N. Ry. Co., 32 I. C. C. 247, 252; Newport Mining Co. v. C. & N. W. Ry., 33 I. C. C. 645, 647; Oklahoma Cottonseed Crushers' Assn. v. M., K. & T. Ry., 35 I. C. C. 94; Wisconsin & Arkansas Lumber Co. v. St. L., I. M. & S. Ry. Co., 33 I. C. C. 33, 38, 43, 46; Campbell's Creek Coal Co. v. A. A. R. R. Co., 33 I. C. C. 558, 561; Newport Mining Co. v. C. & N. W. Ry. Co., 33 I. C. C. 645, 657; San Toy Coal Co. v. A., C. & Y. Ry. Co., 34 I. C. C. 93, 98; Tyler Produce Co. v. I. & G. N. Ry. Co., Unrep. Op. 1951; Greer-Gatty Co. v. P. Co., Unrep. Op. 1955; Ladd & Co. v. Gould S. W. Ry. Co., 36 I. C. C. 179, 183; U. S. Cast Iron Pipe & Foundry Co. v. S. Ry., 37 I. C. C. 75; Kosmos Portland Cement Co. v. I. C. R. R., 37 I. C. C. 449; Memphis Freight Bureau v. St. L., I. M. & S. Ry., 39 I. C. C. 303; Corporation Commission of Virginia v. C. & O. Ry. Co., 40 I. C. C. 24; Connor Lumber and Land Co. v. A., C. & Y. Ry. Co., 40 I. C. C., 111, 113; Hutchinson Traffic Bureau v. A., T. & S. F. Ry., 40 I. C. C. 160; Hayden Bros. Coal Corp. v. D. & S. L. R. R. Co., 39 I. C. C. 94, 110; Goldcamb Mill Co. v. N. & W. Ry. Co., 39 I. C. C. 433, 444; Major Stave Co. v. M., D. & G. R. R. Co., 39 I. C. C. 573, 578; Dallas Chamber of Commerce v. A., T. & S. F. Ry. Co., 40 I. C. C. 619, 644; Hydraulic Press Brick Co. v. P. Co., 40 I. C. C. 669, 672; Inman-Poulsen Lum. Co. v. S. P. Co., 42 I. C. C. 275; Michigan Paper Mills Traffic Asso. v. A. & V. Ry. Co., 43 I. C. C. 16, 22; Atlas Portland Cement Co. v. B. & M. R. R., 44 I. C. C. 416; Traffic Bureau, Toledo Commerce Club, v. C., H. & D. Ry., 43 I. C. C. 446, 456; Bituminous Coal to C. F. A. Territory, 46 I. C. C. 66, 143, 145; New York Harbor Case, 47 I. C. C. 643, 713; Terrell Com. Club v. T. & P. Ry., 50 I. C. C. 6; Humphrey Brick & Tile Co. v. Penn. R. R., 50 I. C. C. 457; Jones & Dunn v. St. L., I. M. & S. Ry., 51 I. C. C. 339; Natchez Chamber of Commerce v. L. & A. Ry., 52 I. C. C. 105, 124; James Bute Co. v. A., T. & S. F. Ry., 52 I. C. C. 380; Whitewater Lumber Co. v. A. C. Ry. Co., 53 I. C. C. 278, 282; Natchez Chamber of Commerce v. A. H. T. Ry., 52 I. C. C. 558, 565; Sheboygan Assn. of Corn v. C. & N. W. Ry., 55 I. C. C. 140, 144; Inland Steel Co. v. Director General, 55 I. C. C. 462. 465; Memphis Southwestern Investigation, 55 I. C. C. 515, 556; Sheboygan Asso. of Commerce v. C. & N. W. Ry., 55 I. C. C. 140, 144; Peerless Coal Co. v. A., T. & S. F. Ry. Co., 57 I. C. C. 274, 280; Corp. Commission of N. C. v. Director General, 57 I. C. C. 523; Switching Rates on Coal at Elkhorn City, Ky., 58 I. C. C. 298, 301; Lodwick-White Coal Co. v. Director General, 58 I. C. C. 530; Monroe Chamber of Commerce v. A. & S. Ry. Co., 58 I. C. C. 685; Western Petroleum Refiners Asso. v. Director General, 59 I. C. C. 38, 40; Lake Superior Paper Co. v. Director General, 61 I. C. C. 709; Silica Sand Producers' Traffic Asso. of Illinois v. Director General, 60 I. C. C. 453; Whitewater Lumber Co. v. A. C., 61 I. C. C. 563; Three Lakes Lumber Co. v. W. W. Ry. Co., 61 I. C. C. 408; Swift Lumber Co. v. F. & G. R. R. Co., 61 I. C. C. 485; Hollingshead Co. v. Director General, as Agent, 62 I. C. C. 147; Cameron-Hogg Co. v. Director General, as Agent, 62 I. C. C. 218; Gillespie Coal Co. v. I. T. S., 62 I. C. C. 335; Fort Dodge Commercial Club v. Director General, 63 I. C. C. 357; Pittsburgh Term. R. R. & Coal Co. v. Director General, as Agent, 63 I. C. C. 179; Proctor & Gamble Co. v. A. C. R. R. Co., 64 I. C. C. 213; Corp. Commission of N. C. v. Director General, 64 I. C. C. 264; Pioneer Lumber Co. v. Director General, as Agent, 64 I. C. C. 485; Routing Restriction on Lumber, 66 I. C. C. 56; Western Petroleum Refiners' Asso. v. Director General, 66 I. C. C. 426; Botany Worsted Mills v. Director General, 66 I. C. C. 556; Decker & Sons v. Director General, 68 I. C. C. 34; Brick Clay and Clay Products, 68 I. C. C. 455; Oklahoma Corp. Commission v. A. & S. Ry., 69 I. C. C. 207; Western Cement Rates, 69 I. C. C. 644; Vickers Petroleum Co. v. Director General, 73 I. C. C. 578; Williamette Valley Lumbermen's Asso. v. S. P. Co., 73 I. C. C. 733; United Iron Works v. Director General, 74 I. C. C. 277; Salt from C. F. A. to W. T. L. Destinations and between points in C. F. A. Territory, 74 I. C. C. 409; Hagerstown Chamber of Commerce v. W. M. Ry. Co., 74 I. C. C. 741; Andrews Bros. v. A., C. &

Y. Co., 74 I. C. C. 448; Weirton Steel Co. v. Monongahela Ry. Com., 77 I. C. C. 622; D. B. Mason v. M., K. & T. Ry., 77 I. C. C. 633; Corporation Commission of Oklahoma v. Arkansas Railroad, 80 I. C. C. 607; Galloway Coal Co., 40 I. C. C. 311, 320; Willard Coal Co. v. E. K. Ry. Co., 78 I. C. C. 455; Western Coal Rates, 80 I. C. C. 383, 398, 436, 437; Melcroft Coal Co. v. I. C. V. Ry. Co., 81 I. C. C. 251.

VI. REMEDY FOR UNLAWFUL GROUPING.

§14. In General.

CASES 1887-1908

(a) A change in the rates in the Texas common-point territory, which will necessarily involve an extensive disturbance of rates to other common points, or must tend to disrupt the common-point system, upon which commercial conditions in Texas are based, will not be made without the fullest consideration. Dallas Freight Bureau v. M., K. & T. Ry. Co., 12 I. C. C. 427.

ALL OTHER CITATIONS

Stiritz v. N. O. & C. R. R. Co., 22 I. C. C. 578, 581; Bartlesvelle Salvage Co. v. M., K. & T. Ry. Co.,, 25 I. C. C. 672, 674; Southern Hardwood Traffic Bureau v. I. C. R. R. Co., 31 I. C. C. 6, 8; Class and Commodity Rates to and from Quincy, Ill.,, 32 I. C. C. 471, 476, 478; Gulf Lumber Co. v. G. & S. R. R. R. Co., 53 I. C. C. 369.

§15. Scope of Complaint.

See Complaint.

CASES 1887-1908

(a) Issuance of order in regard to defendant's group-rate practice suspended, and case held open to permit readjustment of rates by defendant, but with leave to complainant to file such application for an order in that respect as may be necessary, and with leave, also, to either party to introduce further evidence. Rea v. Mobile & Ohio R. Co., 7 I. C. C. 43.

(b) Original complaint herein was mainly directed to the claim that Amarilla, Tex., should be made a Texas common point, but one paragraph alleged unreasonable rates from points within the State of Texas to Amarillo, and complainants attempted to show upon the hearing under this paragraph that certain specific rates were too high. HELD: That the complaint should have explicitly directed attention of defendants to the rates which were to be put in issue and passed upon by the Commission, and that therefore the testimony offered was inadmissible. Complainants allowed to amend complaint and defendants given opportunity to introdudce further testimony upon the issues thus made. Nobles Bros. Gro. Co. et al. v. F. W. & D. C. Rwy. Co. et al., 12 I. C. C. 242.

IMPORTANT CASES SINCE 1908

(c) When a complainant challenges reasonableness of the rates on a commodity from only one point and it appears that a number of points of origin of the particular commodity are grouped under common rates, and also that there is a relationship between two or more groups, the Commission must give due consideration to other factors than rate comparisons. Atlas Portland Cement Co. v. B. & M. R. R., 44 I. C. C. 416, 422.

ALL OTHER CITATIONS

Corn Belt Meat Producers Assn. v. C., B. & Q. Ry. Co., 14 I. C. C. 376, 396; Wisconsin & Arkansas Lumber Co. v. St. L., I. M. & S. Ry., 33 I. C. C. 33, 35.

VII. EVIDENCE.

See Evidence.

§15½. In General.

CASES 1887-1908

(a) The propriety of the application of the principle of grouping is properly open to challenge in every case, and every case must be justified upon its own facts and peculiar circumstances. Howell v. N. Y., L. E. & W. R. R., 2 I. C. C. 162, 174.

(b) The grouping of a place requiring a shorter haul with one requiring a longer haul does not estop a carrier to assert that transportation to the two places is not under substantially similar circumstances and conditions; but merely admits that an equal rate is not prejudicial. Detroit, Grand Haven & Milwaukee Ry. Co. v. Interstate Commerce Commission, 7 I. C. C. App. lxxiv.

IMPORTANT CASES SINCE 1908

(c) It is seldom that ton-mile earnings alone are a decisive test of the unreasonableness of a rate, and this is especially true in the case of group rates. Empire Coke Co. v. B. & S. R. R. Co., 31 I. C. C. 573, 578.

(d) Wherever two lines from the same or different groups of mines inter-

sect, the rate of the line having the longer haul has been made the same as, or with relation to, the rate of the shorter line. Rates on Bituminous Coal, 36 I. C. C. 401, 403.

(e) Groups long maintained are presumably fair and are not to be disrupted unless substantial justice clearly requires it. Dissatisfied producers deprived of the benefit of their proximity to common markets must show that they are actually injured and by an unlawful discrimination. Galloway Coal Co. v. A. G. S. R. R. Co., 40 I. C. C. 311, 320.

(f) On long-haul traffic, group rates may be more extensive than where short hauls are the rule, yet it does not necessarily follow in instances where a group rate is extended that the subsequent reduction establishes unreasonableness of the rate formerly in effect. Cambria Steel Co. v. Director General, as Agent, 60 I. C. C. 459, 463.

(g) Prescribing rates as a whole in rate groups necessarily means that the return will not be the same for each carrier. New England Divisions, 62 I. C. C. 513, 526.

(h) In considering group rates weight is given to the average distance over route not unduly circuitous. Ohio-Michigan Coal Cases, 80 I. C. C. 663, 671.

(i) Group rates disregard distance to some extent, and it is not infrequent that localities within a group suffer thereby. Ohio-Michigan Coal Cases, 80 I. C. C. 663, 677.

(j) In the absence of proof of tangible injury to complainants or of positive evidence that rates are unjustly discriminatory or unduly prejudicial, a group adjustment should not be disturbed. Perry County Coal Corporation v. E. St. L. & S. Ry., 80 I. C. C. 711, 715.

(k) Groups of long standing are presumably fair and ought not to be disrupted unless substantial justice requires it. Perry County Coal Corporation v. E. St. L. & S. Ry., 80 I. C. C. 711, 715.

(l) When a complaint challenges reasonableness of rates on a commodity from only one point and it appears that, because of competitive or other practical trade or transportation considerations, a number of points of origin of the particular commodity are grouped under common rates, and also that there is a relationship between two or more groups, the commission must give due consideration to other factors than rate comparisons. Atlas Portland Cement Co., 44 I. C. C., 416, 422. Perry County Coal Corp. v. E. St. L. & S. Ry. Co., 80 I. C. C., 711, 715.

(m) Groups of long standing are presumably fair and ought not to be disrupted unless substantial justice requires it. Galloway Coal Co., 40 I. C. C., 311, 320, and cases there cited. Perry County Coal Corp. v. E. St. L. & S. Ry. Co. 80 I. C. C., 711, 715.

(n) Commercial competition and conditions under which industries are compelled to conduct their business as distinguished from transportation conditions are important considerations in adjustment of group rates, and this is particularly true of such rates on coal. Melcroft Coal Co. v. I. C. V. Ry. Co., 81 I. C. C., 251, 258.

(o) In considering reasonableness of group rates, distances between selecting points can not be regarded as controlling. Reasonableness of such rates must be judged by average conditions. Indiana State Chamber of Commerce v. B. & O. R. R. Co., 83 I. C. C. 591, 595.

ALL OTHER CITATIONS

Ladd & Co. v. Gould S. W. Ry. Co., 36 I. C. C. 179, 183; Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co., 39 I. C. C. 224, 244; Milling Logs in Transit on Tap Lines, 40 I. C. C. 597, 601; Galloway Coal Co., 40 I. C. C. 311, 320; Riverside Coal Co. v. Director General, as Agent, 68 I. C. C. 205, 209; National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co., 68 I. C. C. 230, 246.

§16. Burden of Proof.

See Burden of Proof; Evidence I.

CASES 1887-1908

(a) On transcontinental traffic, rates that are just and reasonable from selected manufacturing points, through the entire territory east of the Missouri River and west of the Atlantic Seaboard are prima facie just and reasonable from all other points in the same territory. Re Tariffs of the Transcontinental Lines, 2 I. C. C. 203, 207.

(b) A tariff naming a rate from one locality lower than that enjoyed by its neighbor, when the circumstances are the same, renders a preference or advantage to the first; and when any shipper is damaged by the exaction of an additional burden the preference becomes undue and unreasonable, unless it can be justified

upon some sound and substantial ground. Re Tariffs of the Transcontinental Lines, 2 I. C. C. 203, 207.

(c) Traffic moves from interstate points to destinations in the Texas common point territory under a system of rates that obtains in no other part of the United States of equal extent. In general, all points in this vast area take the same rates from any given point of origin on or east of the Missouri and Mississippi Rivers. A change in the rates to one common point necessarily involves an extensive disturbance of rates to other common points or must tend to disrupt the common-point system upon which commercial conditions in Texas are based. A controversy that questions the reasonableness of rates to one common point ought therefore to be presented in all its aspects and receive the fullest consideration before action is taken. Dallas Freight Bureau v. Mo., Kan. & Tex. Ry. Co., 12 I. C. C. 428.

IMPORTANT CASES SINCE 1908

(d) A group rate will not be disturbed or be held to constitute an undue preference against a point lying a short distance outside the group without proof of tangible injury resulting to the complainant. Bovaird Supply Co. v. A., T. & S. F. Ry. Co., 13 I. C. C. 56, 66.

(e) It may be generally true that a system of blanket rates from a producing section is fair and just to all parties concerned, although it necessarily involves rates that are somewhat high for the distance from points on the edge of the blanket nearest the points of distination, but in making such an adjustment the burden rests upon the carrier to provide rates that shall not be unreasonable from any point of origin. Ferguson Saw Mill Co. v. St. L., I. M. & S. Ry. Co., 18 I. C. C. 391, 393.

(f) The contention that the reasonableness of blanket rates are not to be determined by the amount of revenue received on traffic to certain points within the blanket is sound in cases where blanket rates are so adjusted as to work no undue prejudice to any shipper, receiver, or locality. Lincoln Commercial Club v. C. & S. Ry., 47 I. C. C. 557, 560.

ALL OTHER CITATIONS

Commercial Club of Omaha v. Southern Pacific Co., 20 I. C. C. 631; Pueblo Commerce Club v. A., T. & S. F. Ry. Co., Unrep. Op. 427; Lion Coal Co. v. U. Ry. Co., 60 I. C. C. 674, 681.

§17. Extent of Zone.

CASES 1887-1908

(a) The grouping of two stations by a railroad company as stations to which the freight rates from the far east may properly be made the same is a conclusive admission by it that so far as the transportation from the east to its warehouses at such stations is concerned, it is under substantially similar conditions and circumstances. Interstate Commerce Commission v. Detroit, G. H. & M. R. Co. (C. C. W. D. Mich.), 4 I. C. R. 722.

IMPORTANT CASES SINCE 1908

(b) Differences in distance are relatively inconsiderable when rates are constructed and maintained upon the group system and the subject matter is a heavy commodity like coal. Victor Mfg. Co. v. S. Ry. Co., 27 I. C. C. 661, 663.

(c) In testing the reasonableness of rates from producing points to a blanket territory of destination, consisting of arbitraries to a common point and a "stem rate" beyond, the fact that the producing points are also served by carriers whose hauls are longer than the short-line distances and whose lines do not pass through the common point upon which the rates are based, is entitled to consideration. Northern Pine Mfrs. Asso. v. C. & N. W. Ry., 33 I. C. C. 360, 369.

(d) Where, under the pleadings, the rate from every point in a blanket to every destination involved is put in issue, testimony pointing out that the blanket has been developed more by adding points nearer to the destinations than by adding points further away, is relevant and material and therefore admissible. Oklahoma Cottonseed Crushers' Assn. v. M., K. & T. Ry. Co., 39 I. C. C. 497, 500.

ALL OTHER CITATIONS

Williams Co. v. V., S. & P. Ry. Co., 16 I. C. C. 482, 484; Muskogee Traffic Bureau v. A., T. & S. F. Ry. Co., 17 I. C. C. 169, 172, 173; R. R. Commissioners of Nev. v. S. P. Co., 19 I. C. C. 238, 239; Oregon & Washington Lumber Mfrs. Co. v. S. P. Co., 21 I. C. C. 389, 392; Arlington Heights Fruit Exchange v. S. P. Co., 22 I. C. C. 149, 152; Mutual Rice Trade & Devel. Assn., Houston, v. I. & G. N. R. R. Co., 23 I. C. C. 219, 224; Michigan Hardwood Mfrs. Assn. v. Freight Bureau, 27 I. C. C. 32, 34; Mount Pleasant Fertilizer Co. v. L. & N. R. R. Co., Unrep. Op. A-748; Meeker & Co. v.

C. R. R. of N. J., 57 I. C. C. 414-416; Grain and Grain Products from Idaho, 77 I. C. C. 225.

§18. Comparisons.

See Comparative Rates; Evidence §12, §13; Relative Rates.

IMPORTANT CASES SINCE 1908

(a) A comparison of a blanket rate with rates in other parts of the country where different physical, competitive and traffic conditions exist is insufficient to establish the unreasonableness of the blanket rate. Rhinelander Paper Co. v. N. P. R. R. Co., 13 I. C. C. 633, 634, 637.

(b) Where a comparison is made with a group rate for the purpose of testing the reasonableness of the rate attacked on the basis of relative ton-mile earnings the distance assumed for the group rate should be the average distance from the point of origin to the various points in the group. Board of R. R. Commissions of Montana v. D. & R. G. R. R. Co., 27 I. C. C. 522, 523.

(c) Rate comparisons based on distances are open to criticism where points selected are upon the edge of some territorial group so as to make the distance involved not fairly representative of the average distance from the entire group. Iowa State Board v. A. E. R. R. Co., 28 I. C. C. 193, 195.

(d) A proper comparison cannot, of course, be made with distances running to or from a blanket unless a mean point of the blanket is taken as the standard of measure. This is obvious because a group adjustment necessarily implies disregard of distance, and comparisons with points lying on the edges of the group would not fairly represent the relation as a whole. Northern Pine Mfrs. Asso. v. C. & N. W. Ry., 33 I. C. C. 360, 369.

(e) If a blanket or group arrangement is a reasonable one, founded upon sound business and transportation considerations, the reasonableness of a rate from the group to a given point is properly to be determined with respect to the average distance from all points in the group. The selection for comparative purposes of the shortest distance point would be as unjust to the carriers as the selection of the longest distance point would be unjust to the shippers. The group must be treated as a whole. Milliken Refining Co. v. T. Ry., 36 I. C. C. 109, 115.

(f) Mere distance comparisons of the nearer points in one group with specific points in lower rated groups without reference to the group adjustments as a whole, held not to warrant the making of another group to include the complaining points. Galion Iron Works & Mfg. Co. v. B. & O. R. R., 47 I. C. C. 136.

(g) It is difficult to compare a rate applicable to a large blanket with rates graduated according to distance. The only fair way to make such a comparison is to ascertain as nearly as possible the center of distribution on the blanket rate and contrast the revenue per ton-mile on the short-line distance at the graduated rates. California Walnut Growers' Assn. v. A. & R. R. R., 50 I. C. C. 558, 569.

(h) While entitled to reasonable rates from its nearest source of supply, proof that rates from some of the points from which blanket rates are maintained, which rates are made to meet competition from nearer points, yield lower ton-mile earnings, is insufficient to establish that the rates for the shorter distances are unreasonable or unduly prejudicial. Traffic Bureau, Sioux Falls Commercial Club, v. G. N. Ry., 50 I. C. C. 611, 612.

(i) The theory of a group rate adjustment is that the rate to the shortest haul point in a group is somewhat higher than it might be if it were considered as a rate in and of itself, and the rate to a long haul point in the same group may be somewhat lower than it might otherwise be if considered a rate applicable only to that point, so that the proper comparison in determining the reasonableness of group rates is to take the average distance of the whole origin group and compare it with a like distance to the destination group. Chamber of Commerce of the City of Milwaukee v. C. B. & Q. R. R., 78 I. C. C. 110, 117.

(j) Group rates disregard distance to some extent, and comparisons made between specific points in a group and nearby points in another group do not reflect the relation as a whole. Davison & Namack Foundry Co. v. Pennsylvania R. R. Co., 81 I. C. C. 345, 346.

ALL OTHER CITATIONS

Oregon & Washington Lumber Mfrs. Assn. v. S. P. Co., 21 I. C. C. 389, 392; Ohio Foundry Co. v. P., C., C. & St. L. Ry. Co., 19 I. C. C. 65, 67; Idaho Commercial Clubs v. O. S. L. R. R. Co., 18 I. C. C. 562, 564; Anthony v. Philadel-

phia & Reading Ry. Co., 14 I. C. C. 581, 583; Victor Mfg. Co. v. S. Ry. Co., 27 I. C. C. 661, 664; Iowa State Board of Railroad Commissioners v. A. E. R. R. Co., 28 I. C. C. 193, 195; Wisconsin & Arkansas Lum. Co. v. St. L., I. M. & S. Ry., 33 I. C. C. 33, 39; Lindsay & Co. v. N. P. Ry. Co., 32 I. C. C. 287, 289; Northern Pine Mfrs. Asso. v. C. & N. W. Ry. Co., 33 I. C. C. 360, 369; Brush Creek Mining & Mfg. Co. v. L. & N. R. R. Co., 39 I. C. C. 449, 453; State of Iowa v. Wabash Ry., 46 I. C. C. 703, 709; National Petroleum Asso. v. M., K. & T. Ry., 47 I. C. C. 355, 358; West Virginia Rail Co. v. Penn. R. R., 50 I. C. C. 304, 306; Tribune Co. v. G. N., 53 I. C. C. 745, 746; Cambria Steel Co. v. Director General, 60 I. C. C. 459, 463; Goodman Drilling Co. v. Director General, as Agent, 61 I. C. C. 164, 167; Milwaukee Chamber of Commerce v. C. B. & Q. R. R. Co., 78 I. C. C. 110, 117, 118.

§19. Competition.

See Competition.

IMPORTANT CASES SINCE 1908

(a) Competition alone is not the only factor to be considered in the fixing of groups and rates. To take into consideration commercial and competitive conditions only would be to disregard distance and transportation conditions and to revert to the discarded equalization of cost theory; and to carry this theory to its logical conclusion would compel the consideration of the cost to the industry of manufacturing its products, which, of course, is clearly beyond the Commission's powers under the law. The Grouping of Monessen and Donora, 48 I. C. C. 650, 653.

(b) In refusing to disrupt a group adjustment upon complaint, the Commission considers the effect of commercial competition, and the fact that business conditions have become adapted to a rate equality, which does not, on the whole, unduly prejudice the near, or unduly prefer the far, points in the group, and the disruption of which would bring serious consequences to the farther points. If the Commission may thus consider commercial reasons for continuing a group, it may also consider such reasons for creating a group. If the Commission may not create a group which, if already created, it could sanction, the general similarity of conditions in the two instances would be counteracted by the tactical and artificial advantage which the existing group would have by virtue alone of its having been voluntarily created and maintained by the carriers. Anaconda Copper Mining Co. v. Director General, 78 I. C. C. 549, 552.

ALL OTHER CITATIONS

Pacific Coast Gypsum Co. v. O. W. R. R. & N. Co., 30 I. C. C. 135, 138; Wisconsin & Arkansas Lumber Co. v. St. L., I. M. & S. Ry. Co., 33 I. C. C. 33, 38; Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co., 39 I. C. C. 224, 242.

§19¼. New Decisions of Commission.

See Prior Decision of Commission.

ALL CITATIONS

Stewart Sand Co. v. A. T. & S. F. Ry. Co., 68 I. C. C. 111; Democrat Printing Co., v. Director General, as Agent, 74 I. C. C. 595; Gila Water Co. v. A. E. R. R. 78 I. C. C. 15; Adriatic Mining Co. v. C. & N. W. Ry., 78 I. C. C. 611; Melczer Co. v A. E. R. R., 78 I. C. C. 319; Arkansas Jobbers & Manufacturers Asso. v. C., R. I. & P. Ry., 80 I. C. C. 620.

§19½. Reparation.

See Reparation.

CASES 1887-1908

(a) Reparation on shipments of hay and grain from Morganfield, Henshaw, Corydon, Grove Center and other nearby Kentucky points, during the period when higher rate was in effect than to other group points. Harth v. Ill. Cent. R. R. Co., 12 I. C. C. 448.

(b) For several years defendants maintained uniform rates on shipments of grain and kindred products to Atlanta, Ga., and points beyond, from a group of towns on their lines beginning on the north with Henderson and Uniontown, Ky., and including Morganfield, Henshaw, Corydon, Grove Center, and other nearby points; but on December 15, 1904, defendants increased the rates to said destination points by adding 4 cents per 100 pounds on all shipments originating at any point in the group described except Henderson and Uniontown. This gave to Henderson and Uniontown lower rates than those applicable from the intermediate points. On April 5, 1905, defendants canceled the increased rates from the intermediate points, restoring the former rates, and thus again putting all points in this

group upon an equal rate basis. Complainants filed petitions to obtain reparation on their shipments of hay and grain made from said points under the increased rates. Defendants stipulated that they would submit to a reparation order on the basis of 3 cents per 100 pounds on all shipments made during the period of the effectiveness of the higher rates. Upon that basis final adjustment of the controversy was agreed to, and reparation orders aggregating $1,333.28 were entered. Enterprise Mfg. Co. et al. v. Georgia R. R. Co. et al., 12 I. C. C. 450.

IMPORTANT CASES SINCE 1908

(c) Complainant attacks as unreasonable and unduly prejudicial rates on fuel oil from the Mid Continent field to Keokuk, Iowa, in preference to Granite City, Pekin and Argo, Ill. Fuel oil is a low grade petroleum product. Rates are the same on fuel oil as on gasoline, a higher refined product. In Mid Continent Oil Rates, 36 I. C. C. 109, the Commission found that the rates on gasoline should be 20c to St. Louis, 21c to Keokuk, and that the maximum rates on low grade oils, including fuel oil, should be 15c to St. Louis and 20c to Chicago and also stated that rates on lower grades of oil to other points covered in the decision should be applied in just relationship as gasoline. Carriers did not comply with this part of the order in publishing rates to Keokuk. HELD: Rates on fuel oil to Keokuk are unreasonable and unduly prejudicial to extent they exceeded or may exceed rates 5c per 100 pounds less than rates on gasoline, and also that rates under attack should be the same as the rates on fuel oil to St. Louis from Group 1 and not more than 1c in excess of rates to St. Louis from Groups 2 and 3. As to reparation, shipments moving under certain contracts were not entitled to reparation because complainant did not ultimately bear the freight charges, but if any shipments moved where the situation shows that they did bear the freight charges, reparation may be handled on the special docket. Hubinger Bros. Co. v. Director General, 58 I. C. C. 53.

VIII. REGROUPING.

§20. In General.

CASES 1887-1908

(a) Where a system of rates is made by a number of carriers, covering a widely extended territory, which seem to be reasonable in themselves and relatively fair, so far as the evidence shows, the Commission will not order them to be changed at one important point, thereby rendering other changes unavoidable at a large number of other points, and throwing the rates of the entire system into confusion and upsetting values, unless a case arises in which it is necessary that this should be done in order to enforce compliance with the law and to reach the ends of substantial justice. Detroit Board of Trade v. G. T. R. R., 2 I. C. C. 200, 203.

IMPORTANT CASES SINCE 1908

(b) Where the group arrangement is of long standing and business has adjusted itself thereto, the Commission is loath, in the absence of a clear discrimination resulting therefrom, to disturb the arrangement. If, however, differences growing out of rivalry and internecine competition between the shippers from the different groups can no longer be composed among the parties themselves, the Commission may have no alternative but to break up the group arrangement and substitute for the existing adjustment a rate basis which will give to each of the several districts its just relation to all districts. Bituminous Coal to C. F. A. Territory, 46 I. C. C. 66, 143.

(c) Rates between points located at the extremities of their respective groups not found unreasonable and objection by carriers to a proposed detachment of these particular points or origin and destination from their respective groups held to be well founded. Empire Refineries (Inc.) v. Director General, as Agent, 60 I. C. C. 379.

(d) The Commission has recognized the system of group-rate making as proper, within limits, except where shippers or consignees are really damaged by the rates thus afforded while others are correspondingly benefited, and has generally refrained from breaking up a group where it has not been made to appear that the party seeking such action is actually damaged by the discrimination that results from the group rate. South Dakota Ry. Commissioners v. A. & W. Ry. Co., 74 I. C. C. 295, 306, 307.

(e) Groups of long standing are presumably fair and ought not to be disrupted unless substantial justice requires it. Galloway Coal Co., 40 I. C. C., 311, 320, and cases there cited. Perry County

Coal Corp. v. E. St. L. & S. Ry. Co., 80 I. C. C. 711, 715.

(f) The commission has consistently refrained from breaking up a group where it has not been made to appear that party seeking such action is actually damaged by discrimination which results from the group rate. Newport Mining Co. v. C. & N. W. Ry. Co., 33 I. C. C., 645, 657, and cases cited. Galloway Coal Co., 40 I. C. C., 311, 320 and cases there cited. Perry County Coal Corp. v. E. St. L. & S. Ry. Co., 80 I. C. C. 715.

(g) Where the arrangement is of long standing, the grouping should not be lightly or unnecessarily disturbed. Lincoln Gas Coal Co. v. B. & O. R. R., 88 I. C. C. 379, 383.

ALL OTHER CITATIONS

Cement Rates from Mitchell, Ind., 32 I. C. C. 93; The Illinois Coal Cases, 32 I. C. C. 659; Sand and Gravel Rates from Wisconsin Points, 34 I. C. C. 467; Milliken Refining Co. v. M., K. & T. Ry., 36 I. C. C. 109, 115; Peet Bros. Mfg. Co. v. A., T. & S. F. Ry., 36 I. C. C. 208; Colorado Class Rates, 37 I. C. C. 203, 209, 211; Drain Tile from Illinois Points (No. 2), 42 I. C. C. 707, 711; Lake Cargo Coal Rates, 46 I. C. C. 159, 172, 175, 177; The New York Harbor Case, 47 I. C. C. 643, 713; The Grouping of Monessen and Donora, 48 I. C. C. 650; Bituminous Coal Rates to the Southeast, 50 I. C. C. 1; Sheboygan Association of Corn v. C. & N. W. Ry., 55 I. C. C. 140, 144; Illinois Classification, 55 I. C. C. 290, 303, 304; Memphis Southwestern Investigation, 55 I. C. C. 515, 522, 524, 528, 551, 555, 566; Bartlett-Colline Glass Co. v. St. L. & S. F., 56 I. C. C. 236, 245; Illinois Classification, 56 I. C. C. 687; Goodman Drilling Co. v. Director General, 61 I. C. C. 164, 167; Austin Abbott v. Director General, 61 I. C. C. 296; South Bend Chamber of Commerce v. Director General, 61 I. C. C. 67; James A. Coad v. C., St. P., M. & O. Ry. Co., 64 I. C. C. 178; Interstate Rates on Grain, Grain Products and Hay, Carloads, Between Points in the Western and Mountain Pafic Rate Groups, 69 I. C. C. 562; Newport Mining Co. v. C. & N. W. Ry. Co., 33 I. C. C. 645, 657; Galloway Coal Co., 40 I. C. C. 311, 320; Anaconda Copper Mining Co. v. Director General, as Agent, 78 I. C. C. 549, 552.

BOILER INSPECTION ACT

IMPORTANT CASES SINCE 1908

(a) Report of the Commission to the United States Senate in response to Senate Resolution No. 327, in respect of whether and to what extent the boiler inspection act, as amended, is being violated, and whether inspection of locomotive boilers is being made in all federal locomotive boiler inspection districts and upon the roads of all common carriers engaged in interstate commerce as required by said act. Inspection of Locomotive Boilers, 73 I. C. C. 761.

(b) It is not possible for the commission to make a determination as to the extent to which the boiler inspection act currently is being violated. Such a determination would involve ascertainment of the condition of each locomotive and information as to the uses being made thereof. The condition varies even as to the same locomotive from day to day. There are approximately 70,000 locomotives within the general purview of the act, housed or repaired at approximately 4,000 different points and operated on more than 265,000 miles of track. Inspection of Locomotive Boilers, 73 I. C. C. 761, 762.

(c) The boiler inspection act does not contemplate that the Commission's inspectors shall inspect all locomotives. Under that act their services are general in character, and they are given such direction as is designed to bring about a compliance with requirements by the carriers. Inspection of Locomotive Boilers, 73 I. C. C. 761, 762, 763.

(d) It is the "use" of a locomotive not found to be in proper condition and safe to operate, and not the condition itself, which is a violation of the boiler inspection act. Inspection of Locomotive Boilers, 73 I. C. C. 761, 763.

(e) A locomotive may be defective and in need of repairs and yet be in a condition in which it is "safe to operate . . . . without unnecessary peril to life or limb." In many instances defects discovered and brought to the attention of carrier representatives are immediately repaired without retiring the locomotive. Under section 6 of the boiler inspection act notice is given of the more serious defects and the locomotives are required to be retired. Inspection of Locomotive Boilers, 73 I. C. C. 761, 763.

(f) In pursuance of the duty of inspectors to see that requirements of the boiler inspection act are complied with and that equipment is kept in safe condition, the inspectors deal with the vary-

ing situations and conditions in that manner which is deemed likely to accomplish the best practical results. The exercise of discretion and judgment is always involved. Inspection of Locomotive Boilers, 73 I. C. C. 761, 763.

BRACING AND BLOCKING

See Facilities and Privileges §10.

BRANCH LINES

I. REASONABLENESS OF RATES.
§1. In general.
§2. Compared with main lines.
§3. As part of system.
§4. In competition with main lines.
II. DUTY TO ROUTE.
§5. In general.
III. CONTROL AND REGULATION.
§6. Jurisdiction of Commission.
IV. DUTY TO FURNISH FACILITIES.
§7. In general.
V. TARIFFS.
§8. In general.
VI. THROUGH ROUTES AND JOINT RATES.
§9. In general.

CROSS REFERENCES

See Advanced Rates §12; Cars and Car Supply §21, §21½; Evidence §37.

I. REASONABLENESS OF RATES.

§1. In General.

CASES 1887-1908

(a) A branch road must be accessible to interstate shippers on equal and reasonable terms, and cannot be used to discriminate between mine owners on its line. Heck v. East Tennessee V. & G. R. Co., 1 I. C. R. 775.

(b) It can hardly be successfully claimed that a railroad company can maintain a separate equipment and carry from points on branch lines to the main line for transfer and forwarding, at as low cost as it could take up and carry a like quantity of freight from points equally distant on its main line, as from the points where the freight was taken up on the branches. Northwestern Iowa Grain & Stock Shippers Asso. v. C. & N. W. Ry. Co., 2 I. C. C. 431, 434.

(c) A higher rate may be maintained to a branch-line point off a direct through line without unjust discrimination. Lehmann v. Texas & P. R. Co. (Com.), 3 I. C. R. 706.

(d) As a general rule the operating expenses per ton per mile are greater on branch lines than on main lines. Eau Claire Board of Trade v. C., M. & St. P. R. Co., 4 I. C. C. 65, 73.

(e) A departure from equal mileage rates on different branches or divisions of a road is not conclusive that the rates are unlawful, but the burden is on the company making such departure to show its rates to be reasonable when disputed. James & Abbott v. Canadian Pacific, 4 I. C. R. 274.

(f) Complaint attacked rates on wheat from Pullman, Wash., to Portland, Ore., as unjust and unreasonable. Pullman is a branch line station 19 miles from defendant's line extending from Spokane to Portland, distant from each other about 450 miles. On 135 miles of this route between Pullman and Walla Walla the grades are heavy. The evidence presented by complainant had to do with rates on wheat between Kansas and Nebraska points to Chicago, where the cost of operation is not nearly as high as in the western country, where the rates attacked apply. Substantial reductions have been made since the case was heard which justify the expectation that further reasonable modifications will follow, and further reductions of the rate attacked by order of the Commission are not now deemed justifiable. HELD: Complaint dismissed. Morrell v. U. P. R. Co., 4 I. C. C. 469.

(g) Higher rates on commodities to a more distant point located on a branch line than to a nearer point, where the competition is greater, are justified. Holmes & Co. v. Southern R. Co., 8 I. C. C. 561.

(h) A passenger fare charge by defendant over its branch line from a point in Canada to a point in the United States, amounting to about 3 cents per mile for a distance of 35.3 miles, and including a 6-cent bridge charge by an independent company is not unreasonable upon the facts shown. Cist v. Michihgan C. R. Co., 10 I. C. C. 217.

IMPORTANT CASES SINCE 1908

(i) It is necessary that carriers be permitted to charge rates on branch lines that are fully compensatory for the services so long as they are not unreason-

able. Morgan Grain Co. v. A. C. L. R. R. Co., 19 I. C. C. 460, 471.

(j) The Commission has frequently recognized the justification for some additional charge for branch-line hauls. Page Milling Co. v. N. & W. Ry. Co., 30 I. C. C. 605, 610.

(k) Density of traffic over branch line is said to be about one-eighth of that over the main lines. American Coal & Supply Co. v. C. & N. W. Ry. Co., 30 I. C C. 492, 493.

(l) While rates from points on short branches may be somewhat higher than rates for like distances from points on main division of system, yet this rule should be applied without undue discrimination. Lumber to Nashville, Tenn., 31 I. C. C. 186, 189.

(m) Cost of service on branch line is greater than on main line. Reshipping Rates on Grain from Omaha, 32 I. C. C. 590, 595.

(n) The Commission has required extension of junction point rates to points on branch and connecting lines, where carriers had adopted such practice with respect to other points similarly located and circumstanced. In instant case as no similarity of transportation and operating conditions affecting rates assailed and rates cited disclosed, rates to branch line points on basis of combination rates not found unreasonable or unduly prejudicial. Caroon & Campbell v. Director General, as Agent, 57 I. C. C. 474, 478.

(o) Where a trunk line carrier publishes the same blanket rate on a specific commodity to destinations located on its branch lines, a shipper situated on an independent branch line connecting with this blanketed stretch of the main line is entitled to the blanket rate, especially where the service over the independent branch line is not in excess of the average service over the trunk line's own branches. Pioneer Lumber Co. v. Director General, as Agent, 64 I. C. C. 485, 489.

(p) Shortest distance applies via a branch line, a portion of which is of narrow gauge construction. Contended that the physical situation is immaterial and that shipper is lawfully entitled to use the shortest distance in the application of distance rates in view of the tariff being unrestricted. HELD: Such unrestricted distance rates would clearly be applicable via the branch line, but the charging of such rates on shipments moving via the longer route is not a violation of section 6, but rather involves unreasonableness under section 1. Since the branch line does not constitute a reasonable route, the moving of shipments via the longer route did not constitute misrouting. Calivada Fertilizer Co. v. S. P. Co., 73 I. C. C. 496, 501, 502.

(q) Disadvantageous operating conditions and light traffic may justify higher rates on a branch line than on a main line. Jackson Lumber Co. v. L. & N. R. R. Co., Unrep. Op. A-220

(r) In cases where establishment or maintenance of district rates from points on independent short lines is sought, no rule of general application can be followed, but each situation must be judged in accordance with its particular facts and circumstances. Big Mandy Coal & Mining Co. v. L. R. R. Co., 78 I. C. C., 445, 450.

(s) Extension of junction-point rates to points on branch lines is not unusual but generally has not been required unless it has appeared that carriers had adopted such practice with respect to other points similarly located and circumstanced, or that rates to junction points were made on group basis and applied over a considerable territory when conditions of operation and transportation on main and branch lines were substantially similar. Western Coal Rates, 80 I. C. C. 383, 450.

ALL OTHER CITATIONS

Anthony Wholesale Grocery Co. v. A., T. & S. F. Ry. Co., 13 I. C. C. 605, 608, 609; Kansas City Transporting Bureau v. A., T. & S. F. Ry. Co., 15 I. C. C. 491, 495; Bartling Grain Co. v. M. P. Ry. Co., 16 I. C. C. 494, 496; Grand Junction Mining & Fuel Co. v. C. M. Ry. Co., 16 I. C. C. 452, 457; Board of Trade of Winston-Salem v. N. & W. Ry. Co., 16 I. C. C. 12, 18; Receivers' & Shippers' Assn. of Cincinnati v. C., N. O. & T. P. Ry. Co., 18 I. C. C. 440, 464; Gumm v. E. P. & R. I. Ry. Co., 20 I. C. C. 237; League of Commission Merchants v. A. C. L. R. R. Co., 20 I. C. C. 132, 135; Meeker & Co. v. L. V. R. R. Co., 21 I. C. C. 129, 153; Railroad Commission of Nevada v. N. C. O. Ry. & S. V. Ry. Co., 22 I. C. C. 205; Goldfield Consolidated Milling & Transportation Co. v. A., T. & S. F. Ry. Co., 26 I. C. C. 567; Board of Trade of Winston-Salem v N. & W. Ry. Co., 26 I. C. C. 146, 148; American National Live Stock Asso. v. S. P. Co., 26 I. C. C. 37, 41; New Eng-

land Investigation, 27 I. C. C. 560, 617; Florida East Coast Ry. Co. v. U. S., 200 Fed. 797, 805; Railroad Commissioners of Fla., v. A. C. L. R. R. Co., 28 I. C. C. 356, 359; Richmond-Eureka Mining Co. v. E. N. Ry. Co., 29 I. C. C. 62; Jackson Lbr. Co. v. L. & N. R. R. Co., Unrep. Op. A. 148; McLean & Co. v. D. & R. G. R. R. Co., Unrep. Op. A-261; Southwestern Missouri Millers' Club v. St. L. & S. F. R. R. Co., Unrep. Op. A-728; Boise Lumber Co. v. P. & I. N. Ry., 33 I. C. C. 109; Jeffris v. N. O. M. & C. R. R. Co., Unrep. Op. A-831; The Tap Line Case, 34 I. C. C. 116; Montrose & Delta Counties Frt. Asso. v. D. & R. G. R. R., 34 I. C. C. 409; Rates on Lbr. from Southern Points, 34 I. C. C. 652, 681; Massie & Pierce Lumber Co. v. N. & W. Ry. Co., 33 I. C. C. 14, 19; Goldfield Cases, 34 I. C. C. 360, 371; Goldfield Cases, 34 I. C. C. 360, 373; Chattanooga Log Rates, 35 I. C. C. 163; 1915 Western Rate Advance Case, 35 I. C. C. 497, 659; Ladd & Co. v. G. S. W. Ry., 36 I. C. C. 179, 181; Consolidated Fuel Co. v. A., T. & S. F. Ry,. 38 I. C. C. 474; Brush Creek Mining & Mfg. Co. v. L. & N. R. R. Co., 39 I. C. C. 449, 452; Hardwood Package Co. v. N., R., H. & W. R. R., 41 I. C. C. 526; Becker Brewing & Malting Co. v. D. & R. G. Co., 42 I. C. C. 133; Sand Point Lumber & Pole Co. v. G. N. Ry., 43 I. C. C. 59; Coal to Brooksville, Ky., 43 I. C. C. 115, 116; Bay State Milling Co. v. Great Lakes Transit Corp., 43 I. C. C. 338, 346; Chaney Co. (Ltd.) v. O. S. L. R. R. Co., 43 I. C. C. 420, 421; Hutchinson Traffic Bureau v. C., R. I. & P. Ry. Co., 43 I. C. C. 689, 691; Tunis-Cockey Lumber Co. v. L. O. P. & G. R. R., 46 I. C. C. 405, 406; Southern Lumber & Mfg. Co. v. Tennessee Ry., 47 I. C. C. 87, 90; Lincoln Com. Club v. C. & S. Ry., 47 I. C. C. 557; Carriers v. A. & N. R. R. R., 50 I. C. C. 280; Cleveland Lumber Co. v. Alabama Central F. F. Co. et al., 52 I. C. C. 159; W. D. Haas & Co. v. T. & P. Ry., 52 I. C. C. 527; Lindas Lumber Co. v. Anthony & Northern Ry., 53 I. C. C. 179; W. S. & S. V. Ry., 53 I. C. C. 607; Continental Coal Corporation v. L. & N., 53 I. C. C. 378; Diamond Match Company v. Director General, 55 I. C. C. 431; Compton Coal Co. v. D. & R. G. Ry., 55 I. C. C. 718; Champion Fiber Co. v. Director General, 57 I. C. C. 349; Pikes Peak Consolidated Fuel Co. v. Director General, 55 I. C. C. 249; Empire Steel & Iron Co. v. Director General, 56 I. C. C. 158, 171; Assets Realizing Mines Corp. v. A., T. & S. F. Ry. Co., 57 I. C. C. 39; Central Pennsylvania Lumber Co. v. Director General, 59 I. C. C. 197; Phelps Dodge Corporation v. Director General, 59 I. C. C. 561; Cannon Mfg. Co. v. Southern Railway, 59 I. C. C. 594; Western Petroleum Refiners' Asso. v. Director General, 59 I. C. C. 38, 41; Arcularius Bros. v. Director General, 59 I. C. C. 727; Century Glass Sand Co. v. Director General, 60 I. C. C. 759; Best Clymer Mfg. Co. v. Director General, 62 I. C. C. 62; Galena Signal Oil Co. v. Director General, 62 I. C. C. 139; Phoenix Chamber of Commerce v. S. P., 62 I. C. C. 500; Consolidation Coal Co. v. Director General, as Agent, 60 I. C. C. 147; Jones & Laughlin Steel Co. v. Director General, as Agent, 60 I. C. C. 325; W. H. Barber Co. v. Director General, 61 I. C. C. 23; Three Lakes Lumber Co. v. W. W. Ry. Co., 61 I. C. C. 408, 414; Hollingshead Co. v. Director General, as Agent, 62 I. C. C. 147; United Iron Works v. Director General, 63 I. C. C. 310; Doe Lumber Co., v. Director General, as Agent, 63 I. C. C. 354; Grayson Owen Co. v. Director General, as Agent, 64 I. C. C. 157; H. P. Jones v. Director General, 64 I. C. C. 221; Asphalt from Gulf Ports, 64 I. C. C. 395; Pioneer Lumber Co. v. Director General, as Agent, 64 I. C. C. 485, 487, 489, Bedford Cut Stone Co. v. Director General, 66 I. C. C. 26; Cosden & Co. v. Director General, 66 I. C. C. 113; Nonapplication of Group-J Rates, 66 I. C. C. 96; State of Idaho ex rel. v. Director General, 66 I. C. C. 330, 336, 337; C. G. Chevalier v. Director General, 66 I. C. C. 421; Massachusetts Oil Refining Co. v. B. & A. R. R. Co., 66 I. C. C. 535; Boise Gas Light & Coke Co. v. Director General, 66 I. C. C. 607; Riverside Coal Co. v. Director General, 68 I. C. C. 205; Smith v. I. C. R. R. Co. 68 I. C. C. 427, 433; Green Rock Coal Co. v. Director General, as Agent, 69 I. C. C. 175; Empress Coal Co. v. O. W. R. R. & N. Co., 69 I. C. C. 618; Willapa Lbr. Co. v. Director General, 68 I. C. C. 659; Southwestern Portland Cement Co. v. Director General, 69 I. C. C. 31; Atlas Portland Cement Co. v. N. & B. R. R., 73 I. C. C. 687; Lassen Lumber & Box Co. v. Director General, as Agent, 73 I. C. C. 212; Nevada-California-Oregon Divisions, 73 I. C. C. 330; South Dakota Ry. Commis. v. A. & W. Ry. Co., 74 I. C. C. 295; Green Felt Shoe Co. v. Director General, as Agent, 74 I. C. C. 363; Bituminous Coal from Mines on C. & M. R. R., 74 I. C. C.

723; K. R. Thames v. A. & N. W. R. Co., 81 I. C. C. 55; Hamill Coal & Coke Co. v. Western Maryland R. Co., 81 I. C. C. 72; Memphis Freight Bureau v. C. & G. R. Co., 81 I. C. C. 221; Thomas R. Heyward, Jr., v. Director General, 81 I. C. C. 529; William Schuette Co. v. Director General, 81 I. C. C. 619; Class Rates to and from Delaware Division Stations, 81 I. C. C. 758, 760; International Pulp Co. v. Director General, as Agent, 78 I. C. C. 83; Western Coal Rates, 80 I. C. C. 383, 462; Graham & Gila Counties Traffic Asso. v. A. E. R. R. Co., 81 I. C. C. 134; Clay County Coal Asso. v. C. & M. R. R. Co., 81 I. C. C. 414; Foster Lumber Co. v. V. & S. R. R. Co., 81 I. C. C. 505; Megeath Coal Co. v. Director General, as Agent, 83 I. C. C. 165; Nelson Fuel Co. v. C. & O. Ry. Co., 83 I. C. C. 737; United Verde Mining Co. v. A. T. & S. F. Ry., 88 I. C. C. 5; United Verde Extension Mining Co. v. A. T. & S. F. Ry. 89 I. C. C. 95.

§2. Compared With Main Lines.

See Comparative Rates; Evidence §57½; Reasonableness of Rates §32.

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(a) Where the roads and branches of two companies extend to and penetrate a wheat producing district, from which they make a joint rate for distances of 480 miles and each company makes the same rate separately for the same district, one for distances of 450 and the other for distances of 650 miles over their respective lines to the same destination. HELD: That it may be fairly assumed that the rates so jointly and separately made are reasonably remunerative and profitable. HELD FURTHER: That what is reasonable compensation for this longer and more expensive branch line service is excessive for the shorter distance of 311 miles over a less expensive route from the same district to the same destination. Newland v. Northern Pacific R. Co., 4 I. C. R. 474.

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(b) A new line is not required to establish as low a rate as a more firmly established road. Du Mee, Son & Co. v. A., T. & N. R. R. Co., 19 I. C. C. 575, 576.

(c) The Commission does not feel justified in requiring a newly constructed line with a comparatively meager traffic to join in the establishment of rates on cotton linters as low as those applying from points located on the rails of carriers more firmly established. Du Mee, Son & Co. v. A. T. & N. R. R. Co., 19 I. C. C. 575, 576.

(d) That a given point, otherwise similarly circumstanced, is located on a branch line, while other points enjoying lower rates are located on main lines, does not create dissimilarity of circumstances. Santa Rosa Traffic Assn. v. S. P. Co., 24 I. C. C. 46, 48.

(e) While rates from points on short branches may be somewhat higher than rates for like distances from points on the main division of the system, yet that rule should be applied without undue discrimination. Lumber to Nashville, Tenn., 31 I. C. C. 186, 189.

(f) When transportation conditions warranted it the Commission has allowed a difference between branch line rates and contemporaneous rates for equal distances on the main line. Railroad Commissioners of North Dakota v. N. P., 53 I. C. C. 437, 440.

(g) There is no substantial difference between the cost of service from points on short-line connections not operated by trunk lines and that from points on branch lines. Hollingshead Co. v. Director General, as Agent, 62 I. C. C. 147, 149.

ALL OTHER CITATIONS

Rahway Valley R. R. Co. v. D., L. & W. R. R. Co., 14 I. C. C. 191; Maricopa County Commercial Club v. Wells, Fargo & Co., 16 I. C. C. 182, 184; Idaho Commercial Clubs v. O. S. L. R. R. Co., 18 I. C. C. 562, 564; Acme Cement Plaster Co. v. C. & N. W. Ry. Co., 18 I. C. C. 105, 106; Commer. Club of Omaha v. C. & N. W. Ry. Co., 19 I. C. C. 156; League of Com. Merch. v. A. C. L. R. R. Co., 20 I. C. C. 132, 134; Burton v. U. V. R. R. Co., 20 I. C. C. 75; Memphis Freight Bureau v. I. C. R. R. Co., 27 I. C. C. 507, 511; Board of Trade of Winston-Salem v. N. & W. Ry. Co., 26 I. C. C. 146, 147, 151; Florence Wagon Works v. S. Ry. Co., Unrep. Op. A-106; Higgins & McGrath v. C., B. & Q. R. R. Co., Unrep. Op. A-184; Jackson Lumber Co. v. L. & N. R. R. Co., Unrep. Op. A-148, A-220; Page Milling Co. v. N. & W. Ry. Co., 30 I. C. C. 605, 610; Foster Lumber Co. v. G., C. & S. F. Ry. Co., 36 I. C. C. 241, 242; Florence Wagon Works v. S. Ry. Co., Unrep. Op. 2210; Blackwell Lumber Co. v. M. P. Ry. Co., 42 I. C. C. 756, 760; McGowan-Foshee Lumber Co. v. F. A. & G. R. R., 51

I. C. C. 317, 322; Empress Coal Co. v. O. W. R. R. & N. Co., 51 I. C. C. 345, 349; Southern Hardwood Traffic Asso. v. Director General, 53 I. C. C. 191, 196; Red River Lumber Co. v. Southern Pac. Co., 53 I. C. C. 321, 324, 325; Empire Steel & Iron Co. v. Director General, 56 I. C. C. 158, 171; Western Petroleum Refiners' Asso. v. Director General, as Agent, 59 I. C. C. 38; Fish Oil from St. Marys, Ga., 60 I. C. C. 511, 514; Cosden & Co. v. Director General, as Agent, 66 I. C. C. 113; Atlantic Refining Co. v. Director General, as Agent, 74 I. C. C. 8; Kamath County Chamber of Commerce v. S. P. Co., 74 I. C. C. 207, 219, 220; Graham & Gila Counties Traffic Asso. v. A. E. R. R. Co., 81 I. C. C. 134.

§3. As Part of System.

See Evidence §57½.

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(a) The service may be rendered under such dissimilar circumstances as to make it lawful to charge more for the same distance on one line or branch than on another line or branch of the same road. Northwestern Iowa Grain & Stock Shippers' Asso. v. C. & N. W. R., 2 I. C. C. 431, 434.

(aa) The Chicago, Milwaukee & St. Paul Railway Company owns and operates an extensive system of Railroads. One of its lines, used largely for the transportation of wheat, runs from a point in Dakota Territory through Minneapolis and St. Paul, to Milwaukee and Chicago. Between Minneapolis and Milwaukee defendant has two routes, one by way of Red Wing and other towns, called the River Division, and being the shorter route; the other by the way of Northfield, Faribault and other towns, and called the Iowa and Minnesota Division. The through rate on wheat from the western terminus in Dakota to Milwaukee and Chicago is twenty-five cents per 100 pounds, with the privilege of milling in transit on both the above mentioned divisions. The rate on wheat from said western Territory to Minneapolis and St. Paul when consigned there, and most, if not all of which is carried by other roads, is seventeen and a half cents a hundred. The rate on the River Division of defendant's road and other competing roads from Minneapolis to Milwaukee and Chicago, and from all intermediate and connecting points on that route, is seven and a half cents a 100 pounds. The rate on wheat on the Iowa and Minnesota Division from Minneapolis and the intermediate towns on that division is fifteen cents per 100 pounds, except from Farmington, which has thirteen and a half cents. The rate on other commodities is the same by both routes. The fact that the rates on wheat on the Iowa and Minnesota Division is double the rate enjoyed by neighboring towns on the other division works practically to their disadvantage and prejudice. On complaint of millers and others on the Iowa and Minnesota Division of unjust discrimination, HELD: (a) That the complaint is well founded; that the rate on wheat on that division is relatively too high; that while a reasonable differential may be allowed on that division, on account of greater distance and probable larger expense of transportation and the greater stringency of the competitive forces on the River Division, the difference above the present rate on the River Division should not exceed two and a half cents a hundred. (b) That it is not a sufficient compliance with the Law that rates are reasonable in themselves, but they should be so relatively reasonable as to protect communities and business against unjust discrimination. (c) That when the same carrier operates parallel lines, and for any cause accepts low rates on one line, it should furnish sufficient corresponding advantages to the patrons of the other line to prevent undue prejudice and disadvantage, and to preserve the substantial equality contemplated by the statute. Boards of Trade Union v. Chic., Milwaukee & St. P. R. R. Co., 1 I. C. R. 608.

(ab) A railroad company cannot complain of an act fixing the rate of charge for the carriage of passengers, as unjust, upon the ground that it denies it the right to fix such rates as will yield a profit upon a particular branch of the road. Missouri P. R. Co. v. Smith (Ark.) 5 I. C. R. 348.

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(b) What might perhaps have been proper as between companies operating separate and distinct short lines may become unreasonable and unjust when both are absorbed by a large system which serves an extensive territory. Black Mountain Coal Land Co. v. Sou. Ry. Co., 15 I. C. C. 286.

(c) The fact that rates on other parts of the carrier's system are forced down by competition to a very low point does

not justify a higher rate to a point located on a branch line, since such point is entitled to the reasonable rate which its location and other advantages dictate without taking into account conditions which bring about lower rates to other points. Board of Trade of Winston-Salem v. N. & W. Ry. Co., 16 I. C. C. 12, 16.

(d) Commission rates are usually the same for all lines, both main lines and branches. It is fair that the main line should in a degree contribute to the support of the branch line, for the branch-line business when it reaches the main line is surplus traffic from which a larger profit is made. It is in the public interest that rates shall be so adjusted that population and industries may freely diffuse themselves. In determining the reasonableness of rates upon a main line based upon earnings, reference must be made to the earnings of branch lines which contribute to it. Receivers & Shippers Assn. of Cincinnati v. C., N. O. & T. P. Ry. Co., 18 I. C. C. 440, 465.

(e) The fact that a rate is made applicable to certain destinations irrespective of whether most of them are located on branch lines does not justify an unreasonable rate to any of the destinations involved, but the reasonableness of the rate is to be tested as a whole. League of Southern Idaho Commercial Clubs v. O. S. L. R. R. Co., 18 I. C. C. 562, 564.

(f) If the branch lines of a railroad are judiciously planned and constructed they should certainly be taken into account in determining the value of the railroad, for although they may not earn a large return upon the cost considered as an independent proposition, they do add to the traffic and the earning power of the entire system; but it must be assumed that the new branches which have been constructed are good investments, otherwise they would not have been built, and that they will add to the earnings of the property in proportion as they have added to its cost. No increase in rate should be called for on this account. City of Spokane v. N. P. Ry. Co., 19 I. C. C. 162, 171.

(g) The carrier cannot claim the right to earn a net profit from every mile, section or other part into which the road might be divided. L. & N. R. Coal and Coke Rates, 26 I. C. C. 20, 30.

(h) If railroads were free to transfer all their expenses of competition to shippers, they would be relieved of the necessity of exercising proper judgment and care in laying out new lines and operating old ones. Lumber Rates from Memphis and other Points to New Orleans, 27 I. C. C. 471, 481.

(i) Where traffic originates upon a branch line, the main line should accept for its haul from the junction point something less than it receives upon business originating at the junction point. Rail road Commissioners of Florida v. A. C. L. R. R. Co., 28 I. C. C. 356, 359.

(j) Rates should not be fixed for a main line without reference to branch lines contributing to it. Atlanta Freight Bureau v. N. C. & St. L. Ry., 29 I. C. C. 476, 485.

(k) The law does not impose upon a carrier the duty in all cases to give to points on a connecting independent railroad the same rates to markets that it gives to points on its own branch lines in the same region. McGowan-Foshee Lumber Co. v. F. A. & G. R. R., 51 I. C. C. 317, 322.

(l) In an extensive blanket a branch-line haul of 30 miles loses its significance unless it is made to appear that the branch-line operation is much more expensive than main-line operations from remoter parts of the blanket. State of Idaho, ex rel v. Director General, 66 I. C. C., 330, 337.

ALL OTHER CITATIONS

Billings Chamber of Commerce v. C. B. & Q. R. R. Co., 19 I. C. C. 71, 75; Acme Cement Plaster Company v. C. & N. W. Ry. Co., 18 I. C. C. 105, 106, 107; Idaho Commercial Clubs v. O. S. L. R. R. Co., 18 I. C. C. 562, 564; Middlesboro Board of Trade v. L. & N. R. R. Co., 27 I. C. C. 14, 21; Consolidated Fuel Co. v. A. T. & S. F. Ry. Co., 27 I. C. C. 554, 555; Louisville & Nashville R. R. Coal and Coke Rates, 26 I. C. C. 20, 29, 30; American Nat. Live Stock Asso. v. So. P. Ry. Co., 26 I. C. C. 37, 40; Rates on Common Brick to Canada, 26 I. C. C. 129, 131; American Coal & Supply Co. v. C. & N. W. Ry. Co., 30 I. C. C. 492; Empress Coal Co. v. O. W. R. R. & N. Co., 51 I. C. C. 345; 349; United Verde Extension Mining Co. v. U. V. & P. Ry. Co., 57 I. C. C. 300; Bare Paper Co. v. Director General, 57 I. C. C. 329; Doe Lumber Co. v. Director General, as Agent, 63 I. C. C. 354; Grayson Owen Co. v. Director General,

as Agent, 64 I. C. C. 157; A. B. Smith et al v. Director General, 68 I. C. C. 427; Smith v. I. C. R. R. Co., 68 I. C. C. 427, 433; East Coast Potato Distributors v. N. Y. P. & N. R. R., 77 I. C. C. 607.

§4. In Competition With Main Lines.

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(a) Two of the south branch lines of said Railway Company are crossed by the main line of the Chicago, Milwaukee & St. Paul R. R. Co. From points on these branch lines the Northwestern Company comes in competition with the St. Paul Company, from its main line points; HELD, that the charges on these branches do not establish a standard of reasonable rates for like distances from points on the north branch of the same company where no such competition exists. Northwestern Iowa Grain & Stock Shippers' Asso. v. Chicago & N. W. R. Co., 2 I. C. R. 431.

(b) Where branch lines of a railway company are crossed by the main line of another company, and from these points the company comes in competition with the other company from its main-line points, the charges on these branches do not establish a standard of reasonable rates for like distances from points on another branch of the same company where no such competition exists. Northwestern Iowa Grain & Stock Shippers Asso. v. Chicago & N. W. R. Co., (Com.) 2 I. C. R. 431.

(c) Where the roads and branches of two companies extend to and penetrate a wheat-producing district, from which they make a joint rate for distance of 480 miles, and each company makes the same rate separately from the same district, one for distances of 450 and the other for distances of 650 miles over their respective lines to the same destination, the rates so jointly and separately made must be held excessive for a shorter distance of 311 miles over a less expensive route, from the same district to the same destination. Newland v. Northern P. R. Co. (Com.), 4 I. C. R. 474.

(d) Where the roads and branches of two companies extend to and penetrate a wheat producing district, from which they make a joint rate for distances of 480 miles and each company makes the same rate separately from the same district, one for distances of 450 and the other for distances of 650 miles over their respective lines to the same destination. HELD, that it may be fairly assumed that the rate so jointly and separately made are reasonably remunerative and profitable. HELD FURTHER, that what is reasonable compensation for this longer and more expensive branch line service is excessive for the shorter distance of 311 miles over a less expensive route from the same district to the same destination. A. S. Newland v. Northern Pacific R. R. Co., et al, 6 I. C. C. 131.

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(e) In establishing a reasonable rate the strongest line should not alone be considered; the necessities of the weaker line must also be taken into account. City of Spokane v. N. P. Ry. Co., 15 I. C. C. 376, 394.

(f) It is almost axiomatic that rates cannot be made so as to give high earnings to a poorly placed, indifferently operated, or an isolated road, without making rates extortionate. In Re Advances in Rates—Western Case, 20 I. C. C. 307, 377.

(g) So it has been decided that branch lines may be established by applying the same mileage scale as upon the main line, plus an additional charge. In this case branch lines of the Southern Pacific were to charge $2.50 per car in addition to the mileage scale for the main line. American National Live Stock Asso. v. So. P. Ry. Co., 26 I. C. C. 37, 40.

(h) Where traffic originates upon a branch line the main line should accept for its haul from the junction point something less than it receives upon business originating at the junction point, for unless such a practice is applied branch lines cannot be maintained without the imposition of extravagant charges. Railroad Commissioners of Florida v. A. C. L. R. R. Co., 28 I. C. C. 356, 359.

(i) Millers located on branch lines may be subjected to some disadvantage in comparison with competitors located along respondents main line if they are required to pay higher rates to and in from the various markets in which they deal, but the disadvantage would arise from their location. Indianapolis Board of Trade v. B. & O. R. R., 64 I. C. C. 416, 419.

ALL OTHER CITATIONS

Commercial Club, Salt Lake City v. A. T. & S. F. Ry. Co., 19 I. C. C. 218;

Jeffris v. N. O. M. & C. R. R. Co., Unrep. Op. A-831; 1915 Western Rate Advance Case, 35 I. C. C. 497, 569; Three Lakes Lumber Co. v. W. W. Ry., 52 I. C. C. 42; Consolidation Coal Co. v. C. & O., 60 I. C. C. 763.

II. DUTY TO ROUTE.

See Routing and Misrouting.

§5. In General.

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(a) Small initial lines should be partially relieved of responsibility for correct routing. Duluth & Iron Range R. R. Co. v. St. P. M. & O. Ry. Co., 18 I. C. C. 485, 489.

ALL OTHER CITATIONS

Bituminous Coal to Mississippi Valley Territory, 39 I. C. C. 378, 386; Chattanooga Implement & Mfg. Co. v. L. & N. R. R. Co., 40 I. C. C. 146, 148; Graham & Gila County Traffic Asso. v. A. E. R. R. Co., 40 I. C. C. 573, 576, 577; Northampton & B. R. R. Co. Case, 41 I. C. C. 68, 73.

III. CONTROL AND REGULATION.

See Control and Regulation.

§6. Jurisdiction of Commission.

See Interstate Commerce Commission; Jurisdiction of Commission

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(a) Short road used as means of conducting interstate traffic in coal by companies owning connecting interstate roads is subject to Act to Regulate Commerce. Heck v. East Tennessee, V. & G. R. Co., 1 I. C. R. 775.

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(b) Commission can establish through routes and joint rates to and from industries upon a belt railroad. St. Louis Springfield & Peoria R. R. v. P. & P. U. Ry. Co., 26 I. C. C. 226, 238.

(c) Where a railroad is not a "lateral branch line," within the meaning of the Act, the Commission cannot order a physical connection. Morris Iron Co. v. B. & O. R. R. Co., 26 I. C. C. 240, 243.

(d) Complainant seeking order requiring narrow-gauge line to restore part of tracks it had destroyed, dismissed for want of jurisdiction. Richmond-Eureka Mining Co. v. Eureka Nevada Ry. Co., 29 I. C. C. 62, 64.

ALL OTHER CITATIONS

St. Louis, Springfield & Peoria R. R. v. P. & P. U. Ry. Co., 26 I. C. C. 226, 230; Clay County Coal Asso. v. C. & M. R. R. Co., 81 I. C. C. 414, 422.

IV. DUTY TO FURNISH FACILITIES.

See Facilities and Privileges.

§7. In General.

See Cars and Car Supply.

IMPORTANT CASES SINCE 1908

(a) Contention that a lateral branch line is under no obligation to furnish cars, not sustained. Campbell's Creek Coal Co. v. A. A. R. R. Co., 29 I. C. C. 682, 690.

(b) Complainant alleged that the Alabama Central Ry., operating a line between Antaugaville and Booth, Ala., 8.5 miles, failed to supply them sufficient cars to transport lumber from Antaugaville to interstate destinations, and unduly preferred their competitors in the distribution of available cars. The A. C. Ry., connected at Booth with the M. & O. R. R. upon which it depended for its supply of freight cars. The A. C. served four lumber concerns; complainants, Whitewater Lum. Co., Felton Lum. Co., and James Miller. Complainants capacity was less than 25,000 ft. per day, and they had at date of hearing 175,000 ft., at Antaugaville; the Whitewater Lum. Co's. capacity was 40,000 ft., on hand 1,500,000 to 2,000,000 ft. Felton Lum. Co., capacity 10,000 ft. The A. C. published no rules for car distribution; but the conductor of its train made what he considered an equitable distribution, by which the Whitewater Lum. Co., was to receive 4 cars; complainants, 1 or 2 cars; and the Felton Lum. Co., 1 car. During the period from June, 1916, to September, 1917, inclusive, complainants received 118 cars; the Whitewater Lumber Co., 506 cars; the Felton Lum. Co., 72 cars; and Miller, 42 cars. It appeared that complainants held cars longer on the average than any of the others. During the latter part of the period involved complainants were not producing lumber; all they had was a supply of lumber, previously accumulated and constantly diminishing. This lumber had not been properly stacked so as to resist the elements. HELD (1) that without passing upon the question of jurisdiction to award damages for the alleged failure to furnish cars upon reasonable request as required by section 1, under the circumstances, disclosed of record it could not with propriety be found that defendant should respond in damages for its inabil-

ity to furnish a full car supply; (2) defendants practices with respect to the distribution of available cars, while meriting criticism, not shown to have unduly preferred complainant's competitors with resulting damage to complainants. Complaint dismissed. Oden-Elliott Lum. Co. v. A. C. Ry., 51 I. C. C. 403.

(c) In a typical case the complaint was dismissed because it was not proven that there existed unlawful discrimination as between carriers, in the sense that they failed to afford all reasonable proper and equal facilities for the interchange of traffic. There was unrestricted interchange between the narrow gauge line and the standard gauge line to the full extent that the difference in gauges would permit, and between them they maintained in constant operation a through route. The Commission HELD the lack of joint rates is not in itself a discrimination of the nature alleged. United States v. S. S. V. Ry., 53 I. C. C. 607, 618.

(de) Complainant attacked the rates, rule, regulations and practices applicable to the transportation of milk and cream, less carloads, from Cloverdale, Vt., to Hartford, Conn., as unreasonable, unjustly discriminatory and unduly prejudicial. Cloverdale is on the branch of the C. V., extending east from Essex Junction to Cambridge Junction, 18 miles from the former point; and Middlesex is on the main line of the same carrier, 27 miles south of Essex Junction. Shipments move over the C. V., to Windsor, Vt., the B. & M., to Springfield, Mass., and the N. Y. N. H. & H. beyond. Charges were exacted at the applicable per can rates, the reasonableness of which was not upon hearing questioned. Charges at the per can rate for the actual number of cans shipped were collected daily from complainant. Where shipments were made in open iced milk cars, from points on the C. V., additional charges at the per can rates, reduced to a per quart basis, were collected at the end of each month, for the difference between the number of quarts actually shipped and 5,100 quarts. There was and is no provision made by defendant's tariff for the exaction of charges based upon the minimum number of quarts shipped. Charges assessed and collected in excess of those accruing on the basis of the actual number of cans transported therefore were not and are not legally applicable and must be refunded. Shipments from Cloverdale are transported in baggage cars to Essex Junction, and thence to destination in open iced cars; those from Middlesex are transported the entire distance in open iced cars. Open iced cars are those for which the carriers supply ice in summer and which are stopped en route to pick up less than carload shipments. In April, 1919, complainant was notified by the C. V., that daily open iced cars service between the points involved would be re-established for the summer only upon condition that daily shipments of not less than 5,100 quarts would be guaranteed by complainant. To this complainant agreed. In November, 1919, complainant was notified that the same minimum quantity would be required for every other day open iced car service during the late fall and winter months. Defendants have offered, and still offer, baggage car service for shipments not in excess of 25 cans from and to the points involved on days when the Hartford car is not operated. Under the arrangement proposed, shipments would be handled in C. V., open iced cars to White River Junction and thence to destination in baggage cars of the B. & M., and N. Y. N. H. & H. The B. & M. refused to accept for transportation in this way shipments of more than 25 cans, maintaining that a greater number, on account of the lack of available space in baggage cars, would be subjected generally to long lay over at White River Junction; and that, when space was available, the loading of cans would delay passenger trains. Daily baggage car service is provided for shipments of milk and cream from Barton, Vt., which is on the B. & M., 90 miles north of White River Junction, to Springfield, Mass. From Northfield, Vt., a point on the main line of the C. V., intermediate to White River Junction from Middlesex, shipments to New Haven, Conn., are carried in the same car which complainant uses, and occasional shipments from two other points on the C. V., were made in this car during 1919. No guaranty of a minimum daily shipment is required of shippers at these points. Complainant competes with the consignee of shipments from Barton. No open iced car service is provided from Barton to Springfield and shipments of milk and cream from Barton are carried in baggage cars at baggage car milk rates on the regular passenger trains of the B. &

M. Shipments of milk and cream from Northfield to New Haven average 8 to 10 cans a day. Defendants insist that these shipments do not require through service, and could be carried in the open iced cars of the Boston milk train to White River Junction and thence in baggage cars to destinations. HELD, the assessment of charges in excess of those which would have accrued on the basis of the actual amount of the commodities shipped has been without tariff authority and therefore illegal; that these illegal charges must be refunded; that the rules, regulations, and practices attacked are, were, and for the future will be, unreasonable and unduly prejudicial, in that they fail to provide that, on days on which no open iced car service is provided, milk and cream may be shipped in baggage cars at the rates published for such transportation. Bryant & Chapman Co. v. Director General, 60 I. C. C. 237.

(f) A lateral branch line furthermore is under an obligation to furnish cars. Campbells Creek Coal Co. v. A. A. R. R. Co., 29 I. C. C. 682; Oden-Elliott Co. v. A. C. Ry., 51 I. C. C. 403; Bryant & Chapman Co. v. Director General, 60 I. C. C. 237.

(g) And under certain conditions a branch line may be able to compel a trunk line to maintain through routes and joint rates with it. Pittsburgh Term. R. R. & Coal Co. v. Director General, 63 I. C. C. 179.

(h) Shippers located on branch or lateral lines of a railroad are entitled to the same treatment in the distribution of cars as those on the main line. Chicago, R. I. & P. Ry. Co. v. Sims (Ark., 1923), 256 S. W. 33.

ALL OTHER CITATIONS

Timpson Brokerage Co. v. A. E. R. R. Co. Unrep. Op. 1863.

V. TARIFFS.

See Tariffs.

§8. In General.

IMPORTANT CASES SINCE 1908

(a) Points on new branch line not indexed in the applicable tariff from which rates applied, whereas the rates from stations included in the tariff had been in effect prior to opening of the new line. Contention that it was never intended to apply rates of original tariff to points on the new line not sustained, as defendant should have specifically excepted points on the new branch line, as was subsequently done. Wood Curtis Co. v. S. P., 56 I. C. C. 344, 345.

VI. THROUGH ROUTES AND JOINT RATES.

See Through Route and Joint Rates.

§9. In General.

ALL CITATIONS

Pittsburgh Term. R. R. & Coal Co. v. Director General, as Agent, 63 I. C. C. 179; Nonapplication of Group J. Rates 66 I. C. C. 96; McKell Coal & Coke Co. v. O. Ry. Co., 78 I. C. C. 227; Kanawha Black Band Coal Co. v. C. & O. Ry., 78 I. C. C. 429.

BREAK-BULK RATES

IMPORTANT CASES SINCE 1908

(a) So-called "break-bulk" rates apply on certain rail and water rates across the Great Lakes, the principal route being from points north and west to Milwaukee and thence across Lake Michigan to Ludington, Michigan, and thence to trunk line territory east of Niagara Frontier. These rates are called break-bulk rates because at Milwaukee the shipments are unloaded and carried across the Lake and reloaded at Ludington. This method of handling usually results in a through rate 2 cents to a cent lower than the car ferry route or all rail route from Milwaukee via Chicago. The principal importance of these break bulk rates is in connection with grain. The Commission has held, generally, that the same differential in favor of the break-bulk rate should exist with respect to grain as other traffic. It is also of interest to note that it found that the cost to the railroad for handling grain from Milwaukee to Ludington via the break-bulk boats are equivalent to 2 cents per 100 pounds. In Re Advances in Break-bulk Rates, 27 I. C. C. 78.

(b) The Commission, however, has said that in view of the lower earnings by the break-bulk route the carriers should perhaps not be required to maintain lower rates via this route than via car ferry or all rail routes. Break-bulk Rates on Grain, 30 I. C. C. 357, 363. Note. Also see Milwaukee Produce and Fruit Exchange v. Crosby Transportation Co., 30 I. C. C. 653.

(c) However, subsequently it reversed its decision in this case and permitted the proposed increases to go into effect.

Break-bulk Rates on Grain, 30 I. C. 357. Also see Board of Trade of Chicago v. P. M. R. R. Co., 44 I. C. C. 345, 348.

ALL OTHER CITATIONS

Grain Rates from Milwaukee, 33 I. C. C. 417, 419.

BREAKING RATES

See Basing Points and Lines; Car Ferry; River Crossing.

IMPORTANT CASES SINCE 1908

(a) The breaking up of a rate for transportation into separate rates or charges for the individual services incident to the transportation is merely a different way of stating the former rate. National Poultry, Butter & Eggs Assn. v. B. & O. S. W. R. R. Co., 43 I. C. C. 392, 397.

(b) It is impracticable to arrange so that rates will make and break at various widely separated points and be the same in the aggregate. Toledo Produce Exchange v. N. Y. C. R. R., 50 I. C. C. 515, 521.

BRIDGES AND TOLLS

I. REASONABLENESS.
§1. In general.
II. DISCRIMINATION.
§2. In general.
III. CONTROL AND REGULATION.
§3. In general.
§4. Jurisdiction of Commission.
IV. RIGHT TO USE.
§5. In general.
V. TARIFFS AND PUBLICATION.
§6. In general.

CROSS REFERENCES

See Car Floatage; Car Ferry; River Crossings.

I. REASONABLENESS.

See River Crossings.

§1. In General.

CASES 1887-1908

(a) Complainant alleged a rate of $2 per car charged by defendant for hauling a carload of grain across the bridge from Council Bluffs to Omaha and South Omaha, Neb., was reasonable, but that charges of $6 per car from Council Bluffs to Omaha and $8 per car from Council Bluffs to South Omaha, were unreasonable. Defendant has in force a rate of 1 cent per 100 pounds, minimum charge $5 per car, for transferring grain in carloads from Council Bluffs to Omaha and South Omaha. Its rate for transferring grain from Omaha and South Omaha to Council Bluffs for delivery upon its own tracks is $2 per car, which was put in to induce construction and maintenance of a modern and capacious elevator on its line in Council Bluffs, and a higher rate is charged by it on grain transferred to Council Bluffs for delivery to elevators or industries on other lines. The delivery of grain by defendant in Omaha or South Omaha is for industries or elevators on other lines, for which, under car service rules, it must allow such other lines $2 per car per diem rental. The grain rates from the West to Omaha, South Omaha, and Council Bluffs are the same, while from the East the rates to Council Bluffs are less than to Omaha or South Omaha. HELD, rate attacked not unreasonable, complaint dismissed. Omaha Grain Exchange v. Union Pacific R. R., 12 I. C. C. 66.

IMPORTANT CASES SINCE 1908

(b) If a bridge toll is charged or absorbed at one crossing it should be charged at all crossings. Paducah Board of Trade v. C. B. & Q. R. R. Co., 37 I. C. C. 743, 751.

(c) The Commission has frequently recognized the cost of bridges across such rivers as the Ohio and the Mississippi in connection with the movement of both freight and passenger traffic. Cases cited where such costs were given consideration. Bituminous Coal to C. F. A. Territory, 46 I. C. C. 66, 129.

(d) Charges for a bridge service may be determined upon a basis somewhat different from that employed in the construction of charges at a crossing where the transfer is effected by barges or other floating equipment. Memphis-Southwestern Investigation, 55 I. C. C. 515, 552.

(e) Complainant attacked rates charged on carloads of wheat and corn shipped between July 12, 1918, and Dec. 15, 1919, from a number of points in Indiana on the Pan Handle and Pennsylvania to Louisville as unreasonable to extent they exceeded by more than 1c the rates to Jeffersonville, Ind., on the north bank of the Ohio River opposite Louisville and distant therefrom 3.9 miles. During the period covered by the complaint the rates from these Indiana points to Louisville were 1.5c and 2c higher than the rates to Jeffersonville. The complaint is based on the theory that the rates from these points were

constructed originally by adding to the rates to Jeffersonville a bridge toll of 1c per 100 pounds. The differentials have fluctuated during the last few years and changes were also made in the amounts which the carriers paid to the bridge company for the bridge service. The record affords no basis for a finding that the rates charged were unreasonable. HELD, complaint dismissed. Ballard & Ballard Co. v. Director General, 73 I. C. C. 738.

(f The bridge toll on a given commodity should be approximately the same as the toll on the class to which the rate on the commodity more nearly corresponds. Memphis-Southwestern Investigation, 77 I. C. C. 517.

ALL OTHER CITATIONS

Railroad Commission of Ind. v. K. & I. B. & R. R. Co., 14 I. C. C. 563, 564; West End Improvement Club v. O. & C. B. R. & B. Co., 17 I. C. C. 239, 247; Railroad Commissioners of Ia. v. I. C. R. R. Co., 20 I. C. C. 181, 188; Mfrs. & Merchants' Asso. v. A. & A. R. R. Co., 24 I. C. C. 331, 332; Edwards & Bradford Lumber Co. v. C. B. & Q. R. R. Co., 25 I. C. C. 93, 96; Hafer Lumber Co. v. C. & N. W. Ry. Co., 25 I. C. C. 27, 29; Rock Springs Distilling Co. v. I. C. R. R. Co., 27 I. C. C. 54, 56; East Dubuque Supply Co. v. I. C. R. R. Co., 28 I. C. C. 425, 427; Springfield Commercial Assn. v. P. R. R. Co., 28 I. C. C. 511, 513; Iowa State Board of Railroad Commissioners v. A. E. R. R. Co., 28 I. C. C. 563, 568; Alton Board of Trade v. C. & A. R. R. Co., 28 I. C. C. 589, 591; Paducah Board of Trade v. I. C. R. R. Co., 29 I. C. C. 583, 588; Norman Lumber Co. v. L. & N. R. R. Co., 29 I. C. C. 565, 569, 570, 573; East Dubuque Supply Co. v. I. C. C. R. R. Co., Unrep. Op. A403; Beaver Co. v. N. Y. C. & H. R. R. R. Co., Unrep. Op. A545; South Covington & Cincinnati Street Ry. Co. v. City of Covington, 35 Sup. Ct. Rep. 158, 160, 235 U. S. 537, 59 L. Ed; American Milling Co. v. C. I. & S. R. R. Co., Unrep, Op. A-795; Cunningham v. B. & O. S. W. R. R. Co., Unrep. Op. A-798; East St. Louis Walnut Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-941; Class Rates Between Stations in Louisiana, 33 I. C. C. 302, 305; Duckworth v. I. C. R. R. Co., Unrep. Op. 1858; Henderson Commercial Club v. I. C. R. R. Co., 36 I. C. C. 20, 26; Florence Wagon Works v. M. O. & G. Ry. Co., 36 I. C. C. 650, 651; Paducah Board of Trade v. I. C. R. R. Co., 37 I. C. C. 719, 722, 743, 753; City of Memphis v. C. R. I. & P. Ry. Co., 39 I. C. C. 256, 273, 274; Lumber Rates from Helena, Ark., and Other Points, 41 I. C. C. 565, 569; City of Memphis v. C. R. I. & P. Ry. Co., 43 I. C. C. 121, 124; Campbells Creek R. R. Co. v. A. A. R. R., 44 I. C. C. 574, 578; Chicago Retort & Fire Brick Co. v. Wabash Ry., 45 I. C. C. 61; Cairo Board of Trade v. C. C. C. & St. L. Ry., 46 I. C. C. 343, 344; Himmelberger-Harrison Lumber Co. v. St. L. & S. F. R. R. Co., 46 I. C. C. 480, 482; Weis-Peterson Box Co. v. M. & O. R. R., 46 I. C. C. 693, 696; Western Cement Rates, 48 I. C. C. 201, 223; Business Men's League of St. Louis v. A. T. & S. F. Ry., 49 I. C. C. 713, 714; Zelnicker Supply Co. v. S. R. Ry., 53 I. C. C. 308, 309; Memphis Southwestern Investigation, 55 I. C. C. 515, 540, 541, 544, 546, 573, 574; St. Louis Chamber of Commerce v. B. & O. R. R. Co., 57 I. C. C. 638, 547; North Iowa Traffic Asso. v. Director General, 58 I. C. C. 491, 494; Cairo Association of Commerce v. B. C. R. R., 60 I. C. C. 519; Constructive Mileage over Poughkeepsie Bridge, 66 I. C. C. 230, 232, 233; Keokuk & Hamilton Bridge Co. v. W. Ry. Co., 66 I. C. C. 545, 548; Armour & Co. v. C. of G. Ry. Co., 81 I. C. C. 33; Memphis-Southwestern Investigation, 81 I. C. C. 555.

II. DISCRIMINATION.

See Discrimination.

§2. In General.

ALL CITATIONS

Mfrs.' and Merchants' Assn. v. A. & A. R. R. Co., 24 I. C. C. 331, 336, 339; Mfrs. & Mchts. Assn. v. A. & A. R. R. Co., 25 I. C. C. 116; Hafer Lumber Co. v. C. & N. W. Ry. Co., 25 I. C. C. 27; Paducah Board of Trade v. I. C. R. R. Co., 29 I. C. C. 593; Norman Lumber Co. v. L. & N. R. R. Co., 29 I. C. C. 565, 570; Memphis-Southwestern Investigation, 55 I. C. C. 515, 541, 573, 574; People v. Hudson River Connecting Railroad Corporation, 174 N. Y. S. 754; Missouri Cairo Asso. of Commerce v. B. C. R. R. Co., 60 I. C. C. 519; Ballard & Ballard Co. v. Director General, as Agent, 73 I. C. C. 738; Memphis-Southwestern Investigation, 77 I. C. C. 482, 484, 486, 487, 491, 493.

III. CONTROL AND REGULATION.

See Control and Regulation.

§3. In General.

See Interstate Commerce Commission I; Jurisdiction of Commission.

CASES 1887-1908

(a) Power to regulate commerce between States extends to erection of piers, bridges and all other instrumentalities of commerce which, in the judgment of Congress, may be necessary or expedient. Stockton v. Baltimore etc. R. R. Co. (U. S. C. Ct. N. J.), 1 I. C. R. 411.

(b) The Act of Congress, approved June 16, 1886, entitled "An Act to Authorize the Construction of a Bridge across the Staten Island Sound, known as Arthur Kill," etc., is valid and constitutional under the power of Congress to regulate commerce among the States. Stockton v. Baltimore & N. Y. R. R. Co., 1 I. C. R. 411.

(c) The provision of the Fifth Amendment to the Federal Constitution: "Nor shall private property be taken for public use without just compensation;" does not apply to the use of the land of a State under navigable waters, for the support of a bridge erected under the authority of Congress in aid of interstate commerce. Stockton v. Balt. & N. Y. R. R. Co., 1 I. C. R. 411.

(d) The Act of Congress authorizing the construction of the bridge known as the Arthur Kill, is not permissory merely, but gives authority and power to build such bridge, without reference to any authority or consent from the State on whose land under navigable water the bridge is to rest, and without compensation to the State. Stockton v. Baltimore & N. Y. R. R. Co., 1 I. C. R. 411.

(e) HELD, that the Act of Congress of June 16, 1886, entitled "An Act to Authorize the Construction of a Bridge across the Staten Island Sound, known as Arthur Kill," etc., is within the power conferred upon Congress to regulate commerce among the States, and that if the corporation undertaking the erection of such bridge acquires the right of the owners of the land under the waters and on the shore, the Act gives such corporation lawful authority to build and maintain such bridge without the consent, and notwithstanding the inhibition, of the State of New Jersey. Decker v. Balti. & N. Y. R. R. Co., 1 I. C. R. 434.

(f) Congress can lawfully confer upon a private corporation the capacity to occupy navigable waters within a State, and appropriate the soil under them, for the purpose of interstate commerce, without the consent of the State. Decker v. Balti. & N. Y. R. R. Co., 1 I. C. R. 434.

(g) Bridge companies; construction of charters; common carriers. Where the charter of a bridge company confers upon it the franchises and powers of building, maintaining, and operating, its bridge and approaches, designated as its terminal facilities, such franchises and powers do not, in and of themselves, constitute the bridge company a common carrier of property; on the contrary they are appropriately confined to the erection, operation, and maintenance of a thoroughfare or public highway, open to the use of others, common carriers, and private parties, upon making compensation therefor, in the shape of "reasonable tolls." Kentucky & Indiana Bridge Co. v. Louisville & Nashville R. Co., 2 I. C. R. 351.

(h) Bridge companies; construction of charters; common carriers. Where the charter of a bridge company makes its bridge and approaches thereto, such as it had authority to construct, a public thoroughfare, or highway, for the use of which, by railroads, or street cars, wagons, vehicles, animals, and foot passengers, it was authorized to charge "reasonable tolls," for the collection of which, suitable toll gates could be established; the word "tolls," as used in such a charter, is strictly applicable to charges for the use of its highway, rather than to compensation for transportation services which the bridge company may perform, or be permitted to render. Kentucky & Indiana Bridge Co. v. Louisville & Nashville R. Co., 2 I. C. R. 351.

(i) Kentucky & Indiana Bridge Company; construction of charter; common carrier. The charter powers of said company neither expressly, nor by any clear implication, confer upon it authority "to equip its road, and to transport goods and passengers thereon, and charge compensation therefor;" nor do they, in any way, constitute said company a common carrier—the rule of construction applicable to such charters being, that "No power is conferred upon a corporation, which is not given expressly or by clear implication." Kentucky & Indiana Bridge Co. v. Louisville & Nashville R. Co., 2 I. C. C. 351.

(j) A bridge company owning no freight cars, which solicits freight for railway companies who will furnish the cars and over whose lines the freight is to go, and merely transfers such cars over its bridge to the railway companies furnishing them, charging for its service its regular bridge toll, but making no charge for transporting the freight contained or carried in the cars,—is not a common carrier of such interstate freight. Kentucky & I. Bridge Co. v. Louisville & Nashville R. Co. (C. C. D. Ky.), 2 I. C. R. 351.

(k) The franchises and powers of building, maintaining, and operating a bridge and approaches, designated as its terminal facilities, do not, in and of themselves, constitute the bridge company a common carrier of property; nor do they, by any clear implication, confer upon it authority "to equip its road, and to transport goods and passengers thereon, and charge compensation therefor." Kentucky & I. Bridge Co. v. Louisville & N. R. Co. (C. C. D. Ky.), 2 I. C. R. 351.

(l) Where a railroad company, by contract with a bridge company, acquires the right to use a bridge, with its approaches, for its engines, cars, and trains, it is regarded, under the Act to Regulate Commerce, §1, as the owner or operator of the bridge and approaches, for the time being, as to all freight transported by it over the bridge. And as to all such traffic, it, and not the bridge company, must be regarded as the common carrier. Kentucky & I. Bridge Co. v. Louisville & N. R. Co. (C. C. D. Ky.), 2 I. C. R. 351.

(m) The Green & Barren River Navigation Company, by the Kentucky Act of March 9, 1868, leasing to it the "Green & Barren River line of navigation and their tributaries, together with the grounds, houses, waterworks, rents, profits, tools, machinery, implements, and appurtenances, and all the franchises thereunto belonging or appertaining," acquires only the improvements belonging to the State in its corporate capacity, as distinguished from what was subject to public use under common right, and does not acquire any exclusive right of navigation. Therefore it has no right of action against a railroad company for the obstruction of navigation by repairing a bridge, where this was done under a license which was valid against the public, and the improvements included in the lease were not injured or interfered with. Green & B. R. Nav. Co. v. Chesapeake, O. & S. W. R. Co. (Ky.), 2. I. C. R. 515.

(no) A State Legislature may authorize the building of a bridge or other structure tending to obstruct the navigation of a navigable river which is altogether within its own boundary; and it is only when Congress, by virtue of the constitutional provision, acts as to such obstructions that its will must be obeyed so far as may be necessary to insure free navigation. Green & Barren River Nav. Co. v. Chesapeake, Ohio & S. W. R. Co., 2 I. C. R. 515.

(p) A state has no power to regulate tolls upon a bridge connecting such state with another state; Congress alone has such power. Covington & C. Bridge Co. v. Kentucky (U. S. Sup. Ct.), 4 I. C. R. 649.

(q) A bridge across waters between two states and connecting such states is an instrument of interstate commerce; and traffic across it is interstate commerce. Covington & C. Bridge Co. v. Kentucky (U. S. Sup. Ct.), 4 I. C. R. 649.

(rs) The Kentucky law of 1890 fixing the tolls and fare over the bridge connecting that state and Ohio and spanning the Ohio river at Cincinnati, is in conflict with the interstate commerce clause of the Constitution. Covington & Cincinnati Elevated Railroad & Transit & Bridge Company v. Commonwealth of Kentucky, 4 I. C. R. 658.

(t) A State tax on the intangible property of a company chartered by that State and maintaining a bridge over a river on the State boundary is not an unconstitutional burden on interstate commerce when the business carried on over the bridge is done by other persons and corporations which pay the bridge company tolls for the privilege of using the bridge. Henderson Bridge Co. v. Commonwealth of Kentucky, 7 I. C. C. App. C.

(u) The fact that a bridge over a navigable river between two States is made a post road by an act of Congress which also regulates the height of the bridge and the width of the spans does not interfere with the right of the State to impose taxes on the bridge company. The court says: Clearly the tax was not a tax on the interstate business carried on over or by means of the bridge because the bridge company does not trans-

act such business. That business was carried on by the persons and corporations which paid the bridge company tolls for the privilege of using the bridge. The fact that the tax in question was to some extent affected by the amount of the tolls received and therefore might be supposed to increase the rate of tolls is too remote and incidental to make it a tax on the business transacted. Henderson Bridge Co. v. Commonwealth of Kentucky 7 I. C. C. App. c.

(v) Congress may, directly or through a corporation created for that object, construct bridges for the accommodation of interstate commerce by land. Luxton v. North River Bridge Co., 7 I. C. C., App. XLV.

(w) Under a Missouri statute carriers are prohibited from making any charge for crossing a river other than the regular distance rate. Dimmitt-Caudle-Smith Live Stock Comm. Co. v. C. B. & Q. R. R., 47 I. C. C. 287, 317.

(x) A bridge across waters forming a boundary line between states is an instrumentality of commercial intercourse between such states, and traffic across it is "interstate commerce." Shrader v. Steubenville & B. V. T. E., (Va. 1919), 99 S. E. 207.

(y) No part of the business of an interstate bridge which is subject to the provisions of the Act to Regulate Commerce is under the control of the state. Shrader v. Steubenville, East Liverpool & B. V. T. Co., (Va. 1919), 99 S. E. 207.

(z) The federal Act to Regulate Commerce expressly includes within the scope of its provisions bridges used or operated in connection with any railroad, and an interurban electric railway, other than a street passenger railway, passing over an interstate bridge and participating in the interstate movement of persons and property, is a "railroad" within the meaning of the act, and the bridge over which it passes is therefore subject to the provisions of the act. Shrader v. Steubenville, East Liverpool & B. V. T. Co., (W. Va. 1919), 99 S. E. 207.

(aa) A railroad bridge entirely within a state, but constructed to carry trains engaged in interstate commerce, and extending over a navigable river, is an instrument of interstate commerce subject to the jurisdiction of Congress under Const. art. 1, §8, empowering Congress to regulate commerce among the several states. People v. H. R. Conn. R. Corp. (N. Y. 1920), 126 N. E. 801.

ALL OTHER CITATIONS

Kansas City v. K. C. V. & T. Ry. Co., 24 I. C. C. 22, 26; Kaw Valley Drainage Dist. v. Mo. Pac. R. R., (Kans. 1916), 161 Pac., 937, 938; Proprietors of Cornish Bridge v. Fitts, (N. H. 1919), 107 Atl. 626; Keokuk & Hamilton Bridge Co. v. Wabash Ry., 66 I. C. C. 545, 548.

§4. Jurisdiction of Commission.

CASES 1887-1908

(a) A bridge company which is not, either in law or in fact, a common carrier of interstate traffic, cannot invoke the provisions of the Act to Regulate Commerce to compel railway companies to transact business with or through such bridge company. Kentucky & I. Bridge Co. v. Louisville & N. R. Co. (C. C. D. Ky.), 2 I. C. C. 351. Overruling decision of the Interstate Commerce Commission in the same case. 2 I. C. R. 102.

(b) The Louisville & Nashville Railroad Company united with other companies having lines terminating on the Ohio River at or opposite Louisville in a contract whereby it was agreed that all their business across the river at that point should be taken over the Louisville bridge. The Louisville Bridge Company was a party to the contract, and the tolls were dependent on the amount of business done, and were diminished as the debt of the bridge company was paid off from funds derived from tolls. A new bridge being constructed over the river at this point, one of the railroad companies which had contracted to take all its business over the old bridge transferred the business to the new bridge. The Louisville & Nashville Railroad Company thereupon refused to receive for transportation over its line any freights which had been brought over the new bridge in violation of the contract made with it. HELD, that this refusal was unlawful. Kentucky & Indiana Bridge Co. v. Louisville & Nashville R. Co., 2 I. C. R. 102.

ALL OTHER CITATIONS

Proprietors of Cornish Bridge v. Fitts (N. H. 1919), 107 Atl. 626; Shrader v. Steubenville & B. V. T. E., (Va. 1919) 99 S. E. 207; People v. H. R. Conn. R. Corp. (N. Y., 1920) 126 N. E. 801; Keokuk & Hamilton Bridge Co. v. Wabash Ry., 66 I. C. C. 545, 548.

IV. RIGHT TO USE.

§5. In General.

CASES 1887-1908

(a) The Kentucky & Indiana Bridge Company has the chartered powers of a common carrier and is such de facto. It is therefore, under the Act to Regulate Commerce, entitled to demand of railroad companies whose lines are intersected by its tracks the same reasonable proper, and equal facilities for the interchange of traffic and for the receiving, forwarding, and delivering of property that may lawfully be demanded by other carriers under that Act. Kentucky & Indiana Bridge Co. v. Louisville & Nashville R. Co. 2 I. C. R. 102.

(aa) Act to Regulate Commerce; reasonable, proper, and equal facilities; abandonment. Under the terms and operations of a contract, made by a bridge company and three railroad companies, the railroad companies secured and enjoyed all reasonable, proper, and equal facilities, for the interchange of cars and traffic, between them, which interchange was conducted for many years at the regular, established, yard or depot of one of them, and the expenses of such interchange was shared by them, in certain proportions fixed by contract. After the passage of the Act to Regulate Commerce, one of the railroad companies voluntarily abandoned those facilities, and changed its business to another bridge—not in the interest of the public, nor of the interstate commerce it handled, but for its own private benefit and advantage; and then sought to compel the company (at whose yard the interchange of traffic had been conducted), to allow such interchange at a new point of connection, and to afford at such point, facilities equal to those which the applicant had voluntarily abandoned. HELD, that the application ought not to be granted. Kentucky & Indiana Bridge Co. v. Louisville & Nashville R. Co., 2 I. C. R. 351.

(b) Common carriers; bridge companies; soliciting agents. When a bridge company, owning no freight cars of its own, solicits freight for railway companies, who will furnish the cars, and over whose lines the freight is to go, and merely transfers such cars over its bridge, delivering them to the railway companies furnishing the same, and charging for its service its regular bridge toll, but making no charge for transporting the freight contained, or carried, in the cars, such a bridge company is not a common carrier of such interstate freight. The object and purpose of the bridge company, in thus constituting itself the soliciting agent for the railway companies, who are willing to provide the cars for the freight it may secure, is manifestly to obtain tolls for the use of its bridge; and the Law does not require the railway companies to keep up such an arrangement with the bridge company, in order to protect its interest in securing tolls for its bridge. Kentucky & Indiana Bridge Co. v. Louisville & Nashville R. Co., 2 I. C. R. 351.

(c) Common carriers; bridge companies. Where a railroad company, by contract with a bridge company, acquires the right to use a bridge, with its approaches, for the engines, cars and trains of the railway company, the first section of the "Act to Regulate Commerce," regards the railway company as the owner, or operator of the bridge and approaches, for the time being, as to all freight transported by the railway company over the bridge. And as to all such traffic, the railway company, and not the bridge company, must be regarded as the common carrier. Such a bridge company is not, either in law or in fact, a common carrier of interstate traffic, within the scope and meaning of said section; and it cannot invoke the provisions of said Act, to compel railway companies to transact business with, or through such bridge company. Between such a bridge company, and the railway carriers of the country, the Act establishes no such reciprocal relations, duties, and obligations, as require the latter to form business connections with the former. Kentucky & Indiana Bridge Co. v. Louisville & Nashville R. Co., 2 I. C. R. 351.

V. TARIFFS AND PUBLICATION.

See Tariffs.

§6. In General.

CASES 1887-1908

(a) A bridge handling interstate through traffic, should publish tariffs. Enterprise Transp. Co. v. Pennsylvania R. Co., 12 I. C. C. 326.

(b) Tariffs are to be published by bridges, ferries, etc., when they form part of a through interstate route. Enterprise Transportation Co. v. Pa. R. R. Co., 12 I. C. C. 326.

IMPORTANT CASES SINCE 1908

(c) A bridge company which does not own or operate any motive power or cars and rents its bridge to an interstate carrier need not file tariffs with the Commission. Keokuk & Hamilton Bridge Co. v. Wabash Ry., 66 I. C. C. 545, 548.

BROKERS

IMPORTANT CASES SINCE 1908

(a) Brokers who occupy the position of shippers and patrons of carrier's transportation service are entitled to nondiscriminatory treatment from carrier both in respect of services which it is bound to perform for shippers and of any services which it may volunteer. Emery & Co. v. B. & M. R. R., 38 I. C. C. 636, 637.

(b) The duty imposed by the Act upon common carriers not to discriminate unjustly between persons undoubtedly is owed only to patrons of carriers as such, and carriers owe no duty not to discriminate between customs brokers merely as brokers. Emery & Co. v. B. & M. R. R., 38 I. C. C. 636, 637.

BULK HEADS

See Allowances §8 (6); Facilities and Privileges §2½.

BULK OF COMMODITY

See Classification §4, §15.

BULK SHIPMENTS

See Classification §12; Forwarders II.

BUNCHING

See Demurrage §14.

BURDEN OF PROOF

See Advance Rates §3; Blanket Rates §16; Crimes §25; Discrimination §11; Evidence I; Long and Short Hauls §12 (1); Loss and Damage §15; Passenger Fares and Facilities §4½; Reduced Rates §10; Routing and Misrouting §8; Through Routes and Joint Rates §15; Undercharges §5; Weights and Weighing IV.

BUSINESS SECRETS

See Freight Bills.

IMPORTANT CASES SINCE 1908

(a) Section 15 of the Act prohibits common carriers from giving to shippers and prohibits shippers from receiving from common carriers information as to the shipments of competitors. Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 244.

(b) A movement of merchandise by rail ordinarily implies a business transaction between the consignor and the consignee with respect to which the privacy guaranteed by the Act may be of no small importance. Intervening under a contract of carriage in the business affairs of others, the carrier is prohibited by the statute from making disclosures to anyone "other than the shipper or consignee" without first securing the "consent of such shipper or consignee." The consignor and the consignee is a matter in which the carrier ordinarily has no concern. In that trade relation with one another the consignor and the consignee have a right of privacy and the obvious meaning and purpose of the provision in question is to restrain the carrier from violating this right by revealing information necessarily acquired by it in performing the transportation service but it is clear that the enumeration there of certain information must be interpreted merely as illustrative of what must not be disclosed by the carrier, and not as leaving the carrier free to reveal the name of the consignor to anyone and everyone seeking that information. The apparent purpose of the provision is to forbid the carrier from disclosing information that "may be used to the detriment or prejudice of such shipper or consignee." The carrier ought not on any ground disclose the information it acquires by virtue of its agency for others in a service of carriage; and the purpose of the provision in question was to put it under an affirmative restraint against disclosure, apparently to the extent necessary to protect the interest of "such shipper or consignee." It would be altogether illogical and entirely inconsistent with reason, and with what must be considered to be the plain purpose of that provision, to require the carrier to withhold the name of the consignee and at the same time permit it without restraint to disclose to strangers the name of the consignor. In the Matter of Freight Bills, 38 I. C. C. 91, 92.

(c) The consignee of a reconsigned shipment ordinarily is a stranger to the transaction between the original consignee and the original consignor. The reconsignment implies a commercial transaction between the original consignee and the ultimate consignee which

has no relation whatever to the transaction between the original consignor and the original consignee. As to this second transaction, the original consignee has a right of privacy which may not be lawfully violated by the carrier by revealing to the ultimate consignee the name of the original consignor without first securing the consent of the original consignee. In the Matter of Freight Bills, 38 I. C. C. 91, 92.

(d) Where the charges accruing up to the point of reconsignment on basis of the full local rate are paid by the original consignee, the ultimate consignee is concerned only with the rate from that point and there is no reason why the freight bill should disclose any information to him as to the origin or routing of the shipment, except from the reconsigning point to the ultimate destination. When, however, the ultimate consignee is called upon to pay the through charges from the original point of origin, or a portion of the through charges based upon the remainder of a joint through rate, he is entitled to know whether in making out the freight bill there has been a proper application of the published rates of the carriers, and of this the ultimate consignee can not be well advised unless the point from which the shipment first started, as well as the route of the movement, are shown upon the freight bill. In the Matter of Freight Bills, 38 I. C. C. 91, 93.

(e) And the prohibition contained in section 15 against disclosure of information is intended to secure to every shipper immunity from a disclosure of his business at the hands of a common carrier, and the mere absence of injury to complainants does not excuse defendants' failure to require their agent to conform to the requirements of the law against disclosure of information. Nashville Abattoir, Hide & Melting Asso. v. L. & N. R. R. Co., 40 I. C. C. 134, 137, 141.

(f) When new bills of lading are issued on reconsigned shipments they should not disclose to the ultimate consignee the name of the original consignor without the consent of the original consignee. This applies with equal force to freight bills as to bills of lading. Atwood & Co. v. C. B. & Q. R. R. Co., 42 I. C. C. 385, 387.

ALL OTHER CITATIONS

Colonial Salt Co. v. M. I. & I. Line, 23 I. C. C. 358, 366; Albree v. B. & M. R. R. Co., 22 I. C. C. 303, 321; Federal Sugar Refining Co. v. B. & O. R. R. Co., 20 I. C. C. 200, 211; In Wharfage Charges at Pensacola, 27 I. C. C. 252, 261; Concentration of Cotton, 26 I. C. C. 585, 593; In the Matter of Freight Bills, 29 I. C. C. 496, 498; Jung & Sons v. L. & N. R. R. Co., 31 I. C. C. 455, 457; Michigan Steel Boat Co. v. M. C. R. R. Co., 32 I. C. C. 576, 577; National Pole Co. v. M. & I. Ry. Co., 33 I. C. C. 372, 373; In the Matter of Freight Bills, 38 I. C. C. 91; Aetna Powder Co. v. Wabash R. R. Co., 39 I. C. C. 199; In Re Private Cars, 50 I. C. C. 652, 704.

CABLE RATES

See Telephone and Telegraph Companies.

IMPORTANT CASES SINCE 1908

(a) Jurisdiction over cable rates is clearly conferred upon Commission. White & Co. v. Western Union Telegraph Co., 33 I. C. C. 500, 502.

(b) Deferred cablegrams transmitted only after nonurgent private telegrams and press telegrams, except that deferred messages which have not reached their destination within 24 hours shall be transmitted in turn with non-deferred telegrams. Commercial Cable Co. v. W. U. T. Co., 45 I. C. C. 33, 35.

(c) The refusal of the Western Union Telegraph Co. to transmit for a complainant from New York to points in the United States deferred cable messages originating in South America, upon the same terms as such messages are transmitted for complainant's competitor, subject complainant to unjust discrimination. Commercial Cable Co. v. W. U. T. Co., 45 I. C. C. 33, 39.

(d) Cable messages transmitted over cables leased and operated by a cable company and transferred at New York to its land lines for further transmission to an inland point in the United States may be regarded as continuous messages; but the transmission of a through message is not necessarily a continuous service. Commercial Cable Co. v. W. U. T. Co., 45 I. C. C. 33, 37, 39.

(e) Rates on cable messages from points in foreign countries to points in the United States are apparently not "joint through rates" such as those published by a railroad which holds the con-

currence of its connections, but "combination" rates, one component part of which is the charge made by the land line for transmitting the message from New York to destination. Commercial Cable Co. v. W. U. T. Co., 45 I. C. C. 33, 38, 39.

ALL OTHER CITATIONS

Eastern Extension, Australasia & China Telegraph Company v. United States, 40 Sup. Ct. 168; Commercial Cable Co. v. Phil. Natl. Bk., 263 Fed. 218.

CANADA

See Adjacent Foreign Country.

CASES 1887-1908

(a) Under the act the Grand Trunk Ry, of Canada is required to print, post and file its schedules of rates and charges for the transportation of property from points in the United States to points in Canada, and cannot lawfully charge, demand, collect or receive from any person or persons a greater or less compensation therefor, or for any service in connection therewith, than is specified in such published schedule as may at the time be in force. Matter of Grand Trunk Railway Co., 2 I. C. C. 497, 504.

(b) While the regulating statute may be applied to the reasonableness of a rate from a point in Canada to a point in the United States, it is clear that no law of the United States can apply to a discrimination between places in a foreign country. Cist v. Michigan Central R. Co., 10 I. C. C. 217.

IMPORTANT CASES SINCE 1908

(c) A Canadian line while engaged in through transportation subjects itself to the jurisdiction of the Commission over the joint rates in which it participates, and must abide by the Commission's conclusion's as to the reasonableness of such rates and the divisions thereof. Although the Commission may not require the maintenance of joint rates in the future, it may determine and prescribe the divisions of rates heretofore in effect. P. H. & D. S. S. Co. v. P. R. R., 50 I. C. C. 157, 159.

(d) The Commission has jurisdiction of the rates on shipments from points in the United States to points in Canada only so far as the movement was within the United States. Van Dusen Harrington Co. v. Director General, as Agent, 64 I. C. C. 461.

(e) In attempting to justify the reasonableness of a joint rate from points in Canada to points in the United States, the American carriers contended that the division received by them for the haul within the United States was not unreasonable or excessive. HELD: Commission must consider the reasonableness of the joint rate as a whole. International Nickel Co. v. Director General, as Agent, 66 I. C. C. 627, 631.

(f) The Commission can not require the maintenance of joint rates for the future over routes partly within Canada. American Cyanamid Co. v. Director General, 69 I. C. C. 337, 343.

(g) The Commission can not say that the refusal of a Canadian carrier to accept prepayment in Canada violates the Interstate Commerce Act. Abrasive Co. v. Director General, 69 I. C. C. 630, 634.

(h) The jurisdiction of the Commission over joint through rate from points in Canada to points in United States applies from the boundary. American Splint Corp v. Director General, 74 I. C. C. 19, 20.

(i) If railroads constituting a through route for traffic from a point in Canada to a point in United States concurred in a through rate or a carload minimum that was unreasonably high, they are jointly and severally responsible for any damage that might result to any shipper on account of such unlawful rate or minimum. United Paperboard Co. v. C. N. Rys., 74 I. C. C. 733, 736.

(j) Contention that the fourth section of the act does not apply to joint through rates from points in Canada to points in the United States, not sustained. The provisions of the fourth section apply where the point of origin is in adjacent foreign country and the intermediate point and more distant point of destinations are in the United States. Conf. Ruling 447. United Paperboard Co. v. C. N. Rys., 74 I. C. C. 733, 736.

(k) The Commission has no authority to prescribe joint rates over routes partly within Canada, but can require the participating carriers operating within the United States to cancel their concurrences in rates found unreasonable or in violation of the act. United Paperboard Co. v. C. N. Rys., 74 I. C. C. 733, 737.

(l) American lines parties to a joint rate from or to a point in Canada, the charges under which are unreasonable, cause to be done or do a thing prohibited

and declared to be unlawful by the act, and are liable to the person or persons injured thereby for the full amount of the damages sustained. Greene Cananea Copper Co. v. Director General, 80 I. C. C. 121, 122.

(m) One of the shipments moved in part over the C. P., through Canada, to a destination in the United States. The rate attacked was a joint rate, and all carriers parties to such a rate are jointly and severally liable for any damage resulting from its application. The American lines over which these shipments moved are subject to the jurisdiction of the Commission. The director general was operating them and is thus liable for the full amount of any damage sustained. A. E. Staley Mfg. Co. v. C. P. Ry., 80 I. C. C. 512.

(n) The Commission is without jurisdiction to prescribe rates for the future from a point in the United States to a point in Canada. George E. Green Lumber Co. v. A. A. R. R., 80 I. C. C. 185, 190.

(o) Contention that the commission is without jurisdiction over joint rates to a point in Canada, not sustained following International Nickel Co., 66 I. C. C., 627. Hamilton Furnace Co. v. B. & O. R. R. Co., 77 I. C. C. 377, 378.

(p) Shipment from point in United States, destined to another point in United States, moved in part through Canada. Contention by director general that commission is without jurisdiction to award reparation in respect of such rate, not sustained. Rate assailed was a joint rate, and all carriers parties thereto are jointly and severally liable for any damage resulting from its application. American lines over which shipment moved are subject to jurisdiction of commission. Director General was operating them and is thus liable for full amount of any damage sustained. International Nickel Co., 66 I. C. C., 627, 628. Staley Mfg. Co. v. C. P. Ry. Co., 80 I. C. C. 512.

(q) Commission can not require establishment or maintenance of joint rates between United States and Canada. But where joint rates are in effect and there is no proposal to withdraw them save for purpose of substituting other and higher rates of same character, and commission finds in appropriate proceeding that increases in such joint rates proposed in schedules published and filed with it have not been justified, it is not only within its power but its duty to require their cancellation. Sand and Gravel from Canada, 83 I. C. C. 460, 463.

ALL OTHER CITATIONS

Lake and Rail Rate Cancellations (No. 3), 44 I. C. C. 745, 748; Booth Fisheries Co. v. American Exp. Co., 45 I. C. C. 363; Emery & Co. v. B. & M. R. R., 47 I. C. C. 200, 201; Heated Car Service Regulations, 50 I C. C. 620, 622, 623; Young Grain Co. v. T., St. L. & W. R. R., 51 I. C. C. 523; Eastern Car Co. (Ltd.) v. C. G. Rys, 51 I. C. C. 627; Booth Fisheries Co. v. American Express Co., 53 I. C. C. 735, 736; Monarch Paper Co. v. C. P. Ry., 53 I. C. C. 620, 622; Perishable Freight Investigation, 56 I. C. C. 449, 532; Woodbury Lbr. Co. v. Director General, 57 I. C. C. 324; White Bros. & Crum Co. v. Director General, 57 I. C. C. 511, 512; Page Hersey Iron, Tube & Lead Co (Ltd.) v. Director General, as Agent, 58 I. C. C. 1; Plymouth Cordage Co. v. Director General, as Agent, 58 I. C. C. 208; Payment of Charges in United States Currency, 59 I. C. C. 263; Consolidation of Express Companies, 59 I. C. C. 459; Swift & Co. v. C. N. Rys., 60 I. C. C. 747; Lake Superior Paper Co. (Ltd.) v. Director General, 61 I. C. C. 709; Consolidated Gas Co. v. Director General, as Agent, 63 I. C. C. 135; Stetson, Cutler & Co. v. Director General, as Agent, 73 I. C. C. 24; California Sugar & White Pine Co. v. Director General, as Agent, 73 I. C. C. 338; Waco Chamber of Commerce v. Director General, as Agent, 73 I. C. C. 708; Warren Oil Co. of Pa. v. Director General, as Agent, 73 I. C. C. 745; Rails and Crossties from Eastern Points to Canada, 74 I. C. C. 3; American Splint Corp v. Director General, 74 I. C. C. 19; Proportional Rates on Petroleum and Its Products, 74 I. C. C. 349; United Paperboard Co. v. C. N. Rys. Co., 71 I. C. C. 733, 736, 737; Payne v. Amer. Ry. Exp. Co., 74 I. C. C. 757; North Packing & Provision Company, 73 I. C. C. 749; Tidewater Paper Mills Co. v. B. T. R. R. Co., 80 I. C. C. 493; Express Class Rates Between United States and Canada, 68 I. C. C. 20, 24; Bloedel-Donovan Lumber Co. v. Director General, as Agent, 68 I. C. C. 95, 96, 97; Rub-No-More Co. v. Director General, as Agent, 69 I. C. C. 23, 25; Jonas & Naumburg (Inc.) v. Director General, as Agent, 69 I. C. C. 29; Arnhold Bros. v. Director General, as Agent, 69 I. C. C. 685, 687; Compani De Real v. Director General, as Agent, 81 I. C. C. 52; Barytes from Central Freight Asso., 81 I. C. C. 399.

CANALS

IMPORTANT CASES SINCE 1908

(a) The Interstate Commerce Act, § 6, subd. 13, added by Panama Canal Act, § 11, as amended by Transportation Act, 1920, § 412, not only gives the Interstate Commerce Commission power to establish physical connection between lines of rail carriers and docks, but also to direct rail and water carriers singly or jointly to construct and connect with lines, and to determine and prescribe the terms and conditions of operating such connections, so that such matters are entirely removed from the state and its Public Service Commission has no authority to order such connection between relator's tracks and state's Barge Canal terminal, as regards interstate commerce. People v. Public Service Commission, 191 N. Y. S. 626.

(b) A state, constructing, equipping, and maintaining a Barge Canal for public use, is not a common carrier of commerce, intrastate, where it furnishes the canal to common carriers by water without charge. People v. Public Service Commission, 191 N. Y. S. 636.

CAPITALIZATION

See Evidence §7; Express Companies §24; Financial Operation.

CAR CONGESTION

See Cars and Car Supply §7½; Reasonableness of Rates §8¾.

CAR FERRY

See Across Lake Rates; Allowances §8½; Ferries.

IMPORTANT CASES SINCE 1908

(a) Ferryboats of the Bath Ferry are possibly within the Canal Act technically, but their continued use and ownership by the Maine Central obviously violates none of its provisions. Maine Central Boat Lines, 40 I. C. C. 272.

(b) Proposed increase from 6 to 12 in the minimum number of cars of their equivalent carload minimum, for which car-float service in lieu of lighterage or lighterage free freight received at or delivered alongside piers or vessels in New York Harbor will be performed, found not to have been justified. Car Float Service, New York Harbor, 49 I. C. C. 259, 267.

(c) As in the case of the Mississippi crossings south of Memphis, the river transfer at Natchez is effected, not by bridge, but by car ferry. Memphis, Southwestern Investigation, 55 I. C. C. 515, 552.

ALL OTHER CITATIONS

Peninsular & Occidental S. S. Co., 37 I. C. C. 432, 436; Ashtabula Port Maitland Car Ferry Service, 40 I. C. C. 143; Wisconsin Rate Cases, 44 I. C. C. 602, 637.

CAR FLOATAGE

See Lighterage.

ALL CITATIONS

Republic of France v. Director General, as Agent, 68 I. C. C. 419.

CAR MILE REVENUE

See Reasonableness of Rates §6.

CAR SERVICE

See Track Storage.

CAR LOADS AND LESS THAN CAR LOADS

See Classification §5.

CARETAKERS

See Live Stock Shipments.

CASES 1887-1908

(a) On special newspaper trains may not lawfully be granted the free transportation permissible, under the Act to Regulate Commerce, to the caretakers of certain other kinds of traffic specifically enumerated therein; nor may they lawfully be carried under newspaper commodity rate, or any rate other than specified in a regularly published schedule of passenger rates. Re Free Transportation of Newspaper Employees, 12 I. C. C. 15.

(b) Where the Congress has expressly enumerated special classes of persons or things that may be exempted and excepted from the operation of general provisions in a law, this Commission cannot enlarge the excepted classes by mere construction and include in them persons or things not thus expressly named in the statute itself. HELD, therefore, that the so-called caretakers of newspaper companies whose duty it is to assort newspapers on special newspaper trains and to make them up into packages for delivery as the train arrives at the several points along the line of the run, may not lawfully be granted the free transportation that is permissible under the act to regulate commerce to the caretakers of certain other kinds of traffic specific-

ally enumerated in the act. A commodity rate can not be applied to the transportation of passengers or a passenger rate to the transportation of a commodity. HELD, therefore, that newspaper employes can not lawfully be carried on special newspaper trains under a commodity rate established for the carriage of newspapers, or at any rate other than one specified in a regularly published schedule of passenger rates. Transportation of Newspaper Employes, 12 I. C. C. 16.

IMPORTANT CASES SINCE 1908

(c) Rules 510 and 511 of special rules and regulations governing shipper's protective service against cold, should be revised in such manner as to provide that sending of a caretaker to look after fires where shipper installs a portable stove or heater, will not be required. Perishable Freight Investigation, 56 I. C. C. 449, 595, 597, 598.

(d) Rule 110, clause C, providing that caretakers will be responsible for condition of contents of cars of bananas in their charge, and any neglect or failure by caretakers will be solely at owner's risk, carriers assuming no liability in such cases, should be eliminated. Perishable Freight Investigation, 56 I. C. C. 449, 565, 566.

(e) In the original report, 49 I. C. C. 96, the Commission found that the passenger fares collected by defendant for the return transportation via its line of caretakers who accompanied shipments of live poultry, in carloads, which moved between July 29 and August 14, 1915, from King City, Mo., to New York, N. Y., were unlawful and unreasonable and that the cancellation of the provision for the free return transportation of caretakers of live poultry as applicable to other shipments here under consideration moving on and after January 19, 1915, was unreasonable, and that complainant was entitled to reparation. The Commission found that where through fares were paid reparation should be based on the revenue accruing to defendant for the transportation west of the junctions with the eastern carriers. The proceeding was reopened for further hearing to determine that amount. The outbound shipments as to which refund of the return fares is claimed moved over defendants' line through St. Joseph, 33, to Zearing, Ill., and 2 to East St. Louis, Ill., at which points they were delivered to connecting eastern lines. The caretakers in charge of the shipments which moved through East St. Louis returned over defendants' line beyond that point, and those in charge of the shipments, which moved through Zearing, which is 96 miles west of Chicago, returned over defendants' line from Chicago through Zearing. Defendant admits that its practice has been to permit free return transportation from Chicago west where the shipment was delivered to its connection at Zearing. This practice was not authorized by tariff. Reparation must therefore be confined to that portion of the return transportation west of Zearing. The caretaker who accompanied the shipment of February 11, 1915, returned over defendant's line from Chicago through Zearing to Galesburg, Ill., but beyond the latter point the outbound route was not followed. Defendants' tariff rule contained no requirement that caretakers should return by the routes over which the shipments moved and reparation will be awarded. HELD: Reparation awarded with interest. A. C. Parsons v. C., B. & Q. Ry., 59 I. C. C. 130.

(f) In 53 I. C. C. 515, the Commission found that defendants had failed to justify subsequent to January 10, 1915, the increased rates resulting from the elimination of the rules providing for the free return of caretakers accompanying carlot shipments of live poultry from trans-Missouri territory to destinations in states which included Illinois. Reparation was awarded on some shipments, but denied on others on the ground that the caretaker did not return over the route by which the cars were forwarded as required by the tariff rule. It now appears that defendants' tariff rule does not require the caretaker to return by the route over which the cars were forwarded. HELD: Reparation awarded. Swift & Co. v. S. A. & P., 59 I. C. C. 440.

(g) Where a caretaker of stock alighted from a freight train at an intermediate station to examine the stock, and was killed in attempting to board the train, which had started without notice, it could not be held, as a matter of law, that because the operatives of the train did not have notice that deceased intended to leave the train, or had done so, they were not guilty of negligence in starting the train without notice. Fort Worth & D. C. Ry. Co. v. Hawley (Tex. 1921), 235 S. W. 659.

(h) It is general practice among

carriers to provide return transportation for caretakers who have accompanied shipments of two or more cars of livestock to market. Western Meat Co. v. Director General, as Agent, 83 I. C. C. 218.

(i) Cancellation, and absence from defendants' tariffs, of rule providing for refund of passenger fares paid by caretakers sent to shipping points to return with, and who did return with, two or more cars of livestock, found unreasonable and to have resulted in charges for transportation of such caretakers which were unreasonable. Reparation awarded in amount of difference between fares paid and amounts that would have been refunded by defendants if rule had been in effect. Western Meat Co. v. Director General, as Agent, 83 I. C. C. 218.

ALL OTHER CITATIONS

Western Meat Co. v. Director General, as Agent, 83 I. C. C. 218, 219, 222; Sioux City Live Stock Exchange v. C., St. P., M. & O. Ry. Co. 83 I. C. C. 243; Miller & Lux v. Director General, 88 I. C. C. 403. Heed v. Gummere (Ind. 1921), 132 N. E. 637.

CARMACK AMENDMENT

See Loss and Damage I.

CARS AND CAR SUPPLY

I. CONTROL AND REGULATION.
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I. CONTROL AND REGULATION.

See Control and Regulation.

A. JURISDICTION OF COMMISSION.

See Interstate Commerce Commission I.

§½. In General.

See Jurisdiction of Commission §½.

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(a) Complainant charged unjust discrimination in that defendant did not furnish cars to it but did to its rival, the defendant being within the state of Missouri, the movement being up to Cape Girardeau thence river beyond. HELD: Where it appears that a carrier to whom freight is delivered for transportation from one point to another in the same state has nothing to do with its transportation out of the state, the fact that the ultimate destination of the freight is another state, to the knowledge of such carrier, will not bring the transportation by such carrier within the jurisdiction of the Commission. Missouri & Illinois Railroad Tie & Lumber Co. v. C., G. & S. W. R., 1 I. C. C. 607.

(b) Complainant charged unjust discrimination in that defendant did not furnish cars to it, but did to its rival, the defendant being within the state of Missouri, the movement being up to Cape Girardeau, Mo., thence river beyond. The movement to Cape Girardeau is locally in Missouri, and the transportation across the river into Illinois is entirely independent of the transportation requested of the defendant, and will be by boats not in any respect under the control of the defendant, or forming a continuous line with it, or operated with it under any common arrangement. HELD: The Commission declined to entertain the complaint for the reason defendant was connected in no way with the movement beyond the state. Missouri & Illinois Railroad Tie & Lumber Co. v. C., G. & S. R. Co., 1 I. C. C. 607.

(c) It is a common-law and charter duty of every railway carrier subject to the Act to Regulate Commerce to furnish a proper and adequate car equipment for all the reasonable needs of the business it advertises and undertakes to do, and if the carrier fails to do this, to the wrongful injury of the shipper, it is liable in damages therefor, but the statute has not clothed the Interstate Commerce Commission with the jurisdiction to order the carrier to furnish any particular equipment of cars, or in fact any cars at all. It is the duty of such carrier to select and furnish its own equipment of cars, under all the responsibility which the law requires of it in so vital and important a matter, for the public has not undertaken to divide responsibility with the carrier in this respect. Scofield v. Lake Shore & Michigan Southern R. Co., 2 I. C. R. 67.

(ca) The Interstate Commerce Act has not given the Commission jurisdiction to order the carrier to furnish any particular equipment of cars, or in fact any cars at all. Scofield v. Lake Shore & M. S. R. Co. (Com.) 2 I. C. R. 67.

(cb) A railroad company may acquire cars by construction, by purchase, or by contract for its use, and no one has the power to compel a railroad company to select among these several modes or to contract with all comers. Worchester Excursion Car Co. v. Pennsylvania R. Co. (Com.) 2 I. C. R. 792.

(cc) The Interstate Commerce Commission possesses no authority to compel carriers to provide any particular kind of cars or other special equipments. Rice v. Cincinnati, W. & B. R. Co. (Com.) 3 I. C. R. 841.

(d) The Commission possesses no authority to compel carriers subject to its jurisdiction to provide any particular kind of cars or other special equipment, but, in the absence of adequate equipment freely afforded to all patrons alike, carriers should so adjust rates between those who can and those who cannot fur-

nish their own conveyance that in the relative charges to each there shall be no discrimination against the dependent shipper. Rice v. C., W. & B. R. Co., 3 I. C. C. 841, 849.

(e) The Commission has no power to grant redress for the failure of a carrier to comply with its common-law duty to furnish refrigerator cars. Re Transportation of Fruit, 10 I. C. C. 360.

(f) While the Act to Regulate Commerce contains no provision which, expressly or by proper implication, gives this Commission jurisdiction in cases merely showing delay or negligence in the receipt, forwarding, or delivery of property offered for transportation, including the furnishing of cars, the regulating statute does prohibit any unjust discrimination or wrongful prejudice in the provision of cars or other transportation facilities, as well as in the fixing and application of transportation charges. Richmond Elevator Co. v. Pere Marquette R. Co., 10 I. C. C. 629.

(g) The Commission has no jurisdiction to require a carrier to furnish cars for any purpose, but it has and has frequently exercised authority to prohibit carriers from wrongfully discriminating between shippers in furnishing cars for the transportation of interstate traffic. Red Rock Fuel Co. v. B. & O. R. Co., 11 I. C. C. 438, 451.

IMPORTANT CASES SINCE 1908

(h) If paragraph 12 of section 1 is at all doubtful in construction, the construction adopted by this administrative agency in its enforcement, followed for many years, without any attempt of Congress to change it, even when a bill for that purpose was long pending before it, and without any challenge of its correctness by any other department of the government, while not controlling, is not to be disregarded without the most cogent and persuasive reasons. Robertson v. Downing 127 U. S. 607; Assigned cars for bituminous coal mines, 80 I. C. C. 520, 529.

(i) It was clearly within the power of Congress to apply at their convenience the rule contained in paragraph 12 of section 1 of the act, which compelled a carrier in time of car shortage to count every car used by a coal mine, against the car supply to be furnished such mine, which was a limitation upon a practice of the carriers long existing, which the carriers had claimed the right to perpetuate, and as against the perpetuation of which there stood merely an administrative finding of fact based upon facts as disclosed in records made some 13 years before, binding upon but a few out of the hundreds of railroads subject to the act. Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 520, 531.

(j) The Interstate Commerce Commission is empowered to act upon questions of unfair practices and discriminations in the distribution of coal cars to shippers. Pennsylvania R. Co. v. Weber, 42 Sup. Ct. 18.

(k) Prior to February 28, 1920, the Commission had no power to require a carrier to provide itself with reasonable facilities such as equipment, no question of discrimination being involved. United States v. Pennsylvania R. R. Co., 224 U. S. 208. Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 520, 562.

(lm) By paragraph (11) of section 1 of the act it is made the duty of carriers to establish, observe, and enforce just and reasonable rules, regulations, and practices with respect to car service, and every unjust and unreasonable rule, regulation, and practice with respect to car service is prohibited and declared to be unlawful. Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 556, 557.

(n) By paragraph (14) of section 1 of the act the Commission is given jurisdiction to establish reasonable rules, regulations, and practices with respect to car service, including compensation to be paid for use of any car not owned by carrier using it. Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 557.

(op) Power of Commission to prosecute an inquiry of its own motion, under provisions of section 1 of Interstate Commerce Act, as to adequacy of facilities for performance as common carriers of car service by each of the railroads subject to its jurisdiction, with view to requiring carriers to provide themselves with such safe and adequate locomotives and cars as may be warranted by facts as shown, and as required by law, first came into the Interstate Commerce Act as one of the amendments made by the Transportation Act, 1920. Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 562.

(q) Finding that practice of carriers, in distributing assigned cars to bituminous mines in excess of ratable proportion distributed to mines not receiving as-

signed cars, will be unjust, unreasonable, and unjustly and unreasonably preferential to such mines receiving assigned cars, is not to preclude commission, in exercise of emergency powers under paragraph (15) of section I of the Act, from requiring placement of cars for such loading at mines in excess of percentage allotment to mines generally upon lines of same carrier, or upon same division. Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 520.

(r) Congress has provided that if a shipper furnishes an instrumentality used in transportation of property owned by him, charge and allowance therefor shall be no more than is just and reasonable, and has authorized the commission to fix maximum reasonable charge to be paid by carrier for use of instrumentality so furnished. (Paragraph 13 of section 15 of the Act; compare paragraph 14 of section 1). Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 520, 556.

(s) Under Esch Car Service Act May 29, 1917, c 23, as amended by Transportation Act 1920, §1, par. 10 (Comp. St. Ann. Supp. 1923 §8563), defining "car service," over which the Interstate Commerce Commission has authority, as including "the use, control, supply, movement, distribution, exchange, interchange and return of locomotives, cars and other vehicles, used in the transportation of property, including special types of equipment and the supply of trains by any carrier by railroad, subject to this act," paragraph 15, authorizing the commission to suspend operation of railways with respect to car service (subparagraph a) to make "reasonable directions with respect to car service * * * as in its opinion will best promote the service in the interest of the public (subparagraph b) to require joint or common use of terminals (subparagraph c) and to give directions for preference or priority in transportation or embargoes (subparagraph d), and paragraph 16, granting emergency power to make "just and reasonable directions with respect to the handling, routing and movement of traffic," and section 15, par. 4 (Comp. St. Ann. Supp. 1923, §8583), conferring power to reroute traffic and "to establish temporarily such through routes" as the Commission deems necessary, the Commission is not given emergency powers, without according a railroad a hearing, to require the railroad to switch cars for another road, since "car service" connotes the use to which the vehicles of transportation are put, not the transportation service rendered by means of them. Peoria & P. U. Ry. Co. v. United States. 44 Sup. Ct. 194.

ALL OTHER CITATIONS

R. R. Commissioners of Florida v. Southern Express Co., 44 I. C. C. 645, 649; The Fifteen Per Cent Case, 45 I. C. C. 303, 323; In the Matter of Private Cars, 50 I. C. C. 652, 671, 677, 681; Baltimore & O. R. Co. v. Lambert Run Coal Co., 267 Fed. 776; Armour Grain Co. v. Director General, 57 I. C. C. 398, 409; Dickinson Co. v. C. & O. Ry. Co., 60 I. C. C. 315; Robertson v. Downing, 127 U. S. 607; U. S. v. Pa. R. R. Co., 242 U. S. 208.

§1. Over Car Distribution.

IMPORTANT CASES SINCE 1908

(a) The Car Service Act, approved May 29, 1917, gave the Commission very broad powers to issue summary directions with respect to the movement, distribution, exchange, interchange, and return of cars. Unification of Railroad Operation, 47 I. C. C. 757, 763.

(b) The Commission is without authority to require carriers to refrain from counting box cars as part of the distributive share of cars furnished mines unless it is first found that shortage of equipment, congestion of traffic, or other emergency requiring immediate action exists. Dickinson Fuel Co. v. C. & O. Ry. Co., 60 I. C. C. 315, 317.

(c) And under paragraph 13 of section 1 of the act, the Commission is authorized to require carriers to file their rules and regulations with respect to car service, and it may direct that such rules and regulations be incorporated in the schedules showing rates, fares, and charges for transportation and be subject to any or all of the provisions of the act relating thereto. Fairmont & Cleveland Coal Co. v. B. & O. R. R. Co., 62 I. C. C. 269, 276.

(d) But the Commission has not required that car service rules be filed as tariff schedules. Fairmont & Cleveland Coal Co. v. B. & O. R. R. Co., 62 I. C. C. 269, 276.

(e) The Commission has control over car distribution in the public interest and if there is otherwise sufficient reason for the establishment of joint rates from particular points such rates should not be withheld through fear that car-

rier's car supply may be depleted. Pittsburgh Term. R. R. & Coal Co. v. Director General, as Agent, 63 I. C. C. 179, 182.

(f) The question whether a rule or method of car distribution practiced by a railroad is unjustly discriminatory is one which the Commission had authority to pass upon. Pennsylvania R. Co. v. Clark Bros. Coal Min. Co., 35 Sup. Ct. 896, 900; 238 U. S. 456, 59 L. Ed. —.

(g) Unjust discrimination in the matter of coal-car distribution to a mine owner may be redressed by the Interstate Commerce Commission where the coal, although sold f. o. b. cars at the mine, was to be transported to other states. Pennsylvania R. Co. v. Clark Bros. Coal Min. Co., 35 Sup. Ct. 896, 899; 238 U. S. 456, 59 L. Ed. —.

(h) "Car service," as defined in paragraph (10) of section 1 of the Act, clearly includes supply and movement of private cars. Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 520, 556.

ALL OTHER CITATIONS

I. C. C. v. Ill. Cent. R. R., 215 U. S. 452, 474, 475, 30 Sup. Ct. 115, 54 L. Ed. 280; Rail and River Coal Co. v. B. & O. R. R. Co., 14 I. C. C. 86, 91; Traer v. C., B. & Q. R. R. Co., 14 I. C. C. 165, 168, 169; C., R. I. & P. Ry. Co. v. Hardwich Farmers' Elevator Co., 33 Sup. Ct. 174, 175, 226 U. S. 426; Morrisdale Coal Co. v. Pennsylvania R. R. Co., 33 Sup. Ct. 938, 941, 230 U. S. 304; Coal Rates on the Stony Fork Branch, 26 I. C. C. 168, 176; In Re Irregularities in Mine Ratings, 25 I. C. C. 286, 296; Loomis v. L. V. R. R. Co. (N. Y. 1913), 101 N. E. 907, 914; W. & A. R. Co. v. White Provision Co. (Ga. 1914), 82 S. E. 644; Paraffine Works v. Penn. R. R., 34 I. C. C. 179, 185; Vulcan Coal & Mining Co. v. I. C. C. R. R. Co., 33 I. C. C. 52, 55; Penn. Paraffine Works v. P. R. R. Co. 34 I. C. C. 179, 188, 189; Pennsylvania R. Co. v. United States, 227 Fed. 911, 918, 921; Car Supply Investigation, 42 I. C. C. 657, 671, 673, 674; The Fifteen Per Cent Case, 45 I. C. C. 303, 323; State Public Utilities Comm. v. Baltimore & O. S. W. R. R. (Ill. 1917), 118 N. E. 81; In Re Private Car t, 50 I. C. C. 652, 677; Diamond Lumber Co. v. C., M. & St. P. Ry., 51 I. C. C. 78, 85; Tanner & Co. v. C., B. & Q. Ry., 53 I. C. C. 401, 408; Assignment of Freight Cars, 57 I. C. C. 760, 763, 765, 766; Northwest Virginia Coal Asso. v. P. & L. E. R. R., 68 I. C. C. 167, 171; Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 520, 556, 557, 562.

§2. Car Regulations.

IMPORTANT CASES SINCE 1908

(a) Rules or regulations prescribing who shall load and unload cars of freight are rules or regulations affecting rates, and are therefore subject to the control of the Commission under the fifteenth section. Wholesale Fruit & Product Association v. A., T. & S. F. Ry. Co., 14 I. C. C. 410, 421.

(b) A basis of car distribution is a regulation affecting rates within the meaning of section 15. Hillsdale Coal & Coke Co. v. P. R. R. Co., 19 I. C. C. 356, 358.

(c) The Commission's jurisdiction over car-distribution rules is absolute. Hillsdale Coal & Coke Co. v. P. R. R. Co., 19 I. C. C. 356, 359.

(d) It is doubtful if the Commission would, in the first instance, prescribe a set of rules and regulations governing car distribution in a coal district. This is peculiarly a matter for action in the first instance on the part of the interested carriers and operators. Colorado Coal Traffic Assn. v. D. & R. G. R. R. Co., 23 I. C. C. 458, 464.

(e) Under paragraph 15, section 1, the Commission has authority when in its opinion a shortage of equipment, congestion of traffic, or other emergency requiring immediate action, exists in any section of the country, either upon complaint or upon its own initiative without complaint, to suspend the operation of any or all rules, regulations, or practices then established with respect to car service for such time as it may determine. Northern West Virginia Coal Assn. v. P. & L. E. R. R., 68 I. C. C. 167, 171.

§3. Fuel Cars.

IMPORTANT CASES SINCE 1908

(a) Fuel cars for the carrier's own use are embraced within the governmental power of regulations. Hillsdale Coal & Coke Co. v. P. R. R. Co., 19 I. C. C. 356, 358.

(b) The act delegates to the Commission authority to regulate the distribution of coal fuel cars in times of car shortage as a means of prohibiting unjust preferences or undue discrimination. I. C. C. v. I. C. R. R., 215 U. S. 452, 474, 30 Sup. Ct. 155, 54 L. Ed. 280.

(c) The Commission has jurisdiction to compel a railroad to count against the shipper the company's fuel cars, in the

daily distribution in times of car shortage, under section 3 of the act prohibiting preferences and discriminations. I. C. C. v. I. C. R. R., 215 U. S. 452, 475. 30 Sup. Ct. 155, 54 L. Ed. 280.

§4. Private Cars.

See Common Carrier §6; Infra §31, §32; Private Cars.

IMPORTANT CASES SINCE 1908

(a) Congress has provided that if a shipper furnishes an instrumentality used in the transportation of property owned by him, the charge and allowance therefor shall be no more than is just and reasonable, and has authorized the Commission to fix the maximum reasonable charge to be paid by the carrier for the use of the instrumentality so furnished. Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 520, 556.

(b) The control of the Commission over private cars is to be effected by its control over the railroads that are subject to the act. Ellis v. I. C. C., 35 Sup. Ct. Rep. 646, 237 U. S. 434, 59 L. Ed. 1036.

(c) Where a refrigerator company, owned by a packing company, builds and leases refrigerator and tank cars and is a means whereby an owner of property transported indirectly renders transportation services, its charges are subject to the power of the Commission under section 15. Ellis v. I. C. C., 35 Sup. Ct. Rep. 646, 647; 237 U. S. 434; 59 L. Ed. 1036.

(d) Use of private cars by railroad carriers has been recognized by Congress, which has provided for control of use of such equipment by commission, under provisions of the act, by means of mandate addressed to carriers subject to commission's jurisdiction. The Commission does not deal with private-car owner as such. Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 520, 556.

(e) "Car service," as defined in paragraph (10) of section 1 of the act, clearly includes supply and movement of private cars. Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 520, 556.

ALL OTHER CITATIONS

Ruttle v. P. M. R. R. Co., 13 I. C. C. 179, 185; Chappelle v. L. & N. R. R. Co., 19 I. C. C. 56, 59; In Re Private Cars, 50 I. C. C. 652, 673.

§5. Intrastate Cars.

IMPORTANT CASES SINCE 1908

(a) Where a large part of the business of shippers is interstate, but is conducted in its entirety by shipper and carrier alike as a unit of operation, with little or no regard to the boundaries of the state in which the traffic originates, the Commission has power to prescribe rules for car distribution even though its order in terms affects cars used wholly in intrastate shipments. Pennsylvania R. R. Co. v. I. C. C., 193 Fed. 81, 83.

§6. To Award Damages.

CASES 1887-1908

(a) Complainants attacked defendants failure to furnish cars. HELD: Where no overt acts of misconduct on the part of a defendant railroad company, which could support any judgment of the Commission or any mandatory order, are made to appear, the Commission has no discretion but to dismiss the complaint. The Commission has no authority to call a railroad company to account for any wrong of which such company may have been guilty prior to April, 1887, when the Interstate Commerce Commission went into operation. If, at the hearing before the Commission of a complaint against a railroad company, the defendant avows a purpose to comply with the law, the Commission must not only assume that the company will do so, but must act upon that assumption until it has evidence that the purpose is not lived up to. Holbrook et al. v. St. Paul, Minneapolis & Manitoba R. R. Co., 1 I. C. C. 323, 326.

(b) While the act contains no provision which expressly or by proper implication gives this Commission jurisdiction in cases merely showing delay or negligence in the receipt, forwarding or delivery of property offered for transportation, including the furnishing of cars, the regulating statute does prohibit any unjust discrimination or wrongful prejudice in the provision of cars or other transportation facilities as well as in the fixing and application of transportation charges. Richmond Elevator Company v. Pere Marquette R. R., 10 I. C. C. 629, 636.

IMPORTANT CASES SINCE 1908

(c) Whether complainant had or had not a specific contract with the carrier for delivery of a definite number of cars at stipulated periods, for the breach of

which it would be entitled to damages, raises an issue not before the Commission nor within its jurisdiction to decide. Armour Grain Co. v. Director General, 57 I. C. C. 398, 409.

(d) Where a shipper seeks damages arising from an alleged improper and discriminatory system of car distribution applying to a certain mining region, and affecting the interests of many shippers, he cannot institute an original suit for the same in a United States court under section 9 of the act, but must first file complaint with the Interstate Commerce Commission, even though at the time of beginning the suit the system complained of may have been replaced by another. Morrisdale Coal Co. v. Pennsylvania R. Co., 176 Fed. 748, 761.

(e) Whether after the Interstate Commerce Commission has found a rule of car distribution to be discriminatory, it has jurisdiction to assess the damages sustained by the complaining party, or whether they are to be recovered by an action in some court, without any preliminary assessment by the Commission, quaere. Morrisdale Coal Co. v. Pennsylvania R. Co., 183 Fed. 929, 938.

(f) The Commission has jurisdiction under the act to award reparation against a carrier for damages sustained by the shipper from the unduly discriminatory practices of the carrier in distributing coal cars, the Commission's authority to award reparation not being limited merely to cases of rates, but being extended to cases of all unreasonable and discriminatory regulations and practices. Jacoby v. Pennsylvania R. R. Co., 200 Fed. 989, 996.

(g) Plaintiff began suit against the F. & P. Ry. Co. and the K. C. S. Ry. Co. to recover damages for their refusal to furnish cars for loading oak railway ties at points on their lines in Arkansas and Louisiana for shipment to Linwood, Kan., beyond their lines, such refusal being justified on the ground that their joint through lumber tariff did not include a rate on such ties, crossties being a separate and distinct freight commodity. HELD: That the matter was one coming primarily within the jurisdiction of the Commission, and hence one which a court could not pass upon in the absence of prior action by that body. T. & P. Ry. Co. v. American Tie & T. Co., 34 Sup. Ct. 885, 888; 234 U. S. —., 58 L. Ed. —.

(h) Acceptance by a carrier of interstate shipments of railway crossties destined to a point beyond its line under its joint through lumber rate, does not authorize suit by shipper for damages for failure to accept further shipments, in the absence of previous action by the Commission, where the carrier bases its refusal on the absence of any applicable filed and published rate, contending that ties are not covered by its tariff fixing joint through lumber rates. T. & P. Ry. Co. v. American Tie & T. Co., 34 Sup. Ct. 885, 889; 234 U. S. —., 58 L. Ed. —.

(i) The Commission had authority to make examination and report upon the amount of damages which a shipper had suffered from an unjust discrimination due to a certain method of car distribution. There is nothing in the act to suggest that the damages which may thus be ascertained are only those arising from unreasonable or unjustly discriminatory rates. Rules as to car distribution that are unjustly discriminatory are within the purview of §3, and damages thereby occasioned, as well as those due to the exaction of unreasonable rates, arise from the violation of the act, and their ascertainment is within the scope of the Commission's authority. Pennsylvania R. Co. v. Clark Bros. Min. Co., 35 Sup. Ct. 896, 901; 238 U. S. 456, 59 L. Ed. —.

§6½. Mine Rating.

IMPORTANT CASES SINCE 1908

(a) Practices of the Director General in the distribution of coal cars to mines on the Monongahela, and Morgantown & Wheeling Railways, found to subject operators of mines on those roads to undue prejudice and disadvantage to extent that the percentage of cars furnished was less than the average percentage of cars furnished mines in the same general coal region on the Pittsburgh & Lake Erie and Pennsylvania Railroads. Record held open on question of damages. Northern West Virginia Coal Asso. v. P. R. R. Co., 60 I. C. C. 569.

(b) A suit to enjoin a practice of a railroad company, in time of a shortage of coal cars, to deliver assigned cars, whether its own or those of other railroads or private owners, to mines with which the owners had contracts for coal, counting them against the quota of such mines under their respective ratings, under Interstate Commerce Act, §1, par. 12, as amended by Transportation Act

February 28, 1920, and distributing commercial cars only to fill such quotas. Held: To present an administrative question for determination by the Interstate Commerce Commission, and not within the jurisdiction of the District Court. Corona Coal Co. v. Southern Ry. Co., 266 Fed. 726.

ALL OTHER CITATIONS

In Re Mine Ratings, 25 I. C. C. 286, 296; Griffith v. Jennings, 60 I. C. C. 232; Dickinson Fuel Co. v. C. & O. Ry. Co., 60 I. C. C. 315, 317.

§6⅝. Master Car Builder Rules.

IMPORTANT CASES SINCE 1908

(a) No reason why proper modification of Master Car Builders' rules can not be made, if the present rules governing the reconsignments of shipments need modification in order to remove any injustice to terminal companies. Merchants' Exchange of St. Louis v. T. R. R. Asso. of St. L., 50 I. C. C. 474, 476.

(b) Master Car Builders' Association rules with respect to repairs on private and other cars should not be filed in tariffs of carriers. Suggestions made should be adopted. In Re Private Cars, 50 I. C. C. 652, 707, 710.

§6¾. Regulations in General.

IMPORTANT CASES SINCE 1908

(a) Railroads should establish such regulations as may be necessary to secure the maximum use of their equipment. Plymouth Coal Co. v. D., L. & W. R. R. Co., 36 I. C. C. 76, 77.

(b) Separation of cars in transit is a common incident of transportation, involving no presumption of negligence on the part of the carrier. In cases where delivery of less than an entire shipment is tendered, the consignee has the alternative of either releasing the equipment by unloading the portion offered for delivery or of paying charges prescribed for its detention. If it elects to defer unloading until the arrival of the entire consignment, it cannot be heard to complain of the resulting additional cost. A rule beneficial in its general application may work occasional hardship, but is not merely on that account to be condemned. Darling & Co. v. P., C., C. & St. L. Ry., 37 I. C. C. 401, 402.

(c) For purposes of issue immediately before Commission the powers conferred by the act are sufficient to enable the Commission to require observance of rules for car service found to be reasonable and which in large measure are the same as those adopted by respondents. Car Supply Investigation, 42 I. C. C. 657, 671.

(d) As a means of removing prejudice or unjust discrimination, the Commission has the right to require the carrier to provide specifically in its tariffs the terms under which all similarly situated shippers may demand and secure upon even terms the use of cars employed upon the carrier's line. In the Matter of Private Cars, 50 I. C. C. 652, 677.

(e) Master Car Builders' Association rules with respect to repairs on private and other cars should not be filed in tariffs of carriers. The suggestion made by the association that the former practice of attaching repair cards at the time repairs are made to private cars be returned to, is approved. Suggestions made should be adopted. In Re Private Cars, 50 I. C. C. 652, 707, 710.

(f) Contention that car-service rules were not incorporated in schedules on file with the Commission is without merit, as no direction that they should be so incorporated and filed has been made by the Commission under the car-service amendment to section 1 of the act, and their publication in such manner is not otherwise required. Armour Grain Co. v. Director General, 57 I. C. C. 398, 405.

ALL OTHER CITATIONS

Lee v. St. L., S. W. Ry. Co., 29 I. C. C. 10, 102; Tanner & Co. v. C., B. & Q. Ry., 53 I. C. C. 401, 406.

§6⅞. State Regulation.

See State Rates and Regulation.

CASES 1887-1908

(a) A statute compelling railroad companies to furnish double-decked cars for sheep, under a penalty for failure to do so, and limiting the price per carload, is void as an attempted regulation of commerce when applied to interstate shipments. Stanley v. Wabash, St. L. & Pac. R. Co., 3 I. C. C. 176.

(b) While there is much to be said in favor of laws compelling railroads to furnish adequate facilities for the transportation of both freight and passengers and to regulate the general subject of speed, length and frequency of stops, for the heating, lighting and ventilation of passenger cars, the furnishing of food

and water to cattle and other livestock, an absolute requirement that a railroad shall furnish a certain number of cars at a specified day, regardless of every other consideration except strikes and other public calamities, transcends the police power of a state, and amounts to a burden upon interstate commerce. It makes no exception in cases of a sudden congestion of traffic and actual inability to furnish cars by reason of their temporary and unavoidable detention in other states, or in other places within the same state. It makes no allowance for interference of traffic occasioned by wreck or other accident upon the same or other roads, involving a detention of traffic, the breaking of bridges, accidental fires, washouts, or other unavoidable consequences of heavy weather. Car Shortage, Insufficient Transportation facilities. 12 I. C. C. 561, 577.

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(c) Code, § 2116, as amended by Acts 32d Gen. Assem. c. 107, declaring that every railway corporation shall, when within its power, and upon reasonable notice, furnish suitable cars to all persons who may apply therefor, for the transportation of freight, is merely declarative of the pre-existing common law, and though the state laws are subject to the Interstate Commerce Law, such section is not affected by Interstate Commerce Act, declaring that the term "transportation" shall include cars and other vehicles and all instrumentalities of shipment or carriage, and it shall be the duty of every carrier to provide such transportation upon reasonable request. Carr v. C., R. I. & P. Ry. Co. (Ia. 1916), 155 N. W. 840.

(d) Requiring interstate railway company to furnish cars to shippers within a reasonable time after demand, as is done by Hurd's Rev. Stat. (Ill.) 1913, chap. 114, § 84, does not so directly burden interstate commerce as to render the statute invalid, irrespective of congressional legislation covering the subject, where the state courts hold that the question what is a reasonable time in any case depends upon all existing circumstances and conditions, including the requirements of interstate commerce. Illinois C. R. Co. v. Mulberry Hill Coal Co., 35 Sup. Ct. 760; 238 U. S. 275; 59 L. Ed. —.

ALL OTHER CITATIONS

Illinois C. R. Co. v. Mulberry Hill Coal Co., 35 Sup. Ct. 760, 761, 762; 238 U. S. 275, 59 L. Ed. —.

II. DUTY TO FURNISH CARS.

See Branch Lines IV.

§7. In General.

See Bills of Lading §5; Demurrage §6; Evidence §22.

CASES 1887-1908

(a) Defendant published a tariff containing the following: For the purpose of facilitating quick dispatch of the coal cars of this company, a discount of 10 per cent will be made from the following rates to any person, firm or company which shall receive consignments of coal, in any one year, amounting to 30,000 tons or upwards, at any one station on the line of this road. Quick dispatch to be construed as immediate unloading of coal on its arrival at destination. Defendant claimed that this discount was offered to secure, and was conditioned upon, quick dispatch in unloading its coal cars, and that it was a reasonable regulation for the proper conduct of its business. HELD: By the wording of the offer, "quick dispatch" was not made a condition of the offer, and therefore it cannot be supported on that ground. That even if "quick dispatch" were made a condition of the discount such offer would have neither justice nor reason to support it, as its limitation to consignees receiving a specified number of tons would be an unjust discrimination. That the offer of discount cannot be supported on the consideration of quantity, on the analogy of the distinction usually made in ordinary business transactions, between wholesale and retail dealers. Defendant required to cease and desist the practice. Providence Coal Co. v. Providence & Worcester R. R. Co., 1 I. C. C. 363.

(b) Complainant attacked as unreasonable position of defendant in not furnishing all the cars ordered by complainant during the summer and early fall of 1887, owing to high freight rates on the vessels on the lakes, and the refusal of shippers to ship upon those rates, there was an immense accumulation of coal and coke and other freights along the line of the Pittsburgh & Lake Erie Railroad Company, a short local and interior railroad extending from New Haven, Pa., to Youngstown, O., from which last named point it has traffic arrangements with the Lake Shore & Michigan

Southern Railway, to Ashtabula, and with the New York, Pennsylvania & Ohio Railroad Company to Cleveland. About the middle of September there was a sudden and general rush on the part of these shippers for the coal and coke cars from the Pittsburgh & Lake Erie Railroad Company to ship their coal and coke over its line at once towards Youngstown for Ashtabula and Cleveland, the two nearest and most direct lake ports; and at the same time there was an unprecedented quantity of ore from the Lake Superior mines for shipment over this road from Youngstown, in the direction of Pittsburgh, Bessemer and other points along its line south; while the general freights were exceedingly large and brisk. The freight car equipment of the company, according to previous experience in the course of its business, was sufficient to promptly move all the freight as tendered to it for movement over its line; but it turned out to be insufficient to furnish enough cars to remove coal and coke as fast as demanded by shippers, and this, although the company kept this freight equipment well in hand on its own line and refused to send any part of it to other and distant points off its own line in the transportation of freight; and from the 28th of September, 1887, to the 12th of October following, the company was obliged to furnish cars to the coal and coke miners ratably in proportion to their needs and not to the full extent that they demanded. The company had no connection whatever with the vessels on the lakes, and no interest in or control over their rates. In this condition of affairs the complainants demanded of the Pittsburgh & Lake Erie Railroad Company cars for the shipment of coal to Buffalo, N. Y., a point not situated on the line of the Pittsburgh & Lake Erie Railroad. The company was not then permitting any of its coal cars to go to Buffalo because it was using all of these cars and needed even more to move its freight over its own line. On this state of facts, HELD: 1. The company was guilty of no violation of the law in refusing to furnish its cars to complainants to carry their coal to Buffalo; but, under the circumstances, it was the duty of the company to do as it did in using this freight equipment in moving its freight over its own line. 2. The inability of the company to furnish cars as fast as demanded by shippers in an extraordinary congestion like this, for which it was in no wise responsible or to blame, was no violation of the Act to Regulate Commerce. 3. That, being unable for a brief period from the causes stated, to furnish promptly all coal cars as demanded for the movement of freight over its own line, it was the duty of this company as it did, to furnish cars ratably and fairly to all the mines along its line in proportion to their freights until the emergency had passed, when it could move all their freights as fast as tendered. 4. The proof does not sustain the complaint that the Company violated the Act to Regulate Commerce by giving a preference in cars to the coke over the coal trade. 5. The proof does not sustain the charge in the complaint that the Company violated the Act to Regulate Commerce and gave a preference to shippers in not requiring them to load or unload its cars promptly. 6. The petition is dismissed. Riddle, Dean & Co. v. Pitts. & Lake Erie R. R. Co., 1 I. C. R., 688.

(c) Refusing to furnish cars for transportation, when all cars are needed for transportation of freight which has accumulated along the line is not violation of Act. Riddle v. Pittsburgh & L. E. R. Co., 1 I. C. R. 601, 688.

(de) It is properly the business of a carrier by railroad to supply the rolling stock for the freights he offers or proposes to carry; and if the diversities and peculiarities of traffic are such that this is not always practicable, and consignors are allowed to supply it for themselves, the carrier must not allow its deficiencies in this particular to be made the means of putting at unreasonable disadvantage those who make use in the same traffic of the facilities it supplies. Rice v. L. & N. R. R. Co., 1 I. C. C. 723, 740.

(f) Complainant charged unjust discrimination in the matter of furnishing coal cars. In view of the fact that by an agreement between the N. Y. L. E. & W. extending (over the leased line of the N. Y. P. & O.) to Dayton, O., and the C. C. C. & I. R., extending from Dayton to Cincinnati, the N. Y. L. E. & W., is considered an initial road at Cincinnati, with the right to make rates thereto and therefrom on its own responsibility HELD, that Cincinnati must be treated as a point on the line of the N. Y. L. E. & W., for the purposes of a proceeding against that company under the Act, for unjust discrimination in furnish-

ing coal cars. It is the duty of a common carrier to provide adequate equipment for the business of its line; if in time of special pressure some one must wait, the annoyance must be distributed with all possible equality, and in this respect regular customers are not entitled to preference over occasional customers. It is not necessary for a shipper to make a special contract with a common carrier, in order to entitle himself to transportation for his goods. Common carriers have no right, by issuing a prohibitory tariff or otherwise, to withdraw from the transportation of any articles not dangerous to handle and which are ordinarily the subject of transportation by them; less desirable traffic must be accepted upon reasonable terms, as well as that which is more desirable. When the equipment of a carrier usually applied to the transportation of a particular article (here, gondola cars for the transportation of coal) is not equal to the demand made upon it, it is its duty to appropriate other cars to such service or to obtain cars elsewhere. A carrier is not justified in refusing to furnish any cars for the transportation of coal to a certain point on its line, by the fact that it could at the time make more money by using its regular coal cars on another portion of its line, where return loads were obtainable and more frequent trips could be made, thus enabling it to serve a larger number of customers with a smaller number of cars. Riddle Dean & Co. v. N. Y. L. E. & W. R. R., 1 I. C. R. 787.

(g) A carrier is not justified in refusing to furnish any cars for the transportation of coal to a certain point on its line, by the fact that it could at the time make more money by using its regular coal cars on another portion of its line, where return loads were obtainable and more frequent trips could be made, this enabling it to serve a larger number of customers with a smaller number of cars. Riddle, Dean & Co. v. N. Y., L. E. & W. R. R. Co., 1 I. C. R. 787.

(h) It is the duty of a common carrier to provide adequate equipment for the business of its line; if in time of special pressure some one must wait, the annoyance must be distributed with all possible equality, and in this respect regular customers are not entitled to preference over occasional customers. Riddle, Dean & Co. v. N. Y., L. E. & W. R. R. Co., 1 I. C. R. 787.

(i) When the equipment of a carrier usually applied to the transportation of a particular article (here, gondola cars for the transporttion of coal) is not equal to the demand made upon it, it is its duty to appropriate other cars to such service or to obtain cars elsewhere. Riddle, Dean & Co. v. N. Y., L. E. & W. R. R. Co., 1 I. C. R. 787.

(j) Carrier, charged with unjust discrimination, may show that it made extra exertions in good faith to obtain cars for shipper from connecting line to whom shipper had to look for such cars. Riddle v. Baltimore & O. R. Co., 1 I. C. R. 701, 778.

(k) The N. Y., L. E. & W. R. Co., extending to Dayton, Ohio, by agreement being considered with C., C. C. & I. R. Co., extending from Dayton to Cincinnati, an initial road at Cincinnati, with the right to make rates to that place, Cincinnati must be treated as point upon line for the purpose of proceeding against the company for unjust discrimination in furnishing coal cars. Riddle v. New York, L. E. & W. R. Co., 1 I. C. R. 787.

(l) Carrier is not justified in refusing cars for transportation of coal at certain point by fact that it could make more money by using its regular coal cars on another point of its line. Riddle v. New York, L. E. & W. R. Co., 1 I. C. R. 787.

(mn) It is a common law and charter duty of every railway carrier subject to the act to furnish a proper and adequate car equipment for all the reasonable needs of the business it advertises and undertakes to do, and if the carrier fails to do this, to the wrongful injury of the shipper, it is liable in damages therefor, but the statute has not clothed the Commission with the jurisdiction to order the carrier to furnish any particular equipment of cars, or in fact any cars at all. It is the duty of such carrier to select and furnish its own equipment of cars, under all the responsibility which the law requires of it in so vital and important a matter, for the public has not undertaken to divide responsibility with the carriers in this respect. Scofield v. L. S. & M. S. R. R., 2 I. C. C. 67, 76.

(o) The law does not forbid a carrier from obtaining cars for the transportation of freight over its line from other carriers, or car furnishing companies, but in every such instance the rates on

freight must be exactly the same, and none other, as they would be if such cars were owned by the carrier so using them. Scofield v Lake Shore & Michigan Southern R. Co., 2 I. C. R. 67.

(p) On all the facts in this case, HELD: (1) That the tank car of complainant when loaded was not in a safe condition to be transported by the defendant in April, 1888, and that it was not the duty of defendant to transport it at that time, but it was the duty of complainant to have it repaired before insisting upon its being transported by defendant; (2) That neither the defendant nor any of its officers and agents have been engaged, as complained, in combinations with connecting lines, or other parties, to prevent complainant from obtaining reasonable rates and facilities for the transportation of its mineral waters;(3)That defendant's officials and agents have not acted in a malevolent spirit toward complainant in throwing obstructions in the way of its transporting mineral water over defendant's line and its connecting lines. Michigan Congress Water Co. v. Chicago & Grand Trunk R. Co., 2 I. C. R. 428.

(q) Complainant attacked rates on cotton from stations on the I. C., in Kentucky, Tennessee and Mississippi to New Orleans as compared with the rates from the stations to eastern markets, mills and Atlantic ports, compared according to distance. Also from Meridian, Miss., via C. N. O. & T. P., to New Orleans as unreasonable. The Commission will not order the rail carriers to transport cotton on flat cars instead of in box cars to New Orleans, the rate being the same on each, no injury being shown to have resulted to petitioners or to that city, or to any shipper or producer from the carriage in box cars. New Orleans Cotton Exchange v. I. C. R. R., 2 I. C. C. 777.

(r) A railroad company may acquire cars by construction, by purchase or by contract for their use, and no one has the power to compel a railroad company to select among these several modes or to contract with all comers. Worcester Excursion Car Co. v. Pennsylvania Railroad, 2 I. C. C. 792, 794.

(s) The interest of the public in a matter of this kind is vitally important and lies in the direction of holding every common carrier by rail to the strictest responsibility in furnishing safe, suitable and sufficient car equipment for the transportation of persons over its line; and the law-making power in enacting the Act to Regulate Commerce has not undertaken to divide this responsibility with the carrier in the selection of its cars. Worcester Excursion Car Co. v. Pennsylvania R. Co., 2 I. C. R. 792.

(t) It is a carrier's duty to equip its road with instrumentalities of carriage suitable for the traffic it undertakes to carry, and to furnish them alike to all who have occasion to their use; and its duty to furnish equipment cannot be transferred to or required of shippers. Rice v. Western N. Y. & P. R. Co. (Com.) 3 I. C. R. 162.

(u) There appears to be no law that prevents a carrier in the course of its business from arranging with the shipper to furnish cars for the shipment of his own goods at terms agreed upon between him and the carrier, but in every such transaction the carrier, at his peril, must see to it that neither directly nor relatively must a better rate be given to such shipper than to others engaged in the same business, and making shipments of the same kind of goods, who are dependent on the carrier for cars. Rice Robinson & Witherop v. W. N. Y. & P. R. Co., 3 I. C. C. 162, 171.

(v) It is the duty of the carrier to equip its road with the means of transportation, and, in the absence of exceptional conditions, those means must be open impartially to all shippers of like traffic. Independent Refiners' Asso. v. W. N. Y. & P. R. Co., 4 I. C. C. 162, 169.

(w) Ownership of a car rented to a carrier and for the use of which the carrier pays a full consideration does not of itself entitle the owner to the exclusive use of such car; and if the owner may, in the contract of hire to the carrier, stipulate for the exclusive use of the car, it must be upon such terms as shall not constitute an unjust discrimination against shippers of like traffic in cars owned by the carrier and who are excluded from the use of the car so hired. Independent Ref. Asso. v. Western N. Y. & P. R. Co. (Com.), 4 I. C. R. 162.

(x) It is the duty of the carrier to furnish an adequate and suitable car equipment for all the business it undertakes, and also whatever is essential to

the safety and preservation of the traffic in transit. Truck Farmers Asso. v. Northeastern R. R. Co., 6 I. C. C. 295, 316.

(y) Carriers are left by the law to procure equipment for their business by lease as well as otherwise, and they are not prohibited from leasing cars belonging to a shipper, nor are they compelled to contract in this respect with all shippers because they do with one. Consolidated Forwarding Co. v. Southern P. Co. et al., 9 I. C. C. 182.

(z) Defendant discriminated against complainant in favor of other shippers in furnishing cars at Collins, O., ordered during the months of January and February, 1901, and in not furnishing cars for his shipments from Kipton, O., which were ordered in August and September, 1900, until the following December and January, while cars ordered by other shippers at Norwalk were provided with comparative promptness. HELD: That this was unlawful discrimination against complainant and his traffic and against Kipton as a locality in favor of Norwalk. That complainant should have reparation for damages thereby sustained in the amount of $200. Hawkins v. Lake Shore & M. S. Ry. Co., 9 I. C. C. 207.

(aa) Complainant attacked as unjustly discriminatory defendant's action in not furnishing equipment for his shipments, whereas his competitors were furnished equipment. Complainant at Collins, O., ordered during the months of January and February, 1901, cars for the movement of his freight, and in August and September, 1900, at Kipton, O., cars were not furnished until the following December and January, while cars ordered by other shippers at Norwalk, O., were provided with comparative promptness. HELD: This was unlawful discrimination against complainant and his traffic and against Kipton as a locality in favor of Norwalk. Complainant awarded reparation for damages sustained in the amount of $200. Hawkins v. L. S. & M. S. Ry., 9 I. C. C. 207.

(bb) The defendant unlawfully discriminated against complainant and his locality, in delaying the furnishing of cars at Collins, O., ordered by him during the months of January and February, 1901, and cars ordered by him at Kipton, O., in August and September, until the following December and January, while cars ordered by other shippers at Norwalk were provided with comparative promptness. Complainant was awarded damages in the amount of $200. Hawkins v. Lake Shore & Michigan S. R. Co., 9 I. C. C. 207.

(cc) Complainant attacked distribution of cars by defendant as unlawfully discriminatory. Complainant, located at Hartland, Clarksfield and Brighton, O., non-competitive points, ordered cars for his shipments from defendant during the period from September 3, 1900, to March 6, 1901, which were not furnished, while during the same period defendant furnished cars at Norwalk, O., a competitive station. HELD: This was unlawful discrimination, against complainant, his traffic, and such non-competitive stations in favor of competitive stations, shippers therefrom and traffic there originating. Complainant entitled to reparation for damages thereby sustained in the amount of $100. Hawkins v. W. & L. E. Ry., 9 I. C. C. 212.

(dd) During the period between September 3, 1900, and March 6, 1901, the defendant distributed cars for the movement of traffic in such manner as to discriminate in marked degree against complainant who desired to ship freight from Hartland, Clarksville and Brighton, O., non-competitive stations, in favor of shippers at Norwalk, O., and other competitive stations. HELD: That this was unlawful discrimination against complainant, his traffic, and such non-competitive stations in favor of the competitive stations, shippers therefrom, and traffic there originating. That complainant is entitled to reparation for damages thereby sustained in the amount of $100. Hawkins v. Wheeling & L. E. R. R. Co., 9 I. C. C. 212.

(ee) A carrier, by distributing cars for movement of traffic in such manner as to discriminate against one who desired to ship from Hartland, Clarksfield and Brighton, Ohio, non-competitive stations, in favor of shippers at Norwalk, O., and other competitive stations, was guilty of unlawful discrimination against such shipper, his traffic, and such non-competitive stations in favor of the competitive cities, shippers therefrom, and traffic there originating and damages to the extent of $100 were awarded against him. Hawkins v. Wheeling & Lake Erie R. Co., 9 I. C. C. 212.

(ff) Complainant alleged unjust discrimination by defendant in failing to

furnish him with cars for the shipment of grain while supplying more than a fair proportion of cars to a competitor doing business in the same town, and that defendant subjected him to unreasonable disadvantage by providing his competitor in the coal business with a private switch and denying the like facility to him, thereby compelling him to unload coal at an inconvenient point near the outskirts of the town, and demanded reparation. It appeared that complainant desired to ship grain mainly to eastern points, concerning the transportation of which an embargo had been established by eastern lines, while his competitor in this business shipped largely by defendant's line to local points, for which complainant had no shipments, and that as to the coal business complainant really desired to use a passing siding of defendant for the purpose of unloading his coal. HELD: There was no such showing of undue preference or unjust discrimination as would warrant an order of relief or of reparation, complaint dismissed. Parks v. C. &. M. V. R. R. Co., 10 I. C. C. 47.

(gg) The complainant was not unjustly discriminated against by failure to furnish him with cars for the shipment of grain, while supplying a competitor doing business in the same town with cars, where it appeared that complainant desired to ship grain mainly to eastern points, concerning the transportation of which an embargo had been established by eastern lines, while his competitor in that business shipped largely by defendant's line to local points for which complainant had no shipments. Parks v. Cincinnati & M. Valley R. Co., 10 I. C. C. 47.

(hh) Defendant's refusal to furnish cars to complainants between February 25 and March 26 on the Deal sidetrack at Meyersdale and the sidetrack of the Savage Brick Company at Keystone Junction, while furnishing and offering to furnish cars to complainants' competitors at other points, under the circumstances disclosed by the evidence and described in the findings, was undue and unlawful discrimination against complainants, for which they are entitled to reparation. Glade Coal Co. v. Baltimore & O. R. R. Co., 10 I. C. C. 226.

(ii) Complainant attacked alleged discrimination against it in the matter of rates charged and facilities furnished for the transportation of coal, carloads, from Meyersdale and Keystone Junction, Pa., to market points in other states. Defendant's refusal to furnish cars to complainant on the Deal sidetrack at Meyersdale and the sidetrack of the Savage Fire Brick Company at Keystone Junction, while furnishing and offering to furnish cars to complainant's competitors at other points. HELD: Undue and unlawful discrimination against complainants, reparation awarded. Making certain charges for the transportation of coal shipped in carloads when the coal is loaded by tipple, and exacting a higher charge when it is loaded in some other way, is not justified by difference in cost to the carrier between different methods of loading, or by facts appearing in this case and renders the higher rates thus made unreasonable and unduly discriminatory, first, as against complainants, and, second, as against all other shippers of coal except those who load by tipple. Glade Coal Company v. B. & O. R. R., 10 I. C. C. 226.

(jj) Defendant's refusal to furnish cars to complainant's between February 25 and March 26 on the Deal sidetrack at Meyersdale and the sidetrack of the Savage Brick Company, at Keystone Junction, while furnishing and offering to furnish cars to complainant's competitors at other points, under the circumstances disclosed by the evidence and described in the findings, was undue and unlawful discrimination against complainants, for which they are entitled to reparation. Glade Coal Co. v. Baltimore & O. R. Co., 10 I. C. C. 226.

(kk) Between December 16, 1902, and April 6, 1903, defendant unjustly discriminated against complainant in furnishing cars for the shipment of cross ties by refusing to provide any cars for such shipments by complainant, while it did furnish cars to other persons for the interstate shipment of lumber, stone and many other freight articles, and also supplied cars for the shipment of cross ties destined almost entirely for its own use. Reparation in the sum of $630 awarded to complainant. Paxton Tie Co. v. Detroit S. R. Co., 10 I. C. C. 422

(ll) Complainant attacked as unduly discriminatory action of defendant in refusing to furnish him cars, although cars were furnished to other persons for the interstate shipment of lumber, stone and

other freight articles. Complainant was located at Bainbridge, O., and prior to December 16, 1902, was able to secure all the cars he wanted. On and after that date defendant placed restrictions on loading coal cars with ties, although at the same time defendant furnished cars to be loaded with ties for its own use. HELD: Defendant unduly discriminated against complainant, reparation awarded. Paxton Tie Co. v. Detroit Southern R. R., 10 I. C. C. 422.

(mm) Complainant was unjustly discriminated against by defendant's refusal to provide cars for the shipment of cross ties, while it did furnish cars to other persons for the interstate shipment of lumber, stone, and many other freight articles, and also supplied cars for the shipment of cross ties destined almost entirely for its own use. Paxton Tie Co. v. Detroit S. R. Co., 10 I. C. C. 422.

(nn) The right of complainant to ship coal was not barred by the fact that he was a druggist by occupation, or that he loaded coal cars from wagons, for a large part of the commerce of the country is handled in that way; and when he tendered freight for transportation he was entitled to the same facilities furnished to other shippers in like conditions. Thompson v. Pennsylvania R. Co., 10 I. C. C. 640.

(oo) Defendant's refusal to furnish to complainants cars for interstate shipments of corn from Leipsic, Ohio, while it contemporaneously furnished to complainant's competitors cars for like shipments, was unlawful discrimination. Gallogly v. Cincinnati, H. & D. R. Co., 11 I. C. C. 1.

(pp) During performance of transportation the car is, to every practical intent, the car of the railroad company using it, and its measure of responsibility as to the sufficiency of the car is the same, whether it obtains the car by purchase or by lease. Re Charges for Transportation and Refrigeration of Fruit Shipped From Points on the Pere Marquette and Michigan Central Railroads, 11 I. C. C. 129.

(qq) It is not the business of the shipper to furnish the vehicle of transportation. That is the duty of the carrier. Under its franchise the carrier must do more than construct his roadway. He must equip it with the means of transportation, and these means, of whatever style or pattern, must be open impartially to all shippers of like traffic. If the carrier hires or arranges in any manner for the use of vehicles he does not own, he has one of two things to do: He must furnish like vehicles to all competitors in the traffic, or must be careful to make no unjust discrimination and give no undue preference in his rates. Railroad Commission of Ohio v. H. V. Ry., 12 I. C. C. 398, 410.

(rr) Complaint in this case involved the question whether defendant carrier could establish a through route and fix a joint rate, and then decline to furnish equipment in which to move such freight. As it appeared that there was a specific agreement between defendant carrier and another carrier that the latter should furnish the cars, the complainant agreed that under the circumstances it would be in the interest of all parties that the present proceeding be dismissed. Oklahoma & Arkansas Coal Traffic Bureau v. Midland Valley R. R. Co., 12 I. C. C. 516.

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(ss) Provision of section 1 of the act whereby carriers are required to furnish cars upon reasonable request therefor was inserted by the amendment of 1906. Vulcan Coal & Mining Co. v. I. C. R. R. Co., 33 I. C. C. 52, 59.

(tt) Carrier must assume the burden of explaining or excusing its failure to furnish cars. Vulcan Coal & Mining Co. v. I. C. R. R. Co., 33 I. C. C. 52, 71.

(uu) Although a full car supply can not be expected all the time, carriers must do more than to provide themselves with sufficient equipment for the slack period of coal production. Vulcan Coal & Mining Co. v. I. C. R. R. Co., 33 I. C. C. 52, 71.

(vv) The disability created when initial carrier owns no cars is offset by retention in hand of moneys which would otherwise be expended for purchase and maintenance. Boise Lumber Co., Ltd., v. P. & I. N. Ry. Co., 33 I. C. C. 109, 112.

(ww) The average time in which car can be furnished in lieu of one refused is about 40 hours. Farmers' Cooperative Assn. v. C., B. & Q. R. R. Co., 34 I. C. C. 60, 63.

(xx) The obligation of the carrier is to promptly furnish a suitable car. Farmers' Cooperative Assn. v. C., B. & Q. R. R. Co., 34 I. C. C. 60, 64.

(yy) A delay of over five months in filling an order for cars shows that a carrier's equipment did not meet reasonable demands. Pennsylvania Paraffine Works v. P. R. R. Co., 34 I. C. C. 179, 183.

(zz) Whether or not a particular request for cars is reasonable is a matter for the Commission to decide in each particular case. Pennsylvania Paraffine Works v. P. R. R. Co., 34 I. C. C. 179, 187.

(3a) Obligation to furnish cars is joint upon carriers, parties to through routes and joint rates. Pennsylvania Paraffine Works v. P. R. R. Co., 34 I. C. C. 179, 194.

(3b) In warm weather a perishable commodity like ice requires good cars for its transportation. It is the duty of carriers to furnish such cars upon reasonable request. Eagle Ice Co. v. C., M. & St. P. Ry., 37 I. C. C. 250, 258.

(3c) When extraordinary equipment is used for the transportation of long freight, that is, large cars which were primarily constructed to accommodate certain classes of freight, such as vehicles, furniture and automobiles, the same rate-making principle should also apply. Minimum Charges on Bulky Articles, 38 I. C. C. 257, 262.

(3d) Section 1 of the Act provides in part that it shall be the duty of every carrier to furnish cars upon reasonable request therefor. This duty, however, does not carry with it a right to charge for the movement of the car from the point where it may be at the time to the point where it is wanted. Such a charge unjustly discriminates against shippers at stations to which the empty cars must usually be hauled for varying distances and unduly prefers shippers at points where empty cars are always available. City Ice Delivery Co. v. P. M. R. R. Co., 39 I. C. C. 589, 591.

(3e) The duty does not rest upon the carrier to furnish special equipment if it does provide some method by which the commodity can be protected from the cold during the winter months. Northern Potato Traffic Asso. v. C. & A. R. R., 44 I. C. C. 426, 433.

(3f) The mere toleration by the carriers through a period of years of the use of their cars and equipment as a salesroom affords no basis for a ruling that the practice has now grown into a shipper's right and a carrier's duty and is a transportation service. The Car Peddling Case, 45 I. C. C. 494, 500.

(3g) The Commission is unable to accept the view that the 48 hours of free time for unloading or the further detention of the car under demurrage for that purpose, embraces a right in the shipper to utilize the time by using the carrier's yard and station property as a place of business to which he may invite the general public to come and make purchases directly from the car. This is not a service of transportation, nor does such a practice affect the service of transportion offered by a carrier to the public. On the contrary, it stands wholly apart from any duty the carrier owes to a shipper, and in forbidding the practice for the future the carrier is simply asserting that control over its property, as private property, which the courts have held it enjoys, as fully as the private individual, with respect to "those of the general public who have no occasion to use it for purposes of transportation." Car Peddling Case, 45 I. C. C. 494, 502.

(3h) And shippers should reject cars that are unfit for loading and the carriers should refuse to accept any shipment tendered in an unfit car or where the shipper has failed properly to install the grain doors or otherwise to prepare the car for the safe transportation of grain. Claims for Loss and Damage of Grain, 48 I. C. C. 530, 571.

(3i) The practice of shipping live fish in carloads was found practicable about five years ago. The cars used for this traffic are made with the best steel underframes and are equipped by the shipper at an expense of about $2,000 per car with permanent tanks and mechanism for aerating the water. Express Charges on Empty Fish Cars, 50 I. C. C. 24, 25.

(3j) A car of a peculiar type when first used might be considered special equipment because of its construction and design. If later that type of car should come into general use throughout the country, and move a steady and heavy volume of traffic, it would lose its special character. It is contemplated by carriers that every car which is differently and more expensively constructed than a flat or box car should be considered a special car. A coal car is everywhere considered an ordinary car, but there are several types, differing in cost, and re-

quiring distinct loading and unloading facilities. In the Matter of Private Cars, 50 I. C. C. 652, 678.

(3k) Any attempt to state separate charges for furnishing cars of special types would be a prolific source of litigation, and, in many instances, would impose unjust and unreasonable charges on shippers or receivers of freight. In Re Private Cars, 50 I. C. C. 652, 680.

(3l) It was suggested that carriers might specify in their tariffs the cars they hold themselves out to furnish, and that all other kinds of cars would be considered special by that carrier. Under the system of through rates in this country, such special charges would result in nothing but confusion in tariff publications and lead to uncertainty in amount of freight charges to be paid by shippers or receivers. In the Matter of Private Cars, 50 I. C. C. 652, 680.

(3m) It is doubtful if carriers could be required to furnish live poultry and palace stock cars which are specialized to a high degree. In Re Private Cars, 50 I. C. C. 652, 690.

(3n) A carrier is entitled to a reasonable time in which to furnish special equipment desired by a shipper and unless it is given reasonable notice of the shipper's requirements it is not liable for damages resulting from failure to furnish such equipment. Northwestern Trading Co. v. Adams Express Co., 51 I. C. C. 211, 213.

(3o) The publication of graduated carload minima implies an obligation upon carriers to furnish, upon reasonable notice, cars of corresponding capacity. Feltus Lumber Co. v. G. N. Ry., 51 I. C. C. 571, 575.

(3p) A charge in addition to freight rates should not be made for furnishing to shippers refrigerator, tank, or other special type of car, or for transporting their shipments therein, unless the freight rates are predicated on the transportation in another type of car less expensive and not so difficult to operate. In Re Private Cars, 50 I. C. C. 652, 680, 709.

(3q) Rules by which carriers refuse to accept orders for cars for the carriage of lumber of cubical capacity of less than 2,400 cubic feet, or of more than certain specific cubic capacity, while tariffs named graduated minima for cars of less or greater capacity when tendered for carrier's convenience. HELD: Unreasonable and unduly prejudicial. Feltus Lumber Co. v. G. N. Ry., 51 I. C. C. 571, 576.

(3r) It is well settled that a common carrier is bound to provide whatever equipment is reasonably necessary for the safe transportation of all goods which it holds itself out to carry. Perishable Freight Investigation, 56 I. C. C. 449, 486.

(3s) Siding agreement between Mountain Smokeless Coal Co. and defendant provided that its use by any other party should be by permission of defendant only. Defendant contended that, as complainant did not first obtain its permission to be furnished cars on that siding, the request therefor was not reasonable. HELD: Request met requirements of the act, as agreements in respect of other sidings equipped with two tipples were the same as that of the Mountain Smokeless Coal Co. and defendant permitted cars to be furnished at such other sidings. Meyersdale Smokeless Coal Co. v. B. & O. R. R. Co., 62 I. C. C. 429, 432.

(3sa) Where carrier owns no cars to contribute for traffic off its line, to assess shippers charges for securing empty equipment would result in transferring to them an obligation resting upon common carriers. Cord and Pulp Wood to Canton, 78 I. C. C. 593, 596.

(3sb) Order of Texas R. R. Commission requiring carriers, at request of shippers, to slat stock cars when furnished for tranportation of watermelons between points in Texas, and providing that no transportation charge shall be based on weight of material so used, while making a charge for slatting stock cars when furnished for transportation between points in Texas and points in other states, found unjustly discriminatory against interstate commerce. Discrimination ordered removed by cancellation of interstate charge. Slatting Cars for Watermelons, 78 I. C. C. 732.

(3sc) Without passing on question whether duty of participants in a through movement to supply appropriate shares of equipment necessary for transportation of coal rests upon carriers jointly (compare Huerfano Coal Co., 28 I. C. C., 502) or severally, in aggregate the duty of providing adequate supply of equipment rests upon railroad carriers. Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 520, 546.

(3t) Without passing on the question whether the duty rests upon the carriers jointly or severally, in the aggregate the duty of providing an adequate supply of equipment rests upon the railroad carriers. Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 520, 546.

(3u) The obligation of furnishing an adequate supply of equipment by statute rests upon the carrier, and does not rest upon the shipper. Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 520, 556.

(3v) That a common carrier carries coal at a loss does not relieve it from furnishing proper equipment and performing other duties incident to transportation, such duties being dependent on its status as a common carrier and not on its financial condition, which is consequently no defense to shipper's claim for reimbursement for furnishing car door boards. Boettcher v. Public Utilities Commission of Colorado (Colo. 1923), 213 Pac. 114.

(3w) The six-day period complained of as being too long a period to require furniture shippers at Grand Rapids, Mich., to wait for car of particular size ordered, not found unreasonable. Berkey & Gay Furniture Co. v. M. C. R. R. Co., Unrep Op. 1911.

(3x) The definition of transportation in section 1 of the act is a preliminary to a requirement that the carriers shall furnish the instrumentalities specified upon reasonable request and not that the owners and builders thereof shall be regarded as carriers. Ellis v. I. C. C., 35 Sup. Ct. 646; 237 U. S. 434; 59 L. Ed. 1036.

(3y) The parallel between preferences and prejudices in respect of rates is manifestly close with preferences and prejudices in respect of service; indeed, with a low-grade commodity such as coal, it often happens that an inequality with respect to car distribution, controlling, as it does, quantity of production possible, is much more important to shipper than amount of transportation charge he pays. Assigned Cars for Bituminous Coal Mines. 80 I. C. C. 520, 556.

(3z) Complainant alleged defendant failed and neglected to maintain and furnish sufficient and suitable transportation, including an adequate supply of cars, for economical and safe loading, transportation and unloading of logs for shipments from points on defendant's Superior division to various points in Michigan and Wisconsin. Timber owned by the different complainants is located in the vicinity of Ontonagon, generally reached by spur tracks owned by complainants which connect at various points with the Superior division. Complainants all own and maintain their spur tracks and also provide their own engines, which are used to take the empty cars from the junctions with defendant's line to the logging operations, and to return the loaded cars. Most of the logs are cut in the winter. It was the practice of complainants to order about twice as many cars as were required; obviously a request for twice as many cars as are required can not be considered a reasonable one, and under such practice it would be difficult to determine to what extent, if any, the defendant failed to maintain sufficient cars to meet reasonable demands. The record does not afford a sufficient basis for the promulgation of a set of rules to govern the distribution of cars for the traffic in question. HELD: Defendant's method of distributing cars not unreasonable, complaint dismissed. Norton Lumber Co. v. C., M. & St. P. R. Co., 81 I. C. C. 749.

(4a) The law requirements as to the duty of the carrier to the shipper to furnish equipment and maintain its through route carries with it necessarily the power on the part of the Commission to enforce rules which will permit the free interchange of traffic as between carriers. Krauss Bros. Lumber Co. v. G. M. & N. R. Co., 87 I. C. C. 412, 413.

ALL OTHER CITATIONS

American Creosoting Works v. Ill. Cent. R. R. Co. 15 I. C. C. 160, 164; Peale Peacock & Kerr v. C. R. R. Co. of N. J., 18 I. C. C. 25, 34; Hillsdale Coal & Coke Co. v. P. R. R. Co., 19 I. C. C. 356, 361; Arlington Heights Fruit Exchange v. S. P. Co., 20 I. C. C. 106, 117;Balfour,Guthrie & Co. v. O. W. R. R. & Nav. Co., 21 I. C. C. 539, 540; Albree v. B. & M. R. R. Co., 22 I. C. C. 303, 327; Brunswick-Balke-Collender Co. v. A., T. & S. F. Ry. Co., 23 I. C. C. 395, 397; Colorado Coal Traffic Assn. v. D. & R. G. R. R. Co., 23 I. C. C. 458, 463; I. C. R. R. Co. v. River & Rail Coal & Coke Co. (Ky. 1912), 150 S. W. 641; Asbury Smith Logsdon v. I. C. R. R. Co., 24 I. C. C. 624, 625; Riverside Mills v. G. R. R., 25 I. C. C. 434, 435; Western Classification Case, 25 I. C. C. 442, 443; In Re

Irregularities in Mine Ratings, 25 I. C. C. 286, 291, 293, 295; Galveston Commercial Association v. A., T. & S. F. Ry. Co., 25 I. C. C. 216, 228; In Re Advances on Potatoes, 25 I. C. C. 159, 169; Eagle Pass Luber Co. v. National Rys. of Mexico, 25 I. C. C. 5; Dubuque Shippers' Assn. v. C. & N. W. R. R. Co., 26 I. C. C. 565; Atlas Lumber & Shingle Co. v. N. P. Ry. Co., 26 I. C. C. 313, 314; S. W. Missouri Millers' Club v. St. L. & S. F. R. R. Co., 26 I. C. C. 245, 250, 251, 252; Coal Rates on the Stony Fork Branch, 26 I. C. C. 168, 174; Proportional Rates on Excelsior and Excelsior Wrappers, 26 I. C. C. 44, 45; Boldt Co. v. C., R. I. & P. Ry. Co., 27 I. C. C. 11, 13; Huerfano Coal Co. v. C. & S. E. R. R. Co., 28 I. C. C. 502, 506, 507; Lumber Rates through Ohio River Crossings, 29 I. C. C. 38, 39; New York Shippers' Protective Asso. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 437, 442; Lumber Rates Through Ohio River Crossings, 29 I. C. C. 40; Campbell's Creek Coal Co. v. A. A. R. R. Co., 29 I. C. C. 682, 690; C. & N. W. Ry. Reconsignment Rates, 29 I. . C. 620, 623, 624; Wright v. C. & N. W. Ry. Co., Unrep. Op. A-451; Dorschel Produce Co. v. C., M. & St. P. Ry. Co., Unrep Op. A-489; Miller & Co., v. C., St. P., M. & O. Ry. Co., Unrep Op. A-539; Rental Charges for Insulated Cars, 31 I. C. C. 255, 256; Wabash Sand & Gravel Co. v. V. R. R. Co., 31 I. C. C. 344, 346; Downie Pole Co. v. N. P. Ry. Co., 31 I. C. C. 142, 143; Pittsburgh & Southwestern Coal Co. v. W. P. T. Ry. Co., 31 I. C. C. 660, 663; Farmers' Cooperative Asso. v. C., B. & Q. R. R., 34 I. C. C. 60, 64; Campbell's Creek Coal Co. v. A. A. R. R., 33 I. C. C. 558, 562; Pine Belt Lum. Co. v. G. & S. I. R. R., 33 I. C. C. 117, 118; Routing of Bauxite Ore to Chicago Heights, Ill., Unrep. Op. A-842; Pennsylvania Paraffine Works v. Penn. R. R., 34 I. C. C. 179, 186, 189, 194; Penn. Paraffine Wks. v. P. R. R. Co., 34 I. C. C. 179, 193; Grain Elevation Allowances at Kans. City, 34 I. C. C. 442, 446, 447; Lighterage and Storage Regulations at New York, 35 I. C. C. 47, 55; Midcontinent Oil Rates, 36 I. C. C. 109, 116; Longo Fruit Co. v. Illinois Traction Co., 38 I. C. C. 487; Minimum Charges on Bulky Articles, 38 I. C. C. 257, 261; Furnishing Cars at Carrier's Convenience, 42 I. C. C. 379, 381, 382; Brick from Michigan City, Ind., 42 I. C. C. 509, 511; Atchison, T. & S. F. Ry. Co. v. White (Tex. 1916), 188 S. W. 714; Northern Potato Traffic Asso. v. B. & O. R. R. Co., 43 I. C. C. 545, 548, 549; Johnstown Pa., Switching, 43 I. C. C. 654, 658; Hocking Domestic Coal Co. v. K. & M. Ry., 44 I. C. C. 392; Graustein v. B. & M. R. R., 45 I. C. C. 393, 402; Kindred v. C., N. O. & T. P. Ry., 47 I. C. C. 73; Export Freight Free Time, 47 I. C. C. 162, 179, 196, 197; Newman Lumber Co. v. Gulf & Ship Island R. R., 49 I. C. C. 340, 341; Coal from Arkansas and Other States, 49 I. C. C. 727, 731; Ft. Worth & S. C. Ry. Co. v. Strickland (Tex. 1918), 208 S. W. 410; In the Matter of Private Cars, 50 I. C. C. 652, 671, 679, 690, 708, 709; Dow Chemical Co. v. P. M. R. R., 51 I. C. C. 1, 2; Diamond Lumber Co. v. C., M. & St. P. Ry., 51 I. C. C. 78, 85; Northwestern Trading Co. (Inc.) v. Adams Exp. Co., 51 I. C. C. 211, 213; Oden-Elliott Lumber Co. v. A. C. Ry., 51 I. C. C. 403, 411; Consolidated Classification Case, 54 I. C. C. 24, 32; Gallatin Coal & Coke Co. v. L. & N. Ry., 55 I. C. C. 491, 493; Pacific Engineering & Construction Co. v. C., R. I. & P. Ry., 56 I. C. C. 247, 249; Armour Grain Co. v. Director General, 57 I. C. C. 398, 403, 408; S. J. Hawkins v. O. S. L., 59 I. C. C. 730; Boston Chamber of Commerce v. Director General, as Agent, 59 I. C. C. 73, 80; Bryant & Chapman Co. v. Director General, as Agent, 60 I. C. C. 237, 238; Meyersdale Smokeless Coal Co. v. B. & O. R. R. Co., 62 I. C. C. 429, 431, 432; Pittsburgh Terminal R. R. & C. Co. v. Director General, 63 I. C. C. 179, 182; Substitution of Single Deck for Double-Deck Cars, 64 I. C. C. 251; U. M. Slater, Inc., v. S. P. Co., 64 I. C. C. 647, 653; Wausau Southern Lumber Co. v. G. & S. I. R. R., 64 I. C. C. 732, 736; Meyersdale Smokeless Coal Co. v. B. & O. R. R., 69 I. C. C. 74; Gaynor Bros. v. Director General as Agent, 68 I. C. C. 541; Vander Zyl v. Chicago, R. I. & P. Ry. Co., (Ia. 1922), 189 N. W. 953; Slating Cars for Watermelons, 78 I. C. C. 732, 735; Peerless Lumber Co. v. Director General, 88 I. C. C. 457.

§7⅛. Bad Order Cars.

IMPORTANT CASES SINCE 1908

(a) The practice of terminal carriers of requiring complainants, at their own expense to transfer to other equipment, shipments of hay delivered to team tracks in St. Louis or East St. Louis in bad-order cars, as a precedent to permitting rebilling to points beyond, found an unjust practice. Reparation awarded. Mer-

chants' Exchange of St. Louis v. T. R. R. Asso. of St. Louis, 50 I. C. C. 474.

(b) When cars in bad order are accepted by the terminal company, they are subject to all the rights of the shippers, and one of these, recognized by years of practice by carriers throughout the entire country is that of rebilling in the same cars. Merchants' Exchange of St. Louis v. T. R. R. Asso. of St. Louis, 50 I. C. C. 474, 475.

(c) The contentiton that when original contract of transportation is completed the carriers can not be compelled to enter into a new contract if freight is in defective equipment, not sustained, inasmuch as it would make a substantial right of a shipper depend upon a condition over which it has no control, but which has been created by the carriers themselves, and would permit substantial discriminations between shippers. Merchants' Exchange of St. L. v. T. R. R. Asso. of St. L., 50 I. C. C. 474, 475.

§7¼. Car Congestion.

See Car Congestion; Demurrage §7¼; §14½; Embargoes.

IMPORTANT CASES SINCE 1908

(a) In response to complaints from all parts of the country, the Commission entered upon a general investigation concerning the supply, exchange, interchange, and return of freight cars, and all rules, regulations, and practices relating thereto. The existing conditions of car distribution had no parallel in the history of the country. In some territories the railroads had furnished but a small part of the cars necessary for the transportation of the staple articles of commerce. In consequence mills had shut down, prices had advanced, perishable articles of great value had been destroyed, and hundreds of carloads of food products had been delayed in reaching their markets. In other territories there were so many cars on the lines and at terminals that there had been unprecedented confusion and long delays in transit. For some time there had been a general misuse of freight cars by substantially all carriers, through failure to observe the then effective car service rules 1, 2, 3, and 4, providing for the return of cars to the owning roads, adopted by the American Railway Association. Failure to observe these rules became a common practice as the volume of traffic increased; cars received from other lines for a line haul or for switching movements were used for continuous local service; and the owning lines were deprived of cars which they had provided for the transportation of coal, grain and perishable commodities. As a result, embargoes were placed by some lines against the movement of their own coal cars beyond their rails. To remedy the evil a car efficiency committee was created by the association. This committee directed the return of open top cars and fruit refrigerator and heater cars to the owning lines, and directed that the lines in groups 1 to 8 should return to their western and southern connections from 10 to 30 per cent of the box cars, in excess of those received from such connections, regardless of the number of box cars on line. On January 1, 1917, the percentage of all freight cars on line to total owned were as follows: Group 1, B. & A. R. R., 114.06, and B. & M. R. R., 141.87; Group 2, B. & O. 99.50, L. V. 111.30, and N. Y. C. 108.88; Group 3, A. A. 114.56, P. M. 150.43, and Wabash 133.41; Group 4, A. C. L. 91.92, S. A. L. 114.43, and Southern 89.64; Group 5, C. of G. 84.44, I. C. 75.06, and L. & N. 67.82; Group 6, C., B. & Q. 90.80, C. G. W. 90.27, and C., M. & St. P. 108.34; Group 8, D. & R. G. 106.34, M. P. 102.41, and St. L. & S. F. 122.86; Group 9, F. W. & D. C. 69.02, and T. & P. 105.94; Group 10, A., T. & S. F. 95.44, S. P. 92.86, and W. P. 130.22; Group 11, C. P. 90.78, G. T. 126.71, and G. T. P. 31.57. The percentage of box cars on line to total owned was: Group 1, B. & A. 96.82, B. & M. 150.18; Group 2, B. & O. 138.62, L. V. 126.60, and N. Y. C. 121.46; Group 3, A. A. 115.38, P. M. 130.52, Wabash 154.02; Group 4, A. C. L. 93.81, S. A. L. 121.53, and Southern 95.70; Group 5, C. of G. 81.90, I. C. 65.14, and L. & N. 72.39; Group 6, C., B. & Q. 79.86, C. G. W. 74.42, and C., M. & St. P. 85.51; Group 8, D. & R. G. 87.64, M. P. 86.12, and St. L. & S. F. 105.86; Group 9, F. W. & D. C. 75.19, T. & P. 93.20; Group 10, A., T. & S. F. 87.77, S. P. 84.26, and W. P. 139.60; Group 11, C. P. 85.68, G. T. 116.94, and G. T. P. 27.02. On January 1, 1917, the percentage of gondola, coal and coke cars on line to total owned was: Group 1, B. & A. 161.94, B. & M. 133.84; Group 2, B. & O. 78.37, L. V. 97.40, and N. Y. C. 102.78; Group 3, A. A. 142.96, P. M. 194.58 and Wabash 119.99; Group 4 A. C. L. 225.35, S. A. L. 103.71, and Southern 77.28; Group 5, C. of G. 93.04, I. C. 80.97,

and L. & N. 63.72; Group 6, C. B. & Q. 99.81 C. G. W. 159.70, and C., M. & St. P. 186.33; Group 7, St. J. & G. I. 158.43, U. P. 151.40; Group 8, D. & R. G. 103.23, M. P. 118.41; Group 9, F. W. & D. C. 102.02, T. & P. 168.40; Group 10, A., T. & S. F. 125.06 S. P. 173.70, and W. P. 182.40; Group 11, C. P. 170.39, G. T. 175.03, and G. T. P. 55.02. In spite of the efforts made to stop diversion and misuse of foreign refrigerator cars and coal cars, the practice continued. The car efficiency committee not being able to secure obedience to its directions, its work was delegated to the car service committee, which in its circular No. 3 of December 15, 1916, directed that roads in group 4 not covered by A. R. A. circular No. 1762 in possession of their ownership of box cars, they should help western and southern connections having deficiencies by delivering to them a 20 per cent excess of box cars above the number received. Car shortage conditions were serious, the supply of coal in many communities inadequate and railroads were in many cases obliged to confiscate commercial coal for motive power. The misuse of foreign refrigerator cars continued. The flow of traffic northbound and eastbound had carried box cars from the originating lines into official classification territory, where large accumulations resulted in slow movement and disorganized service. While the carriers had promised to put a stop to the diversion and misuse of foreign open-top and refrigerator cars, the evil practice continued unabated. As a consequence, numerous shippers and carriers had petitioned a formal order to remedy the situation, and an order was issued requiring the carriers to show cause why an order should not be entered requiring them to return to the owners, without misuse or diversion, all foreign open-top cars, and all railroad owned or controlled refrigerator, heater ventilated and insulated cars. The car service committee asked that no car service rule be prescribed by order prior to March 1, 1917, contending that the increased per diem progressive demurrage charges, and diversion penalty contained in the existing car-service rules as amended by Circular No. 1751, were ample to meet the situation. It appeared that the car service committee had not been adequately empowered to deal with the situation, and that it had not been able to secure the cooperation of a substantial number of carriers.

HELD: (1) That the existing increased per diem, progressive demurrage charges, and diversion penalty were unlikely to afford immediate relief, and in any event were not inconsistent with an order for the observance of reasonable car service rules; (2) that the Commission had jurisdiction to require the observance of reasonable car service rules; (3) the existing code of car service rules was approved, insofar as they related to open top coal and coke cars, and railroad owned and controlled refrigerator, heater, ventilated and insulated cars, with the following exceptions: (a) all such cars received under load might be forwarded to destination; when lading was removed or when received empty, they must be returned to their owners, loaded or empty (1) direct, if belonging to direct connections; (2) through the proper home route, if belonging to other than direct connections; (b) the proper home route for cars belonging to other than direct connections, to include the following deliveries only: (1) loaded, consigned to a destination on the home road; (2) loaded, consigned to a destination on a direct connection of the home road; (3) loaded, consigned to destination on road from which originally received, if such movement is in direction of home; or (4) empty, to road and at junction point from which originally received; (c) (1) loaded cars might be delivered to switching roads to be unloaded within switching district;; (2) an empty foreign car might be delivered to a connecting road to be loaded within designated switching limits and returned; (d) the foregoing rules not to apply to cars reconsigned with original lading under duly filed and published tariffs until the original lading had been removed therefrom; (e) any delivery of a foreign open-top coal or coke or foreign railroad owned or controlled refrigerator, heater ventilated, or insulated car, except as provided above, held to be a diversion;; (4) that the practice of carriers in failing to observe the existing car service rules with regard to the return of such cars, to the extent that such rules were not modified by the rules prescribed above, held in violation of section 1 of the act. Car Supply Investigation, 42 I C. C. 657.

(b) A shipper has no inherent right to retain a car beyond the free time and thus prevent it from being used for transportation by other shippers. Car shortages have resulted in incalculable

loss in the past both to the carriers and the shipping public as a whole, and when it appears that shippers detain cars for purposes other than those necessary for proper transportation, the carriers are justified in taking steps to prevent such abuses. American Wholesale Lumber Asso. v. Director General, as Agent, 66 I. C. C. 393, 407.

ALL OTHER CITATIONS

Export Freight Free Time, 47 I. C. C. 162, 179; Trade Asso. v. Director General, 58 I. C. C. 15, 22; Reconsignments and Diversion Rules 58 I. C. C. 568, 580; Transportation Facilities in Northwest Pacific States, 87 I. C. C. 472.

§7⅜. Deposit on Cars.

IMPORTANT CASES SINCE 1908

(a) And proposed schedules which would require shippers to deposit $10 for each live-poultry car ordered, such deposit to be refunded only if loading of the car be commenced within 48 hours following its placement, found not justified in part and ordered cancelled without prejudice to the filing of new schedules modified in accordance with suggestions in the report. Deposit for Live-Poultry Car Ordered, 66 I. C. C. 653.

(b) Approximately 8 per cent of live-poultry cars were not loaded at point at which originally placed. Contention that only those at fault should be penalized and those not responsible for the abuse should not be inconvenienced by a proposed rule which would require a deposit for each car ordered, refund to be made only if loading be commenced within 48 hours after placement. HELD: Percentage sufficiently high to justify some action on the part of respondents to correct the evil. Deposit for Live-Poultry Car Ordered, 66 I. C. C. 653, 654, 655.
654 655.

§7½. Inspection.

See Inspection.

ALL CITATIONS

Southwestern Missouri Millers' Club v. St. L. & S. F. R. R. Co., 26 I. C. C. 245, 250.

§7½a. Restriction of Equipment.

IMPORTANT CASES SINCE 1908

(a) Carriers can not by operating instructions restrict their equipment to their own rails when it results in additional expense to shippers when they publish rates to points on the rails of other carriers and do not publish the equipment restriction in a tariff. Hixon Lumber Co. v. C., B. & Q. R. R., 80 I. C. C. 295, 297.

(b) By operating directions carrier prohibited diversion of cars to points off its line. Carrier at reconsignment point transferred lading to car of foreign line, assessing switching, demurrage, penalty, and transfer charges for this service. HELD: Carriers can not by operating instructions restrict equipment to their own rails when it results in additional expense to shippers when they publish rates to points on rails of other carriers and do not publish equipment restriction in tariff. Charges assessed at reconsignment point found unreasonable and unlawful and reparation awarded. Hixon Lumber Co. v. C., B. & Q. R. R. Co., 80 I. C. C. 295.

§7⅝. Rates on Empty Cars.

See Empty Cars.

IMPORTANT CASES SINCE 1908

(a) Complainant attacked the charges collected by the defendants on various empty tank cars moving on their own wheels, shipped from Milton, Pa., and North St. Louis Mo., to Chanute, Kan., and Cushing, Okla., between August 9, 1912, and February 8, 1915, as unreasonable and discriminating and asked reparation and the establishment of reasonable rates and regulations. The cars in question were new cars purchased by complainant from manufacturers at Milton and Sharon Pa. Those constructed at Milton were purchased f. o. b. that point; those constructed at Sharon f. o. b. North St. Louis. The cars from Milton, 121 in number, were shipped to Chanute and moved over either the Pa. Lines or Pa. & R. Ry. in connection with other defendants to East Galesburg, Ill., and beyond over either the A., T. & S. F. Ry., or in connection with certain other defendants. The cars purchased f. o. b. North St. Louis moved from that point to Chanute and Cushing via the M., K. & T. Ry., Sec. 1 of Rule 29, of the Official Classification, which governed, provided that in providing rating for articles in tank cars the carriers do not assume any obligation to furnish tank cars, and "when tank cars are furnished by shippers or owners, mileage at the rate of ¾ of 1 cent per mile will be allowed for the use of such tank cars, loaded or empty, provided the cars are properly equipped. No mileage will be allowed on cars switched at terminals nor for move-

ment of cars under empty freight car tariffs." Sec. 2 provided: "Private tank cars will be moved empty, without charge, at the time movement is made between stations or junction points on the line of carriers whose tariffs are governed by this classification (either individually or jointly) including delivery to connecting lines subject to the following conditions: (a) should the aggregate empty mileage of any owner's cars on June 30 of each year, at the close of any such yearly period as may be mutually agreed upon, exceed the aggregate loaded mileage on the lines of such carriers individually (or jointly when mileage accounts are computed jointly) such excess must be paid for by the owner, either by an equivalent loaded mileage during the succeeding six months, or at tariff rates, without minimum, plus the mileage that has been paid by the carriers to the owners on such excess empty mileage. Any excess of loaded mileage over empty mileage of any owner's cars at the end of the accounting period will be continued as a credit against the empty movements of such cars for the ensuing twelve months (b) New cars or newly acquired cars, moved empty to home or loading point by order of the owner, must be billed at regular tariff rates." Practically the same provisions were carried in the western classification. At the time of movement the official classification provided a charge of 4 cents per car per mile, min. 100 miles, on new or newly acquired cars moving empty on own wheels to home or loading point. This charge was subsequently increased to 4.2 cents per car mile following The Five Per Cent Case, 32 I. C. C. 325. The western classification provided a charge of 10 cents per car mile, min. $5 per car applicable on such cars. Charges were assessed on all of the cars from Milton to Chanute except on 15 which moved in July, 1913, in the sum of $63.62 per car, based on the following combination rates: 4 cents per car per mile to East Galesburg; a commodity rate of $17.50 per car from East Galesburg to Kansas City, Mo., and 10 cents per car per mile beyond. On the 15 excepted cars the charges were $64.16 per car, a discrepancy not explained. Charges were assessed on each of the cars from North St. Louis to Cushing and Chanute in the sums of $45.50 and $30.20 respectively, based on a commodity rate of $17.50 from East St. Louis to Kansas City and 10 cents per car mile beyond. Complainant contended that paragraph (b) of rule 29 was unreasonable and discriminatory, insisting that new empty tank cars or newly acquired tank cars should be transported without any charge and the distance they traveled before being put into actual service charged to the owner's empty mileage account the same as cars in service; complainant also contended that the charges collected on the cars in question were unreasonable to the extent that the components west of the Mississippi River exceeded 4 cents per car per mile. The short line distance between the Mississippi and Missouri Rivers by way of the Wabash R. R. from Hannibal, Mo., to Kansas City, is 198 miles. The $17.50 rate for that distance yielded a per car mile revenue of $8.83 cents. The distance over the A., T. & S. F. from East Galesburg to Kansas City is 280 miles, for which distance the $17.50 rate yielded 6.2 cents per car mile. The distance from St. Louis to Kansas City by way of the M., K. & T. Ry. is 374 miles The 10-cent rate charged beyond Kansas City applied generally throughout western classification territory except where competitive conditions had forced a lower rate. HELD: (1) that movements of new or newly acquired empty tank cars before they are put into actual service have always been treated like any other freight, the theory of paying allowance for empty movement presupposing a loaded movement, and the meager facts of record did not warrant a condemnation of a rule of such universal application, and accordingly that the rule was not shown to have been unreasonable or discriminatory; (2) that the charges in question were not shown to have been unreasonable or discriminatory, though the rules and rates governing transportation of cars on their own wheels in the three classification territories were in need of revision. Complainant dismissed. Chanute Refining Co. v. A., T. & S. F. Ry., 52 I. C. C. 593.

(b) Complainant attacked as unreasonable rates charged on empty flat cars on their own wheels from East St. Louis, Ill., to Elaine, Ark. Cars were delivered to the Southern Ry. at East St. Louis, and were switched by that line and the T. R. A. of St. L. to the M. P. at Dupo, Ill., taken by that line through Thebes to destination. Rate charged 10c per car per mile for distance of 370 miles. There was in effect a commodity rate of $12 per

car from East St. Louis to Memphis applicable over these lines, which, plus 10c per car mile rate beyond is complainant's contention should apply. Southwestern lines tariff East St. Louis to Elaine was subject to western classification which named the rate of 10c per car mile, but referred to no publication from which to ascertain the distance from which the through charge was to be computed. Charge collected was unreasonable to extent it exceeded the combination on Memphis under Rule 5-B of Tariff Circular 18-A. HELD: Rate attacked unreasonable to extent it exceeded Memphis combination. Reparation with interest awarded. Zelnicker Supply Co. v. S. R., 53 I. C. C. 308.

§7¾. Safety Appliance Equipment.

See Safety Appliance Act.

IMPORTANT CASES SINCE 1908

(a) Certain carriers applied for a further extension of time over that granted by paragraphs (b), (c), (e), and (f) of the order of the Commission of March 13, 1911, within which to make their freight cars conform to the standards of equipment prescribed by the Commission, pursuant to section 3 of the act to supplement the safety appliance acts of April 14, 1910. It appeared that about 82 per cent of the cars in service July 1, 1911, on roads having a total mileage of about 232,000 miles would be either equipped or removed from service by July 1, 1916. Financial difficulties incident to the European war would render further compliance difficult. HELD: That a further extension of 12 months from July 1, 1916, would be adequate, to be uniform to all carriers subject to the act of April 14, 1910. Extension of Time to Comply with Safety Appliance Acts, 36 I. C. C. 370.

ALL OTHER CITATIONS

Extension of Time to Comply With Safety Appliance Acts, 36 I. C. C. 374.

§8. Size and Kind Ordered by Shipper.

See Classification §21; Follow Lot Shipments; Minimums §3, §4, §8.

CASES 1887-1908

(a) It is not reasonable that carriers unable to supply shippers with sufficient cars of large or average capacity should make such minimum loading requirements as can not be practically complied with as to the smaller cars in order that they may obtain as much earnings therein as from those in the larger and superior cars. Wiemer & Rich v. C. N. W. Ry., 12 I. C. C. 462.

(b) Small car offered, surplus should be carried at same rate. Pacific Purchasing Co. v. C. & N. W. Ry. Co., 12 I. C. C. 549.

(ba) Where carrier unable to furnish car of tariff minimum capacity and furnishes two cars instead, the published minimum must be protected. Pacific Purchasing Co. v. C. & N. W. Ry. Co., 12 I. C. C. 549.

IMPORTANT CASES SINCE 1908

(c) In warm weather a perishable commodity like ice requires good cars for its transportation, and it is the carriers' duty to furnish such cars upon reasonable request. Eagle Ice Co. v. C., M. & St. P. Ry. Co., 37 I. C. C. 250, 258.

(d) A carrier may not impose additional transportation charges on a shipper who orders a car of a capacity, length, or dimension specified in the carrier's tariff simply because the carrier is not provided with cars of the dimensions ordered. Lippard-Stewart Motor Car Co. v. M. C. R. R., 38 I. C. C. 112, 113.

(e) The refusal of carriers to provide cars specially equipped with hooks and racks for the transportation of chilled and frozen meats not found unreasonable or unduly prejudicial. Frankfeld & Co. v. N. Y. C. R. R. Co., 40 I. C. C. 555.

(f) Complainant attacked the carrier's refusal to furnish open-top cars to "wagon mines" for loading with coal on its public team tracks, while continuing to furnish that class of equipment to both tipple mines and wagon mines where the loading was done on private or industrial tracks, as discriminatory. In compelling the use of box cars for team-tracks loading the result sought was to make available a larger supply of open-top cars for loading at the tipple mines, thus aiding in the production and movement of coal. The cost of loading box cars averaged $10 a car in excess of that of loading open-top cars; but the government had permitted wagon-mine operators to increase by 75c per ton, or $26.25 per car of 35 tons, the mine prices formally fixed. By express terms this increase in price had been restricted to wagon-mine operators, who shipped in "box cars." HELD: That although in its nature a discrimination between shippers

as a class, the practice attacked nevertheless operated in the interest of the public as a whole, and hence was not an unjust discrimination nor unduly prejudicial within the meaning of Section 3. Complaint dismissed. Swaney v. B. & O. R. R., 49 I. C. C. 345.

(g) Where tariffs are maintained for the use of double-deck cars for the transportation of hogs, calves, sheep, lambs, and goats from primary markets, tariffs should provide that when a double-deck car is ordered, and, for the convenience of carriers, two single-deck cars are furnished, the charges therefor should be at the rate and minimum weight for the double-deck car ordered, provided two days, exclusive of day of notice, are allowed the carriers within which to furnish the car ordered. Cleveland Provision Co. v. A. A. R. R., 50 I. C. C. 293.

(h) The establishment of a two-for-one rule where carriers have provided double-deck rates and minima different from single-deck rates and minima, has become almost universal in cases where carriers' tariffs provide varying minima according to the size of the car. Cleveland Provision Co. v. A. A. R. R., 50 I. C. C. 293, 296.

(i) In several cases the Commission has required the establishment of a two for one rule where carriers have provided double-deck rates and minima different from single-deck rates and minima, and in a number of cases have required the establishment of a two for one rule with respect to ordinary equipment. Such a rule has become almost universal in cases where carriers' tariffs provide varying minima according to the size of the car. The Commission's decisions in those cases were upon the ground that the carriers having provided rates dependent upon certain equipment used, held themselves out to furnish such equipment, thus conferring upon the shipper a legal right to demand that equipment and to have the charges assessed accordingly. A carrier is entitled to a reasonable time to furnish equipment, but if before such time expires or thereafter it furnishes equipment different from that requested, then such equipment is furnished for its own convenience and the shipper should be saved harmless. Cleveland Provision Co. v. A. A. R. R., 50 I. C. C. 293, 296.

(j) A carrier is entitled to a reasonable time to furnish equipment, but if before such time expires or thereafter it furnishes equipment different from that requested, then such equipment is furnished for its own convenience, and the shipper should be saved harmless. Cleveland Provision Co. v. A. A. R. R., 50 I. C. C. 293, 296, 297.

(k) Under a contract specifying termination by either party on 60 days' notice, express companies supplied baggage cars which complainants equipped for transporting live fish. The express companies requested the return of the cars, whereupon the agreement terminated. Prayer that defendants brought suit requesting that the express companies cease and desist from taking the cars and be required to continue to furnish them. The Commission held the issue was not within its jurisdiction. Lay v. American Exp. Co., 51 I. C. C. 373.

(l) Upon request for double deck cars at country stations cars must ordinarily be brought from the points where they are stored, usually division points at which primary markets are located and it is true that by direct train service cars could be moved from such sources in a comparatively short time, but additional time is consumed in locating empty cars which can be used, and at times cars are brought from comparatively distant points. F. H. Coulter v. Hines, 55 I. C. C. 165, 168.

(m) Rule 66 of Tariff Circular 18—A states that carriers tariffs should contain a two for one rule, and provides that in case of controversy between shippers and carriers caused by the absence of such a rule from tariffs which provide graduated minima for cars of different sizes, the Commission will regard such tariffs as prima facie unreasonable. F. S. Harmon & Co. v. P. C. C. & St. L. R. R., 69 I. C. C. 348, 349.

(n) The practice of securing revenue through a minimum higher than the capacity of cars furnished should be condemned, but where abnormally low per car charges resulted from emergency rates established as a temporary relief measure, a shipper has no well-founded claim because he could not load to the prescribed minimum. Devereux Co. v. Director General, as Agent, 73 I. C. C. 289, 290, 291.

(o) There is a distinction between the obligation of the carriers to furnish a suitable car and of the shipper to furnish special protection. The carrier is obli-

gated to furnish proper standard equipment for the safe transportation of goods which it holds itself out to carry, and when necessary cars must be provided which will protect the goods from the elements. It is the corresponding duty of the shipper properly to prepare his goods for shipment, and if special protection be needed, this also he must furnish. When a suitable car is furnished, it is proper that the shipper secure his shipment within it, by staking or otherwise, and so protect it from damage to itself. But when for their own convenience the carriers furnish stock cars for the transportation of watermelons, they should be so equipped by the carrier as to be suitable for that service. Slatting cars for watermelons, 78 I. C. C. 732, 735.

(p) A tariff which does not contain a rule where two small cars are furnished in lieu of one large car ordered, the minimum of the large car will apply for the entire shipment, is prima facie unreasonable. Welsbach Co. v. A. C. R. R. Co. Unrep. Op. 2098.

(q) Two cars are furnished by the carrier, for its convenience, in lieu of larger car ordered, and charges were assessed on the second car at the minimum for that car. Tariff rule provided that where two cars are furnished by carrier for its convenience, the remainder of the shipment loaded into the second car should be charged at actual or estimated weight and carload rate. HELD, charges assessed upon car containing remainder of shipment found illegal to extent they exceeded charges based upon actual weight of contents at c. l. rate. Reparation awarded. Stone-Fisher Co. v. Director General, as Agent, 77 I. C. C. 369.

(r) Two cars were furnished by carrier for its convenience in lieu of larger car ordered. Shipment moved under bill of lading for each car, second bill bearing notation in reference to first: "Part car lot UP 121567—weight and charges ahead." Contention that since "two-for-one" rule in tariff required as condition precedent that but one bill of lading be issued, it was not applicable to this shipment, HELD, since second bill of lading referred to first for weight and charges, this was a substantial compliance with requirement. Stone-Fisher Co. v. Director General, as Agent, 77 I. C. C. 370, 371.

(s) Carrier for its own convenience furnished one larger car in lieu of two smaller ones ordered by shipper, and charges assessed were on the basis of combined full minima of cars ordered. HELD, charges assessed found unreasonable to extent they exceeded those that would have accrued on basis of minima of ordered cars loaded to full visible capacity. Reparation awarded. Noll Lumber Co. v. U. P. R. R. Co., 80 I. C. C. 105.

ALL OTHER CITATIONS

Northern Mercantile Co., Ltd., v. N. P. Ry Co., Unrep. Op 581; Bradford-Kennedy Co. v. N. P. Ry. Co., Unrep. Op. 455; Calvi v. C. M. & St. P. Ry. Co., Unrep. Op. 461; Torrey Cedar Co. v. C. & N. W. Ry. Co., Unrep. Op. 420; Pate v. C. & N. W. Ry. Co., Unrep. Op 417; Lininger Implement Co. v. C. & N. W. Ry. Co., Unrep. Op. 414; Bentley v. C. & N. W. Ry. Co., Unrep. Op. 181; Wheeler Lumber Bridge & Supply Co. v. S. P. Co., 16 I. C. C. 547, 548; Slimmer & Thomas Co. v. Pennsylvania Co. 16 I. C. C. 531, 533; Kaye & Carter Lumber Co. v. M. & I. Ry. Co., 16 I. C. C. 285, 287; Kaye & Carter Lumber Co. v. M. & I. Ry. Co., 17 I. C. C. 209, 211; Carsten Packing Co. v. S. P. Co., 17 I. C. C. 6; Noble v. B. & O. R. R. Co., 20 I. C. C. 72; Minneapolis Threshing Machine Co. v. C. M. & St. P. Ry. Co., 21 I. C. C. 181, 182; Lindsay Bros. v. L. S. & M. S. Ry. Co., 22 I. C. C. 516, 518; Carstens Packing Co. v. S. P. Co., 23 I. C. C. 236, 237; Yorke Furniture Co. v. S. Ry. Co. (N. C., 1913), 78 S. E. 67, 68; Weber & Co. v. H. T. W. R. R. Co., Unrep. Op. A. 23; Riverside Mills v. St. L. & S. F. R. R. Co., 24 I. C. C. 264, 270; In Re Suspension of Western Classification No. 51, 25 I. C. C. 442, 529; Riverside Mills v. G. R. R., 25 I. C. C. 434, 435; Leach v. N. P. Ry. Co., 25 I. C. C. 275; In Re Wool, Hides and Pelts, 25 I. C. C. 185, 188; Atlas Lumber & Shingle Co. v. N. P. R. Co., 26 I. C. C. 313, 314; McLaughlin v. T. & P. Ry. Co., 26 I. C. C. 307, 308; Protection of Potato Shipments in Winter, 29 I. C. C. 504; McKendree v. S. P. Co., Unrep. Op. A-216; Smith System Heating Co. v. G. N. Ry. Co., Unrep. Op. A296; Hastings Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A399; Woods-Evertz Stove Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A469; Long & Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A486; New York Shippers' Protective

Asso. v. N. Y. C. & H. R. R. Co., 30 I. C. C. 437, 442; Rates on Bananas from Gulf Ports, 30 I. C. C. 510, 517; Dunnage Allowances, 30 I. C. C. 538, 542; Torrey Cedar Co. v. C. & N. W. Ry. Co., Unrep. Op. A-588; Gisholt Machine Co. v. C. & N. W. Ry. Co., Unrep. Op. A-618; H. T. & W. R. R. Co. v. D. & H. Co., Unrep. Op. A-639; Moerke v. C. & N. W. Ry. Unrep. Op. A-703, A-712; So. Pac. Co. v. Frye & Bruhn, (Wash., 1914), 143 Pac. 163, 165; American National Live Stock Asso. v. S. P. Co., 32 I. C. C. 515, 520; Beaumont Iron Works Co. v. G. C. & S. F. Ry. Co., Unrep. Op. A-853; Torrey Cedar Co. v. C. & N. W. Ry. Co., Unrep. Op. A-921; Pennsylvania Paraffine Works v. Penn. R. R., 34 I. C. C. 179, 188; Johnson v. S. P. Co., 33 I. C. C. 597, 600; American Fork & Hoe v. C. B. & Q. R. R. Co., Unrep. Op. 1838; Berkey & Gay Furniture Co. v. M. C. R. R. Co., Unrep. Op. 1911; Minneapolis Threshing Machine Co. v. M. & St. L. R. R., 37 I. C. C. 92, 93; Teasdale & Co. v. V. & S. W. Ry., 38 I. C. C. 565; Watters v. C. R. I. & P. Ry. Co., Unrep. Op. 2113; Keen Kleener Mfg. Co. v. C. R. I. & P. Ry. Co., Unrep. Op. 2243; Milwaukee Metal Bed Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 2194; Eagle Ice Co. v. C. M. & St. P. Ry. Co., 37 I. C. C. 250, 259; Lalance & Grosjean Mfg. Co. v. L. I. R. R. Co., 39 I. C. C. 637, 638; Keely v. C. G. W. R. R. Co., 42 I. C. C. 23; Furnishing Cars at Carrier's Convenience, 42 I. C. C. 379, 381; Pacific Lime & Gypsum Co. v. O. S. L. R. R. Co., 42 I. C. C. 734; Furnishing Cars at Carrier's Convenience, 42 I. C. C. 379; Swift & Co. v. C., B. & Q. R. R. Co., 43 I. C. C. 56, 58; Carload Minimum, 43 I. C. C. 259, 261; Western Trunk Line Rate Increases, 43 I. C. C. 481, 493; Wilcox Mercantile Co. v. Wabash R. R. Co. 44 I. C. C. 552, 553; Miller Saw Mill Co. v. C. M. & St. P. Ry., 45 I. C. C. 221, 222; Bowling v. M. K. & T. Ry., of Texas, 45 I. C. C. 473, 474; Page & Hill Co. v. G. N. Ry., 45 I. C. C. 547, 548; Markley & Co. v. C. N. O. & T. P. Ry., 45 I. C. C. 550, 560; Dietly v. N. Y. C. R. R., 46 I. C. C. 312, 317, 319; McFarland Lumber Co. v. St. L. S. W. Ry., 47 I. C. C. 225, 226; Cutler Magner Co. v. M. St. P. & S. S. M. Ry., 47 I. C. C. 249, 250; White v. U. P. R. R., 47 I. C. C. 261, 262; Dewey Bros. Co. v. P. C. C. & St. L. Ry., 48 I. C. C. 467; Swastika Fuel Co. v. A. T. & S. F. Ry. 49 I. C. C. 588; Davis Lumber Co. v. N. P. Ry. Co., 49 I. C. C. 407; Ft. Worth & D. C. Ry. Co. v. Strickland, (Tex. 1918), 208 S. W. 410; Phoenix Chair Co. v. C. & N. W. Ry., 51 I. C. C. 218; Missouri Pac. R. Co. v. Fields Bros., (Ark. 1918), 203 S. W. 1036; Cleveland Provision Co. v. A. A. R. R., 50 I. C. C. 293, 296, 297; Northwestern Trading Co., (Inc.), v. Adams Exp. Co., 51 I. C. C. 211, 213; Feltus Lumber Company v. G. N. Ry., 51 I. C. C. 571, 575; Northwestern Trading Co., Inc. v. Adams Express Co., 52 I. C. C. 552; Coulter v. C. M. & St. P. Ry., 55 I. C. C. 165; Northern Grain & Warehouse Co. v. Director General, 55 I. C. C. 488; Tull & Gibbs v. N. & W. Ry., 55 I. C. C. 17, 18; Consolidated Classification Case, 54 I. C. C. 24; Minimum Weight on Grain, 60 I. C. C. 318, 320; Northern Grain & Warehouse Co. v. S. P. & S. Ry. Co., 63 I. C. C. 205; Armour & Co. v. Director General, as Agent, 63 I. C. C. 369, 373; Substitution of Single-Deck Cars, 64 I. C. C. 251; Arizona Copper Co. v. Director General, as Agent, 73 I. C. C. 287; Peninsular Portland Cement Co. v. Director General, as Agent, 83 I. C. C. 10, 12, 13; Portland Flouring Mills Co. v. N. P. Ry. Co., 83 I. C. C. 366.

§8½. Fish Cars.

IMPORTANT CASES SINCE 1908

(a) Under contract specifying termination by either party on 60 days' notice, express companies supplied baggage cars which complainants equipped for transporting live fish. Express companies requested to return cars whereupon agreement terminated. Prayer that defendants cease and desist from taking cars and to continue to furnish. HELD, issue not within Commission's jurisdiction. Lay v. Amer. Exp. Co., 51 I. C. C. 373.

§9. Form and Time of Order.

See Infra §36; Evidence §36.

CASES 1887-1908

(a) In absence of custom, carrier need not notify shipper that it can not obtain cars for his freight; it is the duty of the shipper to obtain this information for himself. Riddle v. Baltimore & O. R. Co., 1 I. C. R. 701, 778.

(b) A statement of the evidence, from which it appears that it was the duty of the Yough Slope Mine, its owners and agents, to have inquired of the station agent of the railroad company near by the mine on the 30th day of August, 1887, and on the next day, by which they

would have learned that the mine could have obtained cars for the shipment of coal to Arthur & Boylan at Cleveland, Ohio, and they having failed to do this, in consequence of which the Youghiogheny and Ashtabula Mines received nearly all these cars for this purpose, without any partiality or preference on the part of the railroad company. HELD, upon these facts that a complaint of unjust discrimination against the Yough Slope Mine, and in favor of the Youghiogheny and Ashtabula Mines can not be sustained. Riddle, Dean & Co. v. Baltimore & Ohio R. R. Co., 1 I. C. R. 778.

(c) In the absence of some custom and rule of business placing such duty upon the carrier to notify the shipper, without inquiry on the part of the latter, of the fact that he can there obtain cars for the movement of his freight, it is the duty of the shipper, by reasonable inquiry made to the proper agent of the railroad company, to obtain this information for himself; but in a case like the present, if the carrier took upon itself the duty of actually notifying the Youghiogheny and Ashtabula Mines on the 30th of August, 1887, without waiting for any inquiry on their part, that they could get cars, then, in like manner, it was its duty to have notified the Yough Slope Mine at the same time that it could get cars. HELD, that, tested by these rules, no case of preference or unjust discrimination is made out by the evidence in favor of the Youghiogheny and Ashtabula Mines, and against the Yough Slope Mine. Riddle, Dean & Co. v. Baltimore & Ohio R. R. Co., 1 I. C. R. 778.

(d) A shipper is not bound by his order for a specified number of cars on a specified day, in the absence of an acceptance of the order so as to bind both parties. Missouri P. R. Co. v. Texas & P. R. Co. (C. C. E. D. La.), 4 I. C. R. 434.

IMPORTANT CASES SINCE 1908

(e) The effect of rules 35 and 80 in the proposed perishable freight tariff, requiring shippers to give advance notice of the type of equipment wanted for loading, is to require the shipper not only to give the carrier reasonable advance notice in writing that a car is wanted but also to specify at the same time the type of car and the kind of protective service, if any, that are desired. The Commission has frequently ruled that a carrier is entitled to such notice of a demand for a car. It is also reasonable that the carrier should know the kind of service that will be required. Perishable Freight Investigation, 56 I. C. C. 449, 554.

(f) At the time of the adoption of Circular CS-31, governing method for ordering cars for mines, no consideration was given to the length of time the rules were to be made operative, although the fact that the roads were being operated as a unit under federal control was a prime reason for the adoption. Fairmont & Cleveland Coal Co. v. B. & O. R. R. Co., 62 I. C. C. 269, 274.

ALL OTHER CITATIONS

Pope Manufacturing Co. v. B. &. O. R. R. Co., 17 I. C. C. 400, 403; Kaye & Carter Lumber Co. v. M. St. P. & S. Ste. M. Ry. Co., Unrep. Op. 159; Lamson Bros & Co. v. L. S. & M. S. Ry. Co., Unrep. Op. A-882; Ft. Worth & D. C. Ry. Co. v. Strickland, (Tex. 1918), 208 S. W. 410; N. W. Trading Co. v. Adams Exp. Co., 51 I. C. C. 211, 213; Perishable Freight Investigation, 56 I. C. C. 449, 557; Armour Grain Co. v. Director General, 57 I. C. C. 398, 403; Missouri Pac. R. Co. v. Henderson (Ark. 1923), 247 S. W. 1070.

§9¼. Gondola Cars.

IMPORTANT CASES SINCE 1908

(a) Complainant attacked the rate of $1.40 per ton on coal from Manitowoc, Wis., to St. Paul, Minn., assessed on two cars of coal, originating in West Va. The shipments were loaded in gondola cars. the sides of which exceeded 52 inches in height. The rate applied under the tariff on soft coal when loaded in cars exceeding 52 inches in height. It was alleged this rate was excessive to the extent it exceeded the rate of $1.15 applying on coal loaded in cars not exceeding 52 inches in height. (Since the filing of the complaint the two rates were increased to $1.25 and $1.50 respectively.) Gondola cars exceedingly 52 inches in height are hopper bottom cars of the battleship type. These cars are undesirable to defendant, since they are not adapted to the loading of commodities other than coal and it is impossible to find return loading for them. Defendant must pay per diem charges on them and bear the expense of returning them to connections. Gondola cars of other types may be used for other loading. The rate of $1.15 was established to meet com-

petition via Duluth, from which there is a rate of 90c to St. Paul, applicable to across lake traffic; that the $1.15 rate was restricted because it was so low as to be unprofitable if extended to shipments loaded in cars that could not be returned loaded. It was further stated that the difference of 25c in the rate was intended to be an embargo. HELD, that defendant's practice affecting the receipt and charge for the transportation of coal when loaded in gondola cars exceeding 52 inches in height constitute an unlawful and unreasonable regulation and restriction upon such traffic and the shippers thereof. Reparation awarded. C. G. Blake Co. v. M. St. P. S. S. M. Ry. Co., 32 I. C. C. 270.

ALL OTHER CITATIONS

Silica Sand Producers Asso. v. Director General, as Agent, 58 I. C. C. 549, 552.

§9½. Heater Cars.

See Heater Cars; Protective Service.

IMPORTANT CASES SINCE 1908

(a) Protection of potatoes and produce from frost can only be secured by use of heater cars or lined cars, and prompt unloading is necessary if demand is to be supplied. Providence Fruit & Produce Exchange v. M. C. R. R. Co., 36 I. C. C. 307, 310.

(b) But to obtain heater car service, the shipper should have tonnage sufficient to justify it. Longo Fruit Co. v. I. T. System, 38 I. C. C. 487, 489.

(c) Charges for heated car service, of 4c per 100 pounds, minimum of $12.00 per car, on interstate shipments, and 5c per 100 pounds, minimum of $15.00 per car, on interstate shipments with an additional charge of 1 cent per 100 pounds, or minimum of $3.00 per car for each additional state traveled, in connection with shipments of cheese from points in Wisconsin to various destinations not found unreasonable. Cheese Dealers Asso. Co. v. A. T. & S. F. Ry. Co., 40 I. C. C. 1.

(d) It does not appear that cheese is transported during the winter season under circumstances unlike those surrounding transportation of potatoes to warrant a charge for heated car service in one case and not in the other, when such service is requested by shipper. Charges not found unreasonable. Cheese Dealers Asso. v. A. T. & S. F. Ry. Co., 40 I. C. C. 1, 2, 3.

(e) A rental charge of $5 per car per trip for use of refrigerator or insulated car, when ordered by shippers, in transportation of fresh deciduous fruits from the northwest during months when heated car service is necessary held not unlawful or unjustly discriminatory. North Pacific Fruit Distributors v. N. P. Ry. Co., 40 I. C. C. 191.

(f) Competition, train loading, accessibility to large markets and other factors which are determinative of the reasonableness of rates for transportation of an article are not very pertinent in respect of whether heater car charges are reasonable, as to which the cost of the service plus a reasonable profit is the most important factor. Northern Potato Traffic Asso. v. C. & A. R. R., 44 I. C. C. 426, 435.

(g) While retaining for the carrier the present extra charge for heating service, on traffic moving from domestic points to interior Canadian points, tariff amendment proposes to relieve the carriers from all liability for loss or damage, although the extra charge is intended to compensate it for the element of risk involved. HELD, such a rule regarded as hostile to the Cummins amendment. Heated Car Service Regulations, 50 I. C. C. 620, 624.

(h) Portable heaters may be installed in any insulated car, and this is the usual practice in furnishing protection against cold; but in New England and to some extent in the northwest specially designed heater cars are employed. In refrigerator cars the heaters are usually placed in empty ice bunkers. Perishable Freight Investigation, 56 I. C. C. 449, 454.

(i) So little is involved on the part of the carrier in the provision of Shipper's Protective Service that it should be furnished wherever it may be desired. Perishable Freight Investigation, 56 I. C. C. 449, 474.

(j) Cost of fuel per trip, in heated-car service, not sufficient to affect the total cost of the service in an appreciable degree. Perishable Freight Investigation, 56 I. C. C. 449, 535.

(k) Interest on heater investment is an element of cost which ought to be included in the cost of, and estimate herein given found approximately accurate. Per-

ishable Freight Investigation, 56 I. C. C. 449, 538.

(l) Inherent qualities of the commodities should be taken into consideration in determining the charges for heater car service. Perishable Freight Investigation, 56 I. C. C. 449, 540.

(m) Rule 75, providing for substitution of artificial heat for refrigeration, or vice versa, on shipments while in transit, should be revised to permit a change from service under reasonable restrictions. Charge in connection with such changes should not exceed $7.50 per car. Perishable Freight Investigation, 56 I. C. C. 449, 562, 563.

(n) In a typical case a carrier proposed to establish for heater car service charges on less than carload traffic on its line and that of its line and that of the Mineral Range R. R. Prior to 1915 no additional charge was made by respondent for these protective services on less than carload traffic. Early in that year tariffs were published naming charges, ranging from 4 to 10 cents per 100 pounds, for less than carload refrigeration service. These charges remained in effect until Feb. 28, 1920, when they were canceled, but were re-established April 21, 1920. Protestants sole objection is to the proposed extension to the heater car service of the charge made for refrigeration service. The main factors of cost are heater or stove costs and depreciation, cost of fuel, labor hazard. The total actual average cost of the heater car service was estimated by respondent at about $2.03 per car. The cost of refrigeration was shown to be much more, the ice alone costing in excess of $18 per car, the total estimated cost per car being about $23.10. If the proposed charges for this service are approved, jobbers at Duluth will be at a disadvantage to the extent of the charge made for the heater service in competing with jobbers located at nearby distributing points on the lines of other carriers which publish no heater charges on this traffic. The present record affords no proper basis for a determination as to what the charges should be, even assuming that the line haul rates are not high enough to include the service. HELD the proposed charges have not been justified, and an order will be entered requiring the cancellation of the suspended tariff. Less carload refrigeration car protective service, 58 I. C. C. 731.

ALL OTHER CITATIONS

In Re Advances on Potatoes, 25 I. C. C. 159, 170; Ross v. M. C. R. R. Co. (Me. 1914), 90 Atl. 711, 713; Rules Governing the Transportation of Potatoes, 34 I. C. C. 255; Miller & Co. v. N. P. Ry., 34 I. C. C. 154, 157; Boston Potato Receivers' Assn. v. B. & A. R. R., 42 I. C. C. 454; New York & New Jersey Produce Co. v. N. Y. N. H. & H. R. R., 51 I. C. C. 399, 400; Perishable Freight Investigation, 56 I. C. C. 449, 454, 458, 536, 562; Carnation Milk products Co. v. A. T. & S. F. Ry. Co., 63 I. C. C. 60; American Fruit & Vegetable Asso. v. B. & A. R. R. Co., 68 I. C. C. 446.

§9⅝. Insulated or Refrigerator Cars.

See Infra §9⅞ (3); Insulated Cars; Refrigeration.

CASES 1887-1908

(a) A railroad company may provide refrigerator cars by purchase or by lease; and if the latter plan is adopted, it may make contracts with one company which exclude the use of cars owned by other companies. Re Transportation of Fruit, 10 I. C. C. 360.

(b) The respondent railroad companies may provide refrigerator cars by purchase or by lease, and if the latter plan is adopted they may make contracts with one company which exclude the use of cars owned by other companies. In the matter of charges for the transportation and refrigeration of fruit shipped from points on the P. M., and M. C., 10 I. C. C. 360, 373.

(c) It is the duty of the respondent railroad companies engaged as common carriers in transporting fruits from Michigan to furnish refrigeration cars for such service, but such duty arises out of their common law liability, not under the Act, and redress for failure to fulfill it must be sought in the courts. In the matter of charges for the transportation and refrigeration of fruit shipped from points on the P. M., and M. C., 10 I. C. C. 360, 373.

(d) Respondent railroad companies entered into contracts with the respondent, Armour Car Lines, to furnish them with refrigerator cars for use in the transportation of fruit from points in Michigan and to refrigerate the cars when used for such transportation. Under the contracts the use of other cars in that business is prohibited and the

service of refrigeration is performed exclusively by the Car Lines Company. The railroad companies formerly furnished refrigeration without any charge in addition to the freight rate, and they subsequently made a charge for refrigeration substantially equal to the cost of the icing. Acting under the contracts the Car Lines Company exacts charges for the refrigeration service which greatly exceeds those formerly made to cover the cost of icing by the railroad companies and range from 50 to 130 per cent above those made prior to the contracts by the Car Lines Company itself. The total cost of transportation to the shipper has been thereby largely increased. HELD, that the railroad companies, by making these exclusive contracts, in effect impose upon shippers exorbitant charges for the transportation of Michigan fruits to markets in other states in violation of section 1. Further action withheld to allow readjustment of charges by the respondent companies. In the matter of charges for the transportation and refrigeration of fruit shipped from points on the P. M. and M. C., 10 I. C. C. 360.

(e) During the performance of the transportation of a refrigerator car, it is to every practical intent the car of the railroad company using it, and its measure of responsibility as to the sufficiency of the car is the same, whether it obtains the car by purchase or lease. Matter of charges for transportation of fruit, 11 I. C. C. 129, 137.

(f) Railroad companies are required at common law to furnish suitable facilities for the conduct of the business in which they engage, and it follows that respondents, holding themselves out as carriers of perishable fruit, must provide the necessary refrigerator cars for the transportation of that traffic. Matter of charges for transportation of fruit, 11 I. C. C. 129, 136.

IMPORTANT CASES SINCE 1908

(g) When insulated cars are necessary for the carriage of perishable freight, compensation may be secured in one or two ways—either through the line haul rate, or by levying a separate charge. In the opinion of the Commission, the first method is desirable, for simplicity and convenience and because it accords with present practice, where special equipment is ordinarily required for safe transportation throughout the year or a greater portion of the year; but, a separate charge is preferable when the reverse is the case, both to avoid unlawful discrimination and also to discourage the use of the more costly cars when they are not reasonably necessary. Perishable Freight Investigation, 56 I. C. C. 449, 487.

(h) Insulated cars, where required for safe transportation, compensation should be secured through the line-haul rates. Where this is not the case, a special charge is preferable but should be fairly proportioned to the extent and cost of the service furnished. Perishable Freight Investigation, 56 I. C. C. 449, 486, 487, 614.

(i) Where insulated cars are ordinarily required for same transportation throughout the year, or the greater part of the year, compensation should be secured through the line haul rates. Where this is not the case a separate charge is preferable, but such a charge should be fairly apportioned to the extent and cost of the service. Perishable Freight Investigation, 56 I. C. C. 449, 614.

(j) On an amended record, and upon a finding that a refrigerator or other insulated car is the only proper and suitable car in which to transport potatoes during the entire year, it is HELD that the use of such equipment must be included in the line haul charge and a separate charge therefor is not authorized. J. C. Famechon Co. Hines, 187 N. W. 974.

ALL OTHER CITATIONS

Hale Halsell Grocery Co. v. M. K. & T. Ry., 42 I. C. C. 491; Graustein v. M. R. R., 45 I. C. C. 393, 403; The Car Peddling Case, 45 I. C. C. 494, 500; Perishable Freight Investigation, 56 I. C. C. 449, 488, 532, 540, 557; J. C. Famechon Co. v. Hines, 187 N. W. 974.

§9¾. Peddler Cars.

See Peddler Cars.

CASES 1887-1908

(a) Upon 17 carloads of bananas defendant allowed complainants to ship between May 1, 1902, and April 25, 1903, from Charleston to Lynchburg and unload half of the carloads at Danville, paying the Lynchburg rate plus the local rate on the half carloads carried from Lynchburg to Danville. This was in disregard of defendant's regulations and resulted in charges below those applicable

under defendant's published tariff. Complainants seek reparation upon the basis of the Lynchburg rate and defendant upon the basis of its tariff rate, but neither is entitled to recover. Gardner & Clark v. Southern R. Co., 10 I. C. C. 342.

(b) To permit one person to use the cars of a railroad company for a storehouse and to deny that privilege to another creates a discrimination between shippers which is often serious. Kehoe & Co. v. C. & W. C. R. Co., 11 I. C. C. 166, 170.

IMPORTANT CASES SINCE 1908

(c) The rule providing for the free return of accessories used for meats and perishable freight in peddler cars should be in consonance with the Cummins amendment. Western Trunk Line Rules, 34 I. C. C. 554, 568.

(d) No weight can be given to the comparisons of peddler cars with carload freight, where no evidence is introduced showing that the circumstances and conditions surrounding the two classes of traffic are substantially the same. Rates and Rules on Shipments of Packing-House Products, 36 I. C. C. 62, 67.

(e) The circumstances and conditions surrounding the shipment of packing-house products and fresh meats in peddler cars, and of other freight in ordinary merchandise cars, are so radically different, and the rules, regulations and requirements applicable thereto so dissimilar, that no decisive weight can be given to a contention that maintenance of a mileage scale is an unjust discrimination against shippers who use the latter service. Rates and Rules on Shipments of Packing-House Products, 36 I. C. C. 62, 69.

(f) Peddler cars are cleaned, precooled, and loaded by the shipper, move on stated days, and contain large quantities assembled in one car for delivery along the same route, the load decreasing as the haul progresses. Peddler Car Minimum, 43 I. C. C. 139, 140.

(g) The Commission considered the action of certain carriers in the middle west discontinuing the practice of permitting shippers or consignees to peddle or retail fruits, vegetables, or other commodities from cars in railroad yards. The practice had been indulged in by (1) Granges and similar associations of farmers, conducting their business without profit; (2) local merchants, jobbers, and wholesalers; and (3) itinerant merchants. Complainants contended that a shipper, after loading a freight car and shipping it to a desired destination, had a right to retail the contents to the public from the car while in the railroad yards or on a carrier's sidetrack; on the theory, that, as the carrier is paid under the rate for the first 48 hours and by demurrage for the further detention of the car, the shipper may use it as a place for conducting business transactions with the public for his own profit. Detention of cars for this purpose varied from 5 to 7 days, except that the former organizations were generally able to unload within the free time. The carriers objected that the vending of perishable commodities from cars delayed equipment, constituted "attractive nuisances" for children, drew to the carriers' premises persons who came on no business connected with transportation, congested terminals, increased the hazard of railroad operation, and monopolized side tracks to the exclusion of consignors and consignees. HELD (1) that no grounds had been shown for requiring the carriers to continue to permit the continuance of the practice involved; (2) that the carriers' tariffs were not a proper place for rules prohibiting the practice in future; (3) that the privilege, if accorded, was lawful only when affirmatively provided for in tariffs; (4) that continuance or discontinuance of the practice was a matter resting within the control of the carriers themselves, and not within the control of the Commission except to the extent that it might be accorded to some shippers and denied to others under conditions involving discrimination; and (5) that the according of the privilege to farmers associations while denying it in other cases mentioned did not, under the circumstances, appear to be unlawful or discriminatory. Complaint dismissed. The Car Peddling Case, 45 I. C. C. 494.

(h) The suggestion that the acquiescence in the practice of selling from the car throughout a substantial period of years, by the carriers in this limited section of the country, gives it the status of a transportation practice and confers upon the Commission the power, under section 15, to require its continuance on the theory that the withdrawal now of the privilege would be unreasonable, has no basis in reason or in authority. The Car Peddling Case, 45 I. C. C. 494, 500.

(i) The view that the use by shipper of a car on the carrier's tracks at destination as a place for peddling or vending to the public the carload shipment arriving therein, is a service of transportation has no sanction at common law or in the Act to regulate commerce; and the mere toleration by certain carriers through a period of years of such a use of their property affords no basis for a ruling that the practice has grown into a shipper's right and a carrier's duty. The Car Peddling Case, 45 I. C. C. 494, 500.

(j) Tariffs are not the proper place for rules prohibiting the practice of car peddling; on the other hand the privilege, if accorded to shippers, seems to be lawful only when provided for in the tariffs. The Car Peddling Case, 45 I. C. 494, 502.

(k) Benefits derived from car peddling are more or less incidental and local and can have but little weight when compared with the important economic necessity of keeping the car equipment of the carriers as active and free as possible. The Car Peddling Case, 45 I. C. C. 494, 503.

(l) The use of peddler cars in the distribution of fresh meats and packing-house products in less than carloads has become a well-settled practice in various sections of the United States. Swift & Co. v. P. C. C. & St. L. Ry., 48 I. C. C. 525, 526.

(m) Charges on l. c. l. shipments of packing-house products, fresh meats, and other commodities, in peddler cars, from Chicago, Ill., to points in Illinois and Indiana, found unreasonable to extent they exceeded a subsequently established minimum revenue for each peddler car, equivalent to the charges on 20,000 lbs. at the carload dressed beef rate from point of origin to the farthermost destination. Reparation awarded. Swift & Co. v. C. C. C. & St. L. Ry., 50 I. C. C. 211.

(n) There can be no question but that peddler cars with a light loading tends to inefficiency in the transportation system. Cleveland Provision Co. v. B. & O. R. R., 50 I. C. C. 612, 618.

(o) The peddler car, as a rule, is accorded somewhat greater expedition than the ordinary merchandise car. Expedition increases the cost of a given service and is also a thing of value to the shipper. However, these considerations are offset, at least to some extent, by the fact that the initial terminal services on a peddler car, with the exception of switching, whether it be that of the line-haul carrier or its connection, are performed by the shipper. Cleveland Prov. Co. v. B. & O. R. R., 50 I. C. C. 612, 618.

(p) The peddler car is a refrigerator car loaded by the packer at his packing house with l. c. l. consignments, placed in the car in station order, i. e., in the order in which the towns for which the consignments are intended will be reached, so that consignments may be unloaded by the crews as the various stations are reached progressively, with a minimum of trouble and delay. National Wholesale Grocers' Asso. v. Director General, 62 I. C. C. 375, 379, 380.

ALL OTHER CITATIONS

Rates on Packing-house Products, 28 I. C. C. 599, 600; Richmond Chamber of Commerce v. S. A. L. Ry. Co., 30 I. C. C. 552, 554; Rules Governing Shipments of Freight in Peddler Cars, 32 I. C. C. 428, 433; Sinclair & Co. v. C. M. & St. P. Ry., 48 I. C. C. 295; Swift & Co. v. P. C. C. & St. L. Ry., 48 I. C. C. 525, 527, 528; Wilson & Co., Inc., v. C. C. C. & St. L. Ry., 51 I. C. C. 153; Swift & Co. v. C. C. C. & St. L. Ry., 50 I. C. C. 211; Swift & Co. v. United States, 255 Fed. 291; National Wholesale Grocers' Asso. v. Director General, 62 I. C. C. 375, 402, 403, 475.

§9⅞. Miscellaneous Cars.

IMPORTANT CASES SINCE 1908

(a) Section 1 requires carriers to furnish refrigerator cars upon reasonable request therefor. Where a shipper's tonnage does not appear to be sufficient to warrant refrigerator or heated car service, the carriers may, with respect to such tonnage, lawfully exempt themselves from liability for freezing. Longo Fruit Co. v. I. T. System, 38 I. C. C. 487, 489.

(b) If carriers have suitable refrigerator cars to carry refrigerator freight, or will secure such cars, and furnish them on demand, they have the legal right to furnish them, and may refuse to transport shipments in privately owned cars. They are privileged at any time to fulfill their common carrier obligations in this regard. Simple tariff provisions with respect to the matter will enable carriers

to furnish their own cars to all shippers to transport perishable commodities. Armour & Co. v. E. P. & S. W. R. R., 52 I. C. C. 240, 246.

(c) The allowance paid by carriers for use of refrigerator cars are clearly subject to the Commission's jurisdiction. Section 15 of the Act to regulate commerce provides that if the owner of property furnishes an instrumentality of transportation the charge and allowance therefor shall be no more than just and reasonable, the Commission is empowered to determine what is a reasonable charge as a maximum to be paid by the carrier for the use of the instrumentality furnished. Furthermore, under the amendment to section 1 of the Act approved March 29, 1917, the Commission is given power to prescribe the compensation to be paid for the use of cars not owned by common carriers. Armour & Co. v. El Paso & S. W. R. R., 52 I. C. C. 240, 247.

§97/8. (1) Station-order Cars.

IMPORTANT CASES SINCE 1908

(a) A station-order car is one loaded with miscellaneous less-than-carload freight for two or more destinations on the same local freight train division. It differs from a trap car in that the purpose of the station-order car is to permit its being put into trains without rehandling at the railway's freight warehouse. Richmond Chamber of Commerce v. S. A. L. Ry. Co., 30 I. C. C. 552, 554.

§97/8. (2) Trap Cars.

See Trap Cars.

IMPORTANT CASES SINCE 1908

(a) A trap-car loaded with one or more less-than-carload shipments at points on private or assigned sidings, for distribution at the railway freight warehouses into regular package or other cars for forwarding. Richmond Chamber of Commerce v. S. A. L. Ry. Co., 30 I. C. C. 552, 554.

§97/8. (3) Stock Cars.

See Refrigeration; Supra §97/8.

CASES 1887-1908

(a) The Burton Stock Car Company, which furnishes special improved live stock cars owned by it, to shippers over railroads, does not exchange with or use cars belonging to others, and is in no sense a "connecting line," entitled to equal facilities for interchange of traffic, under paragraph 2 of section 3 of the Act to Regulate Commerce. Burton Stock Car Co. v. Chic., B. & Q. R. R. Co., 1 I. C. R., 329.

(b) The Burton Stock Car Company is not entitled to claim that it is unjustly discriminated against by a refusal on the part of railroad companies to pay it the same rate of mileage which carriers adopt as the basis in adjusting their car service accounts with each other. Burton Stock Car Co. v. Chic., B. & Q. R. R. Co., 1 I. C. R. 329.

(c) The expense of hauling the Burton cars in one direction empty (for the reason that by their construction they are not suited to carrying general freight) as compared with the greater ability to load back the ordinary railroad cattle cars, and the fact that a large percentage of the ordinary cattle cars are so back-loaded upon the long hauls of western roads, are considerations which justify a difference in charge against shippers who prefer to hire the improved stock cars. Burton Stock Car Co. v. Chic., B. & Q. R. R. Co., 1 I. C. R. 329.

(d) A shipper is not entitled to have his cattle carried in cars of a special construction of his selection, belonging to a third party and superior to ordinary cattle cars, by reason of the fact that the carrier transports some cattle in other cars, available to all shippers equally, which have some of the improvements of the former, but are furnished by another party under a special contract, and which, unlike the cars desired by the shipper by reason of their peculiar construction, can be used in the chief business of the road,—that of carrying coal,—when not in use for cattle. The refusal to use the cars desired by the shipper does not constitute unjust discrimination. Re Morris v. D. L. & W. R. Co., 2 I. C. R. 617.

(da) Railroad companies are required at common law to furnish suitable facilities for the conduct of the business in which they engage, and it follows that the respondent railroad companies, holding themselves out as carriers of perishable fruit, must provide the necessary refrigerator cars for the transportation of that traffic. Re Changes for the Transportation and Refrigeration of Fruit Shipped from Points on the Pere Marquette and Michigan Central Railroads, 11 I. C. C. 129.

IMPORTANT CASES SINCE 1908

(e) Respondents proposed to establish a $10 rental charge on refrigerator cars owned by the A. R. T. Co., S. F. R. D., Armour Car Lines, Swift & Co., P. F. E., I. C. R. R., and U. R .T. when such cars are used in so-called local service from Pittsburgh, Pa., to destinations in c. f. a. territory. Prior to July 17 1922, the exceptions to the official classification provided for the application at Pittsburgh and one or two other points not here in issue of a charge of $10 per car for the use of certain privately owned refrigerator cars when received loaded at such points, portion of load removed, other perishable freight loaded in the car, and the same reforwarded to destinations in central territory. Effective on that date, the charge was eliminated on shipments from Pittsburgh, and to correct an alleged error the schedules suspended herein were published. Because of the unjust discriminations which would result from the application as proposed from one point only they have not been justified. HELD, suspended schedules should be canceled. Car rental charges on private line refrigerator cars, 74 I. C. C. 107.

(f) The Commission is without authority to require carriers to acquire refrigerator cars for use in express service. Although the law has been changed since 44 I. C. C. 645, 649, the provision under the act under which the Commission may require carriers to equip themselves with adequate facilities for performing their car service applies only to common carriers by railroad. The express company is not a carrier by railroad. C. C. Oyler & Son v. American Railway Express Co., 83 I. C. C. 160, 162.

ALL OTHER CITATIONS

Longo Fruit Co. v. I. T. System, 38 I. C. C. 487, 489; Gamble Robinson Commission Co. v. A. & B. R. Ry., 50 I. C. C. 324; Armour & Co. v. E. P. & S. W. R. R., 52 I. C. C. 240, 246, 247; Commercial Club of Greeley v. C. & S. Ry. Co., 53 I. C. C. 66, 71; Northern Potato Traffic Asso. v. C. & N. W. Ry. Co., 53 I. C. C. 100, 101.

§10. Tank Cars.

See Infra §17; Tank Cars.

CASES 1887-1908

(a) Neither the fact that the shipper in the one case supplies the rolling stock, nor the alleged fact—which is not found sustained—that for the tanks there is a greater probability of return loads, nor the further alleged fact that with barrel shipments there are greater risks to the carrier's property and that which it carries, can justify imposing upon the barrel shipments the greater burden. Rice v. Louisville & Nash R. R. Co., 1 I. C. R. 722.

(b) When oil is transported in tanks permanently affixed to car bodies, the tank is to be considered as part of the car; and for oil transported therein the charge for transportation should be the same by the hundred pounds that the carrier charges for transportation between the same points, of barrels filled with like oil and taken in car load lots. The carrier is guilty of unjust discrimination if the shipper in barrels is charged a higher rate. Rice v. Louisville & Nash. R. R. Co., 1 I. C. R. 722.

(c) When for a special traffic—e. g. the transportation of petroleum oils—a carrier provides rolling stock for one method, but does not provide it for another for which it publishes rates, but the shippers are expected to provide the same, the terms on which such rolling stock is to be provided should be uniform and be published with the rate sheets, and cannot lawfully be left to be the subject of bargain and of different terms in the case of different shippers. Rice v. Louisville & Nashville R. R. Co., 1 I. C. R. 722.

(d) Allowance can be made to owners of tank cars for their use. Rice v. Louisville & Nashville R. Co., 1 I. C. R. 722.

(e) A carrier that employs different methods for the transportation of petroleum oil and its products, in carloads,—for example, tank cars in which the oil is carried in bulk, and box cars in which the oil is carried in barrels,—is not relieved from its duty in respect to equality of rates by the difference it makes between its patrons in the mode of carriage, but its charges for like quantities carried between like points of shipment and destination must be equal upon the commodity itself, irrespective of the mode of carriage of the tank or barrel package in which it is contained. Differences in circumstances and conditions of transportation that are of a carrier's own creation or connivance, or that by reason-

able effort on the part of a carrier might be avoided, cannot justify exceptional rates. Rice, Robinson & Witherop v. W. N. Y. & P. R. Co., 3 I. C. R. 162.

(f) The allowance by a carrier to a shipper of oil in tanks, of 42 gallons, or any number of gallons, from the actual quantity put in a tank, for alleged leakage or waste in transportation, is, in the absence of a corresponding allowance to shippers in barrels, unjust discrimination and unlawful. Rice, Robinson & Witherop v. W. N. Y. & P. R. Co., 3 I. C. R. 162.

(g) The fact that a carrier does not own tank cars, but accepts and uses such cars supplied by some of its patrons for their own traffic, is unimportant so far as rates are concerned. It is a carrier's duty to equip its road with instrumentalities of carriage suitable for the traffic it undertakes to carry, and to furnish them alike to all who have occasion for their use, and its duty to furnish equipment cannot be transferred to nor required of shippers. When a carrier accepts and uses cars for transportation owned by shippers or others, in legal contemplation it adopts them as its own for purposes of rates and carriage, and neither the manner of acquiring cars, nor inability to furnish its general patrons the use of cars similar to those furnished by some shippers for their own traffic, can excuse or justify a carrier for discrimination in rates that may give one shipper advantages over another; nor can any device, such as payment of unreasonable rent for use of cars furnished by shippers, be practiced to evade the duty of equal charges for equal service. Rice, Robinson & Witherop v. W. N. Y & P. R. Co., 3 I. C. R. 162.

(h) An allegation of unjust discrimination resulting from shipments of oil in tank cars owned by the shipper, and low return rates on cotton-seed oil and turpentine in the same tanks, in connection with mileage paid for use of tank cars, cannot be sustained without evidence showing mutuality of interest between the two classes of shippers or the payment of excessive car mileage. Rice v. Cincinnati, W. & B. R. Co. (Com.), 3 I. C. R. 841.

(i) Where oil is transported by the carrier both in barrels and tank cars and the use of the tank cars is not open to shippers impartially but is practically limited to one class of shippers, the charge for the barrel package in barrel shipments in the absence of a corresponding charge on tank shipments, resulting in a greater cost of transportation to the shipper in barrels on like quantities of oil between like points of shipment and destination than to the tank shipper, is a discrimination against the former in favor of the latter, for which no legal justification has been shown in these cases. Independent Refiners' Asso v. Western New York & P. R. Co., 4 I. C. R. 162.

(j) Initial carriers who fail to furnish impartially to shippers tank cars for oil, in consequence of which the latter are required to ship oil in barrels, are severally liable for the damages resulting therefrom, under the Act to Regulate Commerce, § 8, providing that "any common carrier" subject to the provisions of such act shall be liable for the "full amount" of damages caused by its violation of the provisions of such act. Independent Ref. Asso. v. Western N. Y. & P. R. Co., 6 I. C. C. 162.

(k) A common carrier which charges for carrying barrel packages of oil when the use of tank cars for such shipment has not been open to shippers impartially, in consequence of which they have been deprived of the use of such cars, will be required to refund the amount received for the transportation of the barrels. Independent Ref. Asso. v. Western N. Y. & P. R. Co., 6 I. C. C. 378.

(l) It appearing that defendants are and have been able to furnish a large number of tank cars for the shipment of petroleum oil, and that defendants' liability to make reparation to claimants in this case under the order of the Commission of November 14, 1892, depends upon whether the use of tank cars for shipments of oil over the defendant roads, or by the "Green Line," has been open to the claimants, or, if so, whether the delivering carrier made this privilege useless to claimants through discriminating exactions imposed at the terminal point; and, it also appearing that the claims in this case require separate investigation, and that the present record does not enable the Commission to determine whether any of such claims are supported by facts as would bring them within the terms of the order of November 14, 1892. HELD, that claimants' further remedy is by proceeding in the courts under section 16 of the Act

to Regulate Commerce. Independent Refiners Asso. v. Pennsylvania R. Co., 6 I. C. C. 449.

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(m) Whatever the facts may have been which have led up to the present private ownership of tank cars, the fact remains that it is the duty of the carriers to furnish such cars, and sound public policy demands that this duty should be performed in order that all shippers may be served equally well. In the Matter of Demurrage Charges on Privately Owned Tank Cars, 13 I. C. C. 378, 381.

(n) Tank cars are an absolute necessity for transportation of refined products, and their use effects an economic gain. Pennsylvania Paraffine Works v. P. R. R. Co., 34 I. C. C. 179, 181.

(o) It can not be contended that transportation by rail of oil in bulk could be attempted safely in any other equipment than tank cars. Pennsylvania Paraffine Works v. P. R. R. Co., 34 I. C. C. 179, 187.

(p) The shipper who is assured of the exclusive use of a tank car and consequently of the condition of the tank for the receipt of his lading, enjoys an advantage not afforded by a system in which, if the cars were furnished by railroads, he would not have such exclusive use of the car, and for this advantage the shipper ought to bear some proportion of the cost of ownership and maintenance. In Re Private Cars, 50 I. C. C. 652, 681.

(q) The Interstate Commerce Commission was given no power to order a carrier to provide and furnish to shippers tank cars for interstate shipments of petroleum products by the amendment of the Act defining the term "transportation" as including "cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported," and making it the duty of every carrier subject to the provisions of the Act "to provide and furnish such transportation upon reasonable request therefor," although by §12 as amended by the Act of March 2, 1889, the Commission was authorized and required to execute and enforce the provisions of the Act, and by §13 as amended by the Act of June 18, 1910, was given power to enter orders not only regarding rates, but regarding classifications, regulations, or practices, whether affecting rates or not. If any duty to furnish such cars exists, it is enforceable in the courts, not by the Commission. United States v. Pennsylvania R. R., 37 Sup. Ct. 95, 242 U. S. 208, 61 L. Ed. 251.

(r) Carriers do not undertake to furnish tank cars for shippers; when such equipment is required, it is obtained upon an order or at the special request of the shipper. American Milling Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 384.

ALL OTHER CITATIONS

Fairmont Creamery Co. v. A. T. & S. F. Ry. Co., 29 I. C. C. 661, 662; Marshall Oil Co. v. C. G. W. R. R. Co., 28 I. C. C. 707, 708; Coalinga Water & Electric Co. v. G. C. & S. F. Ry. Co., Unrep. Op. A-871; Pennsylvania Paraffine Works v. Penn. R. R., 34 I. C. C. 179, 193; Pennsylvania Paraffine Works v. P. R. R. Co., 34 I. C. C. 179, 180; Lewis Mfg. Company v. W. R. R. Company., Unrep. Op. 2118; Pennsylvania R. Company, v. United States, 227 Fed. 911, 914; National Petroleum Asso. v. A. T. & S. F. Ry. Co., 38 I. C. C. 65, 69, 70, 71, 72; Kistler, Lesh & Co. v. A. G. S. R. R. Co., 39 I. C. C. 478, 480; Oklahoma Cottonseed Crushers' Asso. v. M. K. & T. Ry. Co., 39 I. C. C. 497, 508; Hubinger Bros. Co. v. A. T. & S. F. Ry. Co., 39 I. C. C. 672; Lewis Mfg. Co. v. C. B. & Q. R. R. Co., 41 I. C. C. 671, 672; Lachman & Co. v. S. P. Co., 42 I. C. C. 440, 445, 446; Petroleum to Kentucky Stations, 43 I. C. C. 35, 39; National Syrup Co. v. C. & N. W. Ry., 43 I. C. C. 228; Scully Syrup Co. v. A. G. S. R. R. Co., 43 I. C. C. 567, 574; Fuller & Co. v. A. T. & S. F. Ry., 44 I. C. C. 519; Lange Soap Co. v. G. H. & S. A. Ry., 45 I. C. C. 542, 543, 544; Western Grain & Sugar Products Co. v. B. & O. R. R., 45 I. C. C. 127, 130; In Re Private Cars, 50 I. C. C. 652, 671, 688, 695, 709; Gustafson et al v. Michigan Cent. R. Co. (Ill. 1920), 129 N. E. 516; Standard Oil Co. v. A. E. R. R. Co., 78 I. C. C. 705; National Petroleum Asso. v. Director General, as Agent, 78 I. C. C. 711.

§10½. Private Cars.

See Infra §13; §31; Supra §4; Common Carrier §6; Private Cars.

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(a) It is properly the business of a carrier by railroad to supply the rolling stock for the freights he offers or proposes to carry; and if the diversities and peculiarities of traffic are such that this is not always practicable, and consignors are allowed to supply it for themselves, the carrier must not allow its own deficiencies in this particular to be made the means of putting at unreasonable disadvantage those who make use in the same traffic of the facilities it supplies, Rice v. Louisville & Nashville R. R. Co., 1 I. C. R. 722.

(b) The law does not forbid a carrier from obtaining cars from a shipper for the transportation of such shipper's freight over its line, but in every such instance, after deducting a reasonable rent published in the tariff as part of the rate and paid by the carrier to the shippers for the use of such cars, the rates must be exactly the same, and none other, as upon freight transported in the same service in the carrier's own cars; and in every such transaction the carrier at its peril, must see to it that a shipper furnishing his own cars, receives no other or different rates than other shippers who use the cars of the carrier for a similar service. Scofield v. Lake Shore & Michigan Southern R. Co., 2 I. C. R. 67.

(c) Ownership of a car rented to a carrier and for the use of which the carrier pays a full consideration, does not of itself entitle the owner to the exclusive use of such car, and, if the owner may in the contract of hire to the carrier stipulate for the exclusive use of the car, it must be under such terms as shall not constitute an unjust discrimination against shippers of like traffic in cars owned by the carrier and who are excluded from the use of the car so hired. Independent Refiners' Asso. v. W. N. Y. & P. R. Co., 4 I. C. C. 162, 170.

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(d) An important part of interstate commerce is transported in privately owned cars. It is to the interest of the owners, carriers, and public that their operation should be continued, under such rules and regulations as will insure their efficient handling without discrimination against any shipper or particular description of traffic. In Re Private Cars, 50 I. C. C. 652.

(e) In Sections 1 and 15 Congress has recognized the use of privately owned cars in transporting the commerce of the country, and has provided for their control by the Commission through rules and regulations of carriers hauling them. In the Matter of Private Cars, 50 I. C. C. 652, 672.

(f) The private-car owner has no right to demand that his cars be transported over lines of a carrier which has not consented thereto. Obligation of furnishing an adequate supply of equipment by statute rests upon carrier, and does not rest upon shipper. The duty can not be transferred to nor required of shipper. Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 555.

(g) Carrier, in permitting use of a private car over its lines, must at its peril see that use of the vehicle does not permit, excuse, or justify discrimination, preference, or advantage in favor of owner of the private car, regardless of present ability of carrier to furnish on demand an adequate supply of equipment needed for transportation. Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 557.

ALL OTHER CITATIONS

The Five Per Cent Case, 31 I. C. C. 351, 410; Pennsylvania Paraffine Works v. P. R. R. Co., 34 I. C. C. 179, 193, 194; In the Matter of Private Cars, 50 I. C. C. 652, 673, 675, 677, 680, 686, 709; Armour & Co. v. E. P. & S. W. R. R., 52 I. C. C. 240, 245; Pacific Engineering & Construction Co. v. C. R. I. & P. Ry., 56 I. C. C. 247, 249; Perishable Freight Investigation, 56 I. C. C. 449, 455; Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 546, 557.

§10¾. Pool Cars.

See Pool Cars.

IMPORTANT CASES SINCE 1908

(a) Many so-called pool cars are consigned to transfer companies, warehouses, and distributing agencies on Pacific coast. Furniture Mfrs. Asso. of Grand Rapids v. A. A. R. R. Co., 34 I. C. C. 262, 265.

(b) From southern Illinois to Chicago there is considerable movement of fruits and vegetables in "pool" cars, loaded with l. c. l. shipments from various shippers, consolidated into carload lots and forwarded on basis of carload rates. Business Men's League of St. Louis v. A. T. & S. F. Ry., 44 I. C. C. 308, 315.

§11. At Transit Point.

IMPORTANT CASES SINCE 1908

(a) The refusal to furnish cars for the outbound movement of grain milled in transit amounts to a failure to furnish transportation in violation of section 1. Brook-Rauch Mill & Elevator Co. v. St. L. I. M. & S. Ry. Co., 21 I. C. C. 651, 654.

(b) Complainant shipped a carload of corn from Omaha, Neb., to Little Rock, Ark., over the St. L. I. M. & S. R. R., to be there milled and reshipped to Fordyce, Ark., over the Cotton Belt R. R. The shipment moved under a tariff naming a through rate from Omaha to Fordyce via Argenta, Ark., to which the inbound and outbound carriers were parties. In connection with a later tariff granting transit privileges at Little Rock, a point not on the Cotton Belt's line, its junction with the St. L. I. M. & S. R. R. being at Argenta. To this later tariff the Cotton Belt was not a party. Both carriers refused to furnish transportation equipment for the outbound movement from Little Rock, each claiming it was the duty of the other to do so. HELD, that the Cotton Belt's obligation under the tariff to which it was a party does not accrue until delivery to its own rails, and the duty to furnish equipment for outbound movements from complainant's mill rests upon the inbound carrier, the St. L. I. M. & S. R. R. Brook-Rauch Mill & Elevator Co. v. St. L. I. M. & S. Ry. Co., 21 I. C. C. 651, 656.

ALL OTHER CITATIONS

Peck v. A. T. & S. F. Ry. Co., Unrep. Op. A-923.

§11½. Leased Cars.

See Leased Cars.

CASES 1887-1908

(a) The law does not forbid a carrier from obtaining cars for the transportation of freight over its line from other carriers, or car furnishing companies, but in every such instance the rates of freight must be exactly the same, and none other, as they would be if such cars were owned by the carrier so using them. Scofield v. L. S. & M. S. R. R., 2 I. C. C. 67, 76.

(b) A railroad company may acquire cars by construction, by purchase or by contract for their use, and no one has the power to compel a railroad company to select among these several modes or to contract with all comers. Worcester Excursion Car Co. v. Pennsylvania R. Co., 2 I. C. R. 792.

(c) Carriers are left by law to procure equipment for their business by lease or otherwise. They are not prohibited from leasing cars belonging to a shipper, nor are they compelled to contract in this respect with all shippers because they do with one. Consolidated Forwarding Co. v. Southern P. Co., 9 I. C. C. 182.

(d) During performance of transportation the car is, to every practical intent, the car of the railroad company using it, and its measure of responsibility as to the sufficiency of the car is the same, whether it obtains the car by purchase or by lease. Re Charges for Transportation and Refrigeration of Fruit Shipped from Points on the Pere Marquette and Michigan Central Railroads, 11 I. C. C. 129.

IMPORTANT CASES SINCE 1908

(e) Carriers should lease cars only upon such terms as permit them to furnish cars without discrimination. Pennsylvania Paraffine Works v. P. R. R. Co., 34 I. C. C. 179, 194.

(f) The leased-car system is inconsistent with the per car system. The two can not with justice to all shippers be maintained contemporaneously by carriers in New England. Inasmuch as the two systems can not be operated at the same time with just and reasonable rates and regulations applicable to each, the one which confers special privileges on particular shippers must give way in the interests of the general shipping public. New England Milk Case, 40 I. C. C. 699, 731.

(g) Stock cars which are leased to railroad companies under contract are really railroad cars when used by carriers and are treated as such by connections. In Re Private Cars, 50 I. C. C. 652, 663.

(h) Under the law as construed by the courts, car lines and others engaged in leasing cars to shippers are not common carriers and thus do not come under direct control by the Commission. In Re Private Cars, 50 I. C. C. 652, 677.

(i) The computation of mileage as a basis of payment for private cars should be upon the distance of the haul, with reference to distance tables established by carriers. In Re Private Cars, 50 I. C. C. 652, 686.

(j) Under circumstances shown, shippers should be permitted to lease cars to transport shipments in interstate commerce from sources independent of carriers by railroad. In Re Private Cars, 50 I. C. C. 652, 675, 709.

ALL OTHER CITATIONS

Southwestern Missouri Millers' Club v. St. L. & S. F. R. R. Co., 26 I. C. C. 245, 251; New England Milk Case, 40 I. C. C. 699, 723, 733; Car Supply Investigation, 42 I. C. C. 657, 676.

§11¾. Rental Charges.

See Cars and Cars Supply §11⅞.

CASES 1887-1908

(a) The mileage rate of ¾ of a cent per mile run, which is customary among railroads, for freight cars of other railroad companies used upon the paying company's line, and which payment is, by the interchange of cars, practically equalized among the different roads, is not to be taken as the measure of payment for the use of cars belonging to other persons than railroad companies. Burton Stock Car Co. v. Chic., B. & Q. R. R. Co., I. C. R. 329.

(b) Burton Stock Car Company, which furnishes stock cars to shippers over railroad, does not exchange with or use cars belonging to others, and is not a connecting line entitled to equal facilities for interchange of traffic under section 3, par. 2 of Act. Burton Stock Car Co. v. Chicago etc. R. R. Co., 1 I. C. R. 329.

(c) The Burton Stock Car Company is not unjustly discriminated against by refusal of railroad companies to pay same rate of mileage for its cars as for ordinary freight cars. Burton Stock Car Co. v. Chicago etc. R. R. Co., I. C. R. 329.

(d) Customary mileage rate for freight cars of other railway companies used upon paying company's line, and which payment is, by interchange of cars, practically equalized among different roads, is not the measure of payment for the use of cars belonging to other persons than railroad companies. Burton Stock Car Co. v. Chicago etc. R. R. Co., 1 I. C. R. 329.

(e) Complainant attacked the tariff of the defendant which provides an additional charge to the shipper when his stock is loaded for transportation in private cars owned by complainant, and also attacked the refusal of defendant to allow mileage of three-quarters of one cent per mile per car when cars of complainant are on the rails of defendant. HELD, the mileage rate of ¾ of a cent per mile run, which is customary among railroads, for freight cars of other railroad companies used upon the paying companies line, and which payment is, by the interchange of cars, practically equalized among the different roads, is not to be taken as the measure of payment for the use of cars belonging to other persons than railroad companies. The complainant, which furnishes special improved livestock cars owned by it, to shippers over railroads, does not exchange with or use cars belonging to others, and is in no sense a connecting line, entitled to equal facilities for interchange of traffic, under paragraph 2 of section 3 of the act. The complainant is not entitled to claim that it is unjustly discriminated against by a refusal on the part of railroad companies to pay it the same rate of mileage which carriers adopt as the basis in adjusting their car service accounts with each other. The expense of hauling complainants cars in one direction empty (for the reason that by their construction they are not suited to carrying general freight) as compared with the greater ability to load back the ordinary cattle cars and the fact that a large percentage of the ordinary cars are so backloaded upon the long hauls of western roads, are considerations which justify a difference in charge against shippers who prefer to hire the improved stock cars. Doubted (but not decided) whether the extra charges made to shippers of livestock in special cars over thirty feet in length are not unreasonable. Burton Stock Car Co. v. C. B. & Q. R. R., 1 I. C. C. 329, 353.

(f) A firm of cattle dealers in New York, who procured their cattle on a large scale from Chicago and other western points for domestic consumption as well as for export, made an arrangement with two interstate rail carriers constituting a through line from Chicago to New York that the said firm will, under the name of an express company of their own creation, furnish not less than 200 or more than 400 improved livestock cars for the transportation of these cattle. For the rental of these improved stock cars the carriers pay this express company ¾ of a cent per mile,

whether loaded or empty. Extraordinary facilities and rights of way are given these cars to enable them to make a heavy mileage, and they make more than twice the mileage of ordinary stock cars. Besides this, the carriers pay 50 cents for the loading of each of said cars with cattle at the Union Stock Yards in Chicago, for which no charge is made against the express company or the firm represented by it. In addition to this, the carriers pay this firm yardage at the rate of 3½ cents per hundred pounds on all their cattle, and upon all other cattle hauled for other firms in the care of this firm, owning the express company, to its yards at pier 45, East River. This yardage charge is thus paid to the said firm by the said carriers for keeping their cattle in the firm's own yards after delivery of them to the firm, and then this yardage charge deducted from the tariff rate charged by the carrier. The amount of these rebates to this firm in rates on these cattle by these carriers more than pays the entire cost of the improved stock cars within two years after operations are commenced with them, including the expenses of operation, leaving said firm owning the cars and still operating them with all these advantages and rates and facilities. HELD, this is an unlawful preference to the firm owning these improved stock cars and a violation of the act; it is an unlawful and unjust prejudice to other cattle firms and dealers in New Yrok who are competitors in the business of said firm owning said improved stock cars. Shamberg v. D. L. & W. R. Co., 3 I. C. C. 502.

(g) A railroad which accepts freight in the cars of a connecting road, and transports it therein, when it has cars of its own not in use, is not liable for mileage upon such cars, in the absence of an arrangement to that effect; but the existing custom that when a railroad takes the freight in the foreign cars because it has none of its own out of use, or because the freight would be injured by the transfer, it shall pay certain mileage on the cars used, is reasonable and will be enforced. Oregon Short Line & U. N. R. Co. v. N. P. R. R. Co. (C. C. D. Ore.), 4 I. C. R. 249.

(h) Where a carrier pays mileage for a car which it employs in the service of shippers, it is the carrier, and not the party or company from whom the car is rented, who furnishes the car to the shipper, and in such case there is no privity of contract between the car owner and the shipper. Truck Farmers' Asso. v. Northeastern R. R. Co. et al., 6 I. C. C. 295.

IMPORTANT CASES SINCE 1908

(i) An attempt to fix a stated basis of allowances for use of privately owned cars would by no means result in justice to all owners or to all carriers. In Re Private Cars, 50 I. C. C. 652, 683.

(j) The allowance that should be paid for the use of private cars under all circumstances and conditions must be considered on the average. In Re Private Cars, 50 I. C. C. 652, 683.

(k) Carriers should at least pay for repairs and such depreciation as occurs while the car is in railroad service. In Re Private Cars, 50 I. C. C. 652, 683.

(l) Payments by carriers for the use of private cars should be upon the basis of the loaded and empty mileage, and the mileage should be computed on the basis of distance tables without the elimination of mileage through switching districts. In Re Private Cars, 50 I. C. C. 652, 686, 709.

(m) Proposed $10 car-rental charge to be applied on certain privately owned refrigerator cars when used in so-called local service from Pittsburgh, Pa., to destinations in c. f. a. territory, found not justified. Unjust discrimination would result, as the charge would apply only on the lines of the Pennsylvania to points in c. f. a. territory, and not via other lines which also serve the same destination territory from Pittsburg. Furthermore, the charge is not made or proposed to points on the Pennsylvania lines east of Pittsburgh to which shipments of the same character may be forwarded from Pittsburgh in cars of identical ownership. Car Rental Charges on Private Line Cars, 74 I. C. C. 107.

(n) By paragraph (14) of section 1 of the Act the Commission is given jurisdiction to establish reasonable rules, regulations, and practices with respect to car service, including compensation to be paid for use of any car not owned by carrier using it. Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 557.

ALL OTHER CITATIONS

North Pacific Fruit Distributors v. N. P. Ry., 40 I. C. C. 191; Business Men's League of St. Louis v. A., T. & S. F.

Ry., 44 I. C. C. 308, 318, 324; Northern Potato Traffic Asso. v. C. & A. R. R., 44 I. C. C. 426, 433; Hale-Halsell Grocery Co. v. M., K. & T. Ry., 45 I. C. C. 523, 526; Express Charges on Empty Fish Cars, 50 I. C. C. 24; Northern Potato Traffic Asso. v. G. N. Ry. Co., 58 I. C. C. 360, 362.

§11⅞. Per Diem Charges.

See Cars and Car Supply §11¾; Per Diem.

CASES 1887-1908

(a) A private company owning live stock cars is not unjustly discriminated against by refusal of railroad companies to pay same rate of mileage for its cars as for ordinary freight cars. Burton Stock Car Co. v. Chicago etc. R. R. Co., 1 I. C. R. 329.

(aa) A carrier is at liberty, and will be expected, to make to the owner of tank cars a reasonable allowance for their use. Rice v. Louisville & Nash. R. R. Co., 1 I. C. R. 722.

(ab) Where a carrier pays mileage for a car which it employs in the service of shippers, it is the carrier, and not the party or company from whom the car is rented, who furnishes the car to the shipper, and in such case there is no privity of contract between the car owner and the shipper. Truck Farmers' Asso. v. Northwestern R. R. Co., 6 I. C. C. 295, 316.

IMPORTANT CASES SINCE 1908

(b) The theory of paying allowance for empty movement presupposes a loaded movement. While the equalization rule has been gradually broadened so that the loaded mileage accruing during a designated period on the entire line of the carrier individually, or jointly, when mileage accounts are computed jointly, it never contemplated paying mileage on new or newly acquired empty tank cars before they are put into actual service and such movements have always been treated like any other freight. Chanute Refining Co. v. A., T. & S. F. Ry., 52 I. C. C. 593, 595.

(c) The reclaim arrangement is in substance merely a matter of accounting between the carriers and it does not relieve the shipper of the obligation to pay what the service is reasonably worth. However, all per diem arrangements between carriers under federal control have now been discontinued under G. O. 31. Mercantile Lumber Co. v. I. C., 53 I. C. C. 663, 667.

(d) One of the primary purposes of the per diem arrangement is to increase the use of freight equipment through expediting its movement and avoiding detention. Although the charge is intended to cover the cost of ownership, including maintenance, depreciation, taxes, interest, and other allocations incident to ownership, per diem savors of a penalty. New England Divisions, 62 I. C. C. 513, 538.

(e) Payment of per diem reclaims to industrial railroads may result in preferences and advantages to the proprietary industries, and is not a proper basis for settlement by an industrial railway for the use or detention upon its line of foreign cars. B. & W. C. Ry. v. P., C., C. & St. L. R. R. R. Co., 62 I. C. C. 357, 361; Tionesta Valley Ry., 473, 478; Genesee & Wyoming R. R. Co., 62 I. C. C. 680, 683.

(f) Payment of an industrial railway of per diem, with or without reclaims, is not the proper basis for settlement for the use or detention of foreign cars Mount Hope Mineral R. R. Co. v. C. R. R. Co. of N. J., 74 I. C. C. 195, 200.

(g) By paragraph (14) of section 1 of the Act the Commission is given jurisdiction to establish reasonable rules, regulations, and practices with respect to car service, including compensation to be paid for use of any car not owned by carrier using it. Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 557.

(h) Fact that industrial carriers have received low net earnings or operated at deficit is not convincing as bearing upon question of per diem arrangement, for deficiency in earnings may indicate, among other things, poor location, insufficient traffic, uneconomic management, high operating expenses, maladjusted divisions or absorptions, or necessity for track-storage charge such as may be in force upon other lines in district. L. E. & Ft. W. R. R. Co., 78 I. C. C., 475, 490.

ALL OTHER CITATIONS

Brick from Michigan City, Ind., 42 I. C. C. 509, 511; Class Rates from C. R. Ry. Stations, 50 I. C. C. 153, 155; In Re Private Cars, 50 I. C. C. 652 681, 683, 685; Birmingham Southern R. R. Co. v. Director General, as Agent, 61 I. C. C. 551, 556; Wausau Box & Lumber Co. v. Director General, as Agent, 62 I. C. C. 56, 57; Genessee & Wyoming R. R. Co.,

62 I. C. C. 680, 683; Lake Erie & Fort Wayne R. R. Co., 63 I. C. C. 122; Lake Erie & Fort Wayne R. R. Co., 78 I. C. C. 475, 488, 489, 490, 493; Moshassuck Valley R. R. Co. v. N. Y. N. H. & H. R. R. Co., 69 I. C. C. 368, 374.

III. ASSIGNMENT AND DISTRIBUTION.

(A) Counting of Cars.

§12. In General.

CASES 1887-1908

(a) It is the duty of carrier to furnish cars ratably to shippers along its line until the emergency is passed. Riddle v. Pittsburgh & L. E. R. Co., 1 I. C. R., 601, 688.

(b) The legal duty of a carrier is to operate its cars so as to keep them as much as possible on its line, and confined to the business on its line. If in a crisis the carrier could not furnish sufficient cars to all shippers along its line for the amount of their freight, then it was its duty to furnish its cars to shippers of coal in proportion to their shipments over its line, upon a basis that was relatively and substantially just. Riddle, Dean & Co. v. P. & L. R. E. E., 1 I. C. C., 688, 693.

(c) No exact rule can be laid down to govern the general distribution of cars between different localities and different species of traffic. Shippers must be reasonable in their demands and carriers diligent and honest in meeting those demands. In times of temporary car famine a railroad can only be required to do its best and to treat its patrons without undue preference. Hawkins v. Wheeling & L. E. R. Co., 9 I. C. C., 212, 214.

(d) During perfomance of the transportation the car is to every practical intent the car of the railroad company using it, and its measure of responsibility as to the sufficiency of the car is the same, whether it obtains the car by purchase or lease. Matter of Charges for Transportation of Fruit, 11 I. C. C., 129.

(e) Complainants attack the reasonableness of a regulation of the Southern Pacific Company to the effect that, in time of car shortage, cars will be furnished to the various shippers in proportion to the amount of fruit picked and actually in the packing houses at the time of the demand for cars. Prior to April, 1907, cars were distributed in proportion to the season's business done by the various shippers. This so-called "crop-holding rule" is still in force over the A., T. & S. F. Ry., but, in case of the Southern Pacific Company, has been displaced by the "house rule," to which objection is taken. HELD, that the situation can not be adequately covered by any fixed, inelastic regulation. Although the "crop-holding rule" appears to work more perfectly to the satifaction of shippers and carriers, nevertheless the "house rule" does not appear to be unduly discriminatory. Complaint dismissed. Cal. Fruit Growers' Exchange et al v. So. Pac. Co., 15 I. C. C., 553.

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(f) Grouping mines and alloting to one of the mines of a company the entire percentage of cars due all of them on that day, would result in unjust discrimination. McCaa Coal Co. v. C. & C. Ry. Co., 33 I. C. C., 128, 131.

(g) All cars whether owned or leased, must be distributed without discrimination. Pennsylvania Paraffine Works v. P. R. R. Co., 34 I. C. C., 179, 193.

(h) Some definite period at the end of which average detention of coal cars must be obtained and a balance struck must be prescribed. A calendar month is a natural division, and such division conforms to commercial usage and to the time statements of debits and credits are made in car accounting. Red Ash Coal Co. v. C. R. R. Co., of N. J., 37 I. C. C., 460, 462.

(i) The equitable distribution of coal cars is a difficult problem and rules adopted by carriers to effect it must be impartially applied and enforced. Greenfield & Co. v. P. R. R., 47 I. C. C., 403, 407.

(j) In the allotment of cars among shippers, their previous traffic as individuals should have no consideration further than may be useful or necessary in determining the amount offered and ready for shipment at the time. While there is usually a relationship between past performance and present ability, such relationship is not universal or necessary and must yield to better evidence when it is available. Tanner & Co. v. C., B. & Q. Ry., 53 I. C. C., 401, 406.

(k) A rule which provides for the distribution of cars in time of shortage in the relative proportions in which ship-

pers tender grain on hand and conveniently located for prompt loading, taking into consideration the rights of the small shipper, is just and reasonable and should be followed during the entire period of car shortage. Tanner & Co. v. C., B. & Q. Ry. 53 I. C. C., 401, 408

(l) It is not possible always for carriers to furnish particular mines their exact quota of cars during periods of car shortage and if shortages or overages are adjusted with reasonable promptness a carrier may be said to have fulfilled its duty Northern West Virginia Coal Asso. v. P. R. R. Co., 60 I. C. C., 569, 573.

(m) In the matter of car supply and other transportation services, joint mines are treated by carriers the same as junction-point mines, and consequently are able to draw cars from two or more roads, while a local mine is dependent exclusively for car supply on the one line serving it. The advantages accruing to the joint mines are a better car supply in time of car shortage due to their ability to draw cars from more than one line, additional territory in which to market their product, and additional routes in reaching points available by one road. Benton Coal Mining Co. v. C., B. & Q. R. R. Co., 63 I. C. C., 396, 397.

(n) The practice of a carrier in distributing cars on the basis of actual amount of grain on hand in elevator and ready for shipment, and refusing to take into consideration grain in the country adjacent to complainant's elevator, found not to result in unjust discrimination. Farmers Grain Co. v. C., R. I. & P. Ry. C., 64 I. C. C., 730.

(o) Practice of carriers distributing empty cars among lumber shippers in refusing to apportion available cars upon basis of ability of shippers to promptly load, as determined by production and accumulated stock on hand, and apportioning such cars upon basis of past performance during periods of normal car supply, found not to have resulted in undue prejudice or discrimination. Wausau Southern Lumber Co. v. G. & S. I. R. R. Co., 64 I. C. C., 732.

(p) It is just as necessary to maintain a proper relationship for car distribution between shipping points, district, and railroad divisions as it is to maintain a proper relationship between individual shippers. Wausau Southern Lumber Co. v. G. & S. I. R. R., 64 I. C. C., 732, 734.

(q) The Commission established a rule to be followed during periods of car shortage in distributing cars to grain shippers located upon its line in the relative proportion in which different shippers tender grain for shipment, such grain being actually on hand and conveniently located for prompt loading. Wausau Southern Lumber Co. v. G. & S. R. R., 64 I. C. C., 732, 735.

(r) It is the duty of a carrier to furnish transportation upon reasonable request therefor, and not to unjustly discriminate as between shippers in the distribution of cars. This duty, however, only applies when the commodity tendered for shipment is actually on hand and conveniently located for prompt loading. Wausau Southern Lumber Co. v. G. & S. I. R. R. Co., 64 I. C. C., 732, 736.

(s) During any period when the supply of cars available does not equal the requirements of such mines it shall be the duty of such carrier to maintain and apply just and reasonable ratings of such mines, and to count each and every car furnished to or used by any mines for transportation of coal against the mine. Northern West Virginia Asso. v. P. & L. E. R. R., 68 I. C. C., 167, 171.

(t) Paragraph 12, Section 1 of the act makes it the duty of every carrier by railroad to make just and reasonable distribution of cars for transportation of coal among the coal mines served by it whether located upon its line or lines or customarily dependent upon it for car supply. Northern West Virginia Asso. v. P. & L. E. R. R., 68 I. C. C., 167, 171.

(u) Complainant alleged defendants failed to distribute empty cars for the shipment of hay fairly and equitably between complainants at Forestburg, S. D., and its competitors at Forestburg and Woonsocket, S. D., thereby causing undue prejudice to complainants; that the cars furnished were so small that it was impossible to load the carload minimum applicable and that rates and regulations as to minimum weights on certain shipments were unreasonable. Forestburg is on the C. M. & St. P., about 9 miles east of Woonsocket. Another line of the Milwaukee runs north and south through Woonsocket but does

not reach Forestburg. The evidence submitted by complainants in support of their allegation of undue prejudice, the burden of proof being upon them, does not justify a finding in their favor. No specific evidence was offered that any other shipper at Forestburg or Woonsocket received any preferential treatment to the undue prejudice of complainants. As no records were kept of the number of cars ordered either at Forestburg or Woonsocket, the proportion which the cars furnished bore to the number ordered cannot be stated. The further contention of complainants that the applicable carload minimum of 25,000 pounds was too high is not established. The record does not contain positive evidence that the baling was done properly or that the cars were loaded to full capacity. The tariff was subsequently amended to make actual weight apply when cars are loaded to full visible capacity. HELD, undue prejudice not sustained, and carload minimum attacked not unreasonable, complaint dismissed. Gaynor Brothers. v. Director General, 68 I. C. C., 541.

(v) The term "local mine" designates a mine situated on and served by only one railroad. Bell & Zoller Co. v. B. & O. S. W. R. Co., 74 I. C. C., 435.

(w) Whatever tends to inflate nominal mine ratings beyond the amount which can normally be produced and shipped is distinctly counter to the public interest. Bell & Zoller Coal Co. v. B. & O. S. W. R. R. Co., 74 I. C. C., 443.

(x) Defendants can not evade liability for damages directly traceable to their unduly prejudicial distribution of such cars as were available under the existing car supply by computing what might or could have happened if a full car supply had been available for all shipping mines. Avella Coal Co. v. P. & W. V. Ry. Co., 77 I. C. C., 731, 736.

(y) Special Service Order No. 25 of the Interstate Commerce Commission effective September 20, 1922, does not affect the assigned car practice, and leaves the question of proper distribution of coal cars to be governed by Interstate Commerce Act, sec. 1, (12), as amended by Transportation Act of 1920. Cleveland and Western Coal Co. v. Baltimore & D. R. R. Co., 283 Fed. 995.

(z) The provision of Interstate Commerce Act, Sec. 1 (12), as amended by Transportation Act of 1920, that every carrier shall count each and every car furnished to or used by any coal mine against such mine, does not determine the question of distribution, but must be read in connection with other language of the paragraph directing just and reasonable distribution of cars to coal mines, and also to maintain and apply just and reasonable ratings of such mines, and whether the method of distribution practiced by carrier conforms to the statute is a question primarily for the Interstate Commerce Commission. Cleveland & Western Coal Co. v. Baltimore & D. R. R. Co., 283 Fed. 995.

(aa) An application was made for an injunction to compel a carrier to furnish an equitable distribution of coal cars. It appeared that the cars were being furnished in accordance with an order of the Interstate Commerce Commission. The court said, page 996: "Defendant, since September 20, 1922, has distributed its coal cars in accordance with Special Service Order, Interstate Commerce Commission, dated April 15, 1920. This order follows and embodies the car service rules approved by the Interstate Commerce Commission as the same existed and were applied prior to Federal control and as outlined and defined in Railroad Commission of Ohio v. Hocking Valley Ry. Co., 12 Interst. Com. Comn. R. 398; Traer v. Chicago & Alton R. Co., 13 Interst. Com. Com. R. 451; I. C. C. v. I. C. R. Co., 215 U. S. 452, 30 Sup. Ct. 155, 54 L. Ed. 280. In addition thereto, defendant limits the definition of assigned cars so that it applies only to cars used for its own fuel supply when furnished to mines with which it has a contract to take the entire output for a period of not less than six consecutive months. This service order was later superseded by Special Service Order No. 16, dated September 28, 1920, and this last service order was later, on March 22, 1921, vacated and set aside. In consequence of this action, plaintiff asserts that no service orders are in existence except Orders Nos. 23 and 25. If Special Service Order dated April 15, 1920, or one like it, prescribing a practice of coal car distribution, were now in effect, then this court would be without jurisdiction to hear and determine this application, but it would be necessary to constitute and assemble a special court consisting of three judges, of whom at least one should be a circuit judge. See Lambert

Run Coal Co. v. B. & O. R. Co., 257 U. S. —, 42 Sup. Ct. 349, 66 L. Ed. —, decided by U. S. Supreme Court April 10, 1922, reversing (C. C. A.) 267 Fed. 776. If, however, there is no special order of the Interstate Commerce Commission on the subject, but merely a car service rule or practice of the defendant, then this court, as now constituted, has jurisdiction to a limited extent. If the statute prescribes a method of distribution, or if there is an order of the Interstate Commerce Commission prescribing a method of distribution, or if there is an established and published car service rule, a suit may be maintained to enjoin a violation thereof. If, on the other hand, the question is merely as to whether or not a rule or practice is in itself unfair or discriminatory, a question then arises calling for the exercise of judgment and discretion which has been vested by Congress in the Interstate Commerce Commission, and the courts will not, until after that Commission has acted and made its finding, take jurisdiction, and then only in the special manner prescribed by statute. See Penna. R. Co. v. Puritan Coal Min. Co., 237 U. S. 121, 35 Sup. Ct. 484, 59 L. Ed. 867; Texas & Pacific R. Co. v. Abilene Cotton Oil Co., 204 U. S. 426, 27 Sup. Ct. 350, 51 L. Ed. 553, 9 Ann. Cas. 1075." The court then continued, page 997; "Paragraph 12, § 1, does not, in my opinion, have the effect asserted on behalf of plaintiff. The direction therein contained, to count each and every car furnished to or used by any coal mine, must be read in connection with other language in the paragraph directing every carrier to make just and reasonable distribution of cars for transportation of coal among the coal mines served by it and also to maintain and apply just and reasonable ratings to such mines. The direction to count cars against the mine, if given the effect for which plaintiff contends, would render superfluous the other language. The direction to count cars against the mine cannot, therefore, be taken as determining the question of distributing cars among the mines. If such were the intention of Congress, then the carrier has no independent duty or power in making distribution of coal cars to coal mines; if it were, the Interstate Commerce Commission likewise would no longer have any power or duty in the matter of determining whether a method of car distribution is just or reasonable. Congress, in my opinion, did not by this paragraph intend to establish a method of distributing coal cars different from that which had previously existed and had been approved by repeated decisions of the Interstate Commerce Commission and the United States Supreme Court. The legislative history of paragraph 7 clearly indicates that Congress was intending merely to put in statutory form the pre-existing practice, and not to declare a new and definite method of distribution which would supersede the duty to make just and reasonable distribution. The expression "to count each and every car against the mine' is borrowed from previous decisions and regulations of the Interstate Commerce Commission and of common carriers in applying the so-called assigned car rule. Upon the proper construction of this paragraph, the reasoning of Judge Clayton in Corona Coal Co. v. Southern R. Co. (D. C.), 26 Fed. 726, seems to me to be sounder and more persuasive than the views expressed by Judge Woods in B. & O. R. R. Co. v. Lambert Run Coal Co. (C. C. A.) 276 Fed. 776. Judge Clayton's view also accords with the present view of the Interstate Commerce Commission, which now has pending before it the question of whether the assigned car rule as applied by defendant is a just and reasonable distribution of cars among coal mines. If I am right in this conclusion, then, whether defendant's method of car distribution is unfair or discriminatory, becomes a question in the first instance for the Interstate Commerce Commission has heard and determined the question. Certainly plaintiff's contention to the contrary is not so clear that it should be adopted as a basis upon which to issue a preliminary injunction which ought not to be issued, and thereby overturn an existing status, unless the plaintiff's right is reasonably clear and free from doubt." Cleveland & Western Coal Co. v. Baltimore & O. R. R. Co., 283 Fed. 995.

(bb) Finding that practice of carriers in distributing assigned cars to bituminous mines in excess of ratable proportion distributed to mines not receiving assigned cars, will be unjust, unreasonable and unjustly and unreasonably preferential to such mines receiving assigned cars, is not to preclude commission, in exercise of emergency powers under paragraph (15) of section 1 of the act, from requiring placement of cars for

such loading at mines in excess of percentage allotment to mines generally upon lines of same carrier, or upon same division. Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 520.

ALL OTHER CITATIONS

Powhatan Coal & Coke Co. v. N. & W. Ry. Co., 13 I. C. C. 69, 81; Hillsdale Coal & Coke Co. v. P. R. R. Co., 19 I. C. C. 356, 369; Bulah Coal Co. v. Pa. R. R. Co. 20 I. C. C. 52, 54; Missouri & Illinois Coal Co. v. I. C. R. R. Co., 22 I. C. C. 39, 48; Stonega Coke & Coal Co. v. L. & N. R. R. Co., 23 I. C. C. 17, 26; Colorado Coal Traffic Assn. v. D. & R. G. R. R. Co., 23 I. C. C. 458, 464; U. S. v. B. & O. R. R. Co., 165 Fed. 113, 125; In Re Irregularities in Mine Ratings, 25 I. C. C. 286, 294, 296; National Coal Co. v. B. & O. R. R. Co., 28 I. C. C. 442, 444; Railroad Commissioners of Iowa v. & O. R. R. Co., 28 I. C. C., 442, 444; C., R. I. & P. R. R. Co., 29 I. C. C., 396, 404; Stineman Coal Mining Co. v. Pennsylvania Railway Co. (Pa. 1913), 88 Atl. 761; McCaa Coal Co. v. C. & C. Ry. Co., 30 I. C. C. 531, 532, 536, 537; Coal and Oil Investigation, 31 I. C. C., 193, 217, 218, 219; McCaa Coal Co. v. C. & C. Ry. Co. 33 I. C. C. 128, 131, 132; Frankfeld & Co. v. N. Y. C. R. R. Co., 40 I. C. C. 555, 558; Huerfano Coal Co. v. C. & S. E. R. R., 41 I. C. C. 657, 658, 659; Hocking Domestic Coal Co. v. K. & M. Ry., 41 I. C. C. 392, 397; West Coast Lumber Mfrs. Asso. v. S. P. & S. Ry., 45 I. C. C. 230, 235; Louisiana Cotton, 46 I. C. C. 451, 454; Greenfield & Co. v. P. R. R., 47 I. C. C. 403, 408; Farmers' Elevator Co. v. C., M. & St. P. Ry., 47 I. C. C. 475, 478, 480, 481 482; Swaney v. B. & O. R. R. 49 I. C. C. 345, 349; Dow Chemical Co. v. P. M. R. R., 51 I. C. C. 1, 2; Diamond Lumber Co. v. C., M. & St. P. Ry., 51 I. C. C. 78, 86, 87; Oden-Elliott Lum. Co. v. A. C. Ry., 51 I. C. C. 401, 403, 406, 407, 408, 409, 410; Northern Coal Co. v. M. & O. Ry., 55 I. C. C. 502; Lumber Carload Minima 56 I. C. C. 318, 321; Phoenix Portland Cement Co. v. Baltimore & O. R. Co. (Penna. 1920), 263 F. 230; Assignment of Freight Cars, 57 I. C. C. 750, 763, 765, 766; Southern Appalachian Assn. v. L. & N., 58 I. C. C. 348, 349; Coal from Sewell Valley R. R. Stations, 58 I. C. C. 261, 265; Avella Coal Co. v. P. & W. Va. Ry. Co., 58 I. C. C. 313, 317, 320; Southern Appalachian Coal Operators' Asso. v. L. & N. R. R. Co., 58 I. C. C. 348, 349; Hawkins v. O. S. L. R. R. Co., 59 I. C. C. 730, 731; Gillespie Coal Co. v. I. T., 62 I. C. C. 335, 337; Griffith v. Jennings, 60 I. C. C. 232; Dickinson Fuel Co. v. C. & O. Ry. Co., 60 I. C. C. 315; Hobart Mill & Elevator Co. v. Director General, 61 I. C. C. 192; Fairmount & Cleveland Coal Co. v. B. & O. R. R. Co., 62 I. C. C. 269, 274; Hillsboro Coal Co. v. C., C., C. & St. L. Ry. C. C. 401; Assigned Cars for Biutminous Coal Mines, 80 I. C. C. 520, 556, 557; Meyersdale Smokeless Coal Co. v. B. & O. R. R. Co., 69 I. C. C. 74.

§12½. Priority.

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(a) If priorities were to be prescribed in transportation of bituminous coal it would obviously be necessary to give first priority to railway fuel, as was done when priorities were issued by the President's priority agent during the war. Assignment of Freight Cars, 57 I. C. C. 760, 766.

§13. Private Cars.

See Supra §4; §10½; Infra §31; Demurrage §10; Private Cars.

CASES 1887-1908

(a) Complainant attacked method of defendants in the distribution of cars as unduly discriminatory. Defendants are engaged principally in transportation of coal from mines located upon their lines. Certain other railways purchase their fuel supply from coal operators owning mines upon the lines of defendants and send their own cars upon the lines of defendants, consigned to the coal companies, with which railways so sending their cars have contracts for fuel supply. Certain other coal operators have upon the lines of one of the defendants leased, or so called "private" cars, devoted exclusively to the use of such lessees. During a part of the year defendants are unable to furnish all of the cars desired by coal operators along their lines, and at such times the available cars not specially consigned or restricted as to use are divided among the several coal companies according to the capacities of their several mines. But in such distribution the foreign railway fuel cars and the leased or "private" cars are excluded from consideration and are given to the coal companies to which they are consigned or assigned in addition to the full share of cars allotted to such mines in the proportionate distribution. Complainant alleges unjust discrimination against other coal operators along the

lines of defendants, in that such distribution of cars and such failure to count the foreign railway fuel cars and the leased or "private" cars gives the coal operators to whom such cars are consigned and assigned unwarranted advantages over other operators in the mining and marketing of coal. HELD: That a carrier should give to owner or lessee of private cars the use of such cars, and should also give to a coal company the foreign railway fuel cars consigned to it; but that such "private" and foreign railway fuel cars should, in the distribution of cars, be counted against the company to which delivered and such company should not be given, in addition to such delivery, a share of the system cars except when the number of "private" and foreign railway fuel cars so delivered to it is less than its distributive share of the available cars, including system cars, foreign railway fuel cars, and so-called private cars, in which event it should be given only so many of the system cars as are necessary, when added to the number of private and foreign railway fuel cars assigned to it, to make up its distributive share of the total available cars, including system cars, foreign railway fuel cars, and so-called private cars. R. R. Com. of Ohio et al. v. H. V. Ry. Co., 12 I. C. C. 398.

IMPORTANT CASES SINCE 1908

(b) Private cars and cars placed for railroad fuel loading in accordance with 12 I. C. C. 398, and 13 I. C. C. 451, will be designated as assigned cars. All other cars will be designated as unassigned cars. Northern West Virginia Asso. v. P. & L. E. R. R., 68 I. C. C. 167, 172.

(c) The Commission instituted an investigation with respect to the reasonableness and propriety of the present car distribution rules of carriers in so far as they apply to privately owned coal cars and cars furnished for railroad fuel coal, with a view of prescribing such just and reasonable rule or regulation as may appear to be necessary. Three classes of cars are involved: System cars, or cars of railroad ownership, set for loading upon the line of the owning carrier, or such as may be on its line of railroad and not owned by some specific shippers or restricted as to used cars for railway foreign fuel, which are delivered to another carrier consigned to particular mine operators for loading with fuel for the use of the delivering carrier and return to it; and private cars, which include cars owned or leased or subject to the exclusive control of particular persons, not carriers by railroad, who deliver them to the railroad for placement at designated mines for loading and subsequent transportation as desired by the private car owners. The coal to be transported in the private cars may or may not be intended eventually to be used for railroad fuel. The term "commercial mines" will be understood as referring to a mine which does not receive assigned cars. By the term "assigned cars" is meant cars to be used for railroad fuel only. It is recognized that the importance of the railroads in the distribution of coal and other commodities, and their general dependence upon bituminous coal in producing transportation, require that in some lawful way they may be assured of a steady supply of suitable coal. It is likewise generally admitted that, whatever means are adopted to secure such supply, emergencies will occur when the supply will fail unless the railroad is enabled by some means within the law to take sufficient coal ahead of less necessitous uses to keep the flow of traffic going as the public interest requires. There is no dissent from the proposition that confiscation of fuel coal by railroads is a practice to be avoided. It seems to be generally accepted that the public interest requires that the carriers shall not be subjected to unreasonable prices. Obviously a carrier should not be permitted to take advantage of a means provided by the public to insure an uninterrupted movement of traffic, as a means to coerce an unreasonably low price for fuel. HELD: In the distribution of cars for transportation of coal among the bituminous coal mines served by the respective respondents, whether located upon the line of a respondent or customarily dependent upon it for car supply, any rule, regulation or practice of the respondents whereby private cars or cars for the loading of bituminous coal for railway fuel purposes are placed at any such mine in excess of the pro rata allotment and distribution of cars for coal loading currently made to any other of such mines which do not receive private cars or cars for railway fuel and which are on the same division or district established by such respondent for the distribution of cars, is un-

just and unreasonably and unduly prejudicial. All cars should be distributed by such respondent to all mines on such district or division on a pro rata basis; and that if cars are assigned or consigned to any of such mines, and if they are placed at the mines to which they are assigned or consigned, they should be so placed that every mine on the same division or district should receive the same pro rata share of the total number of available cars, whether assigned, consigned, or unassigned, which are distributed to all mines on such division or district, and that all such assigned or consigned cars should be counted and charged against the mines at which they are placed in the same manner and to the same extent that unassigned cars are counted and charged. It is not intended that this finding shall preclude the Commission hereafter in the exercise of the emergency powers conferred upon it by paragraph 15 of section 1 of the act, from requiring the placement of cars for bituminous coal loading at any mine or mines in excess of the current percentage allotment made to mines generally upon the lines of the same carrier, or upon the same division, when the order or direction for placement shall so provide. Assigned Cars for Bituminous Mines, 80 I. C. C. 520.

(d) It is erroneous to assign coal cars to a mine on such a basis that no mine which had received private or fuel cars would have a right to receive any unassigned cars unless its share of the unassigned cars exceeded the number of private or fuel cars delivered to it. Clark Bros. Coal Mining Co. v. Pennsylvania R. Co., 238 Fed. 642.

(e) Following Assignment of Freight Cars, 57 I. C. C. 760, paragraph (12) of section 1 of the act HELD not in terms to prohibit practice of assigning cars for railway fuel and private cars to coal mines under limitations fixed in Hocking Valley Case, 12 I. C. C. 398, and Traer Case, 13 I. C. C. 451. Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 520.

(f) Practice of respondents in assigning private cars, and system or foreign-line cars for railway fuel, to bituminous coal mines upon their lines not receiving assigned cars, found for future unjust and unreasonable, and unduly and unreasonably preferential of mines furnished such cars in excess of ratable proportion and discriminatory against and unduly prejudicial to such other mines not receiving assigned cars. Finding not to preclude Commission, in exercise of emergency powers under paragraph (15) of section 1 of the act, from requiring placement of cars for such loading at mines in excess of percentage allotment to mines generally upon lines of same carrier, or upon same division. Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 520.

(g) The private-car owner has no right to demand that his cars be transported over lines of a carrier which has not consented thereto. Obligation of furnishing an adequate supply of equipment by statute rests upon carrier, and does not rest upon shipper. The duty can not be transferred to nor required of shipper. Assigned Cars for Bituminous Coal Mines, 80 I.C.C. 556.

(h) Though railroad carriers have charter duties as to transportation of privately owned cars, such obligations can not defeat power of Congress to compel equality of treatment of shippers in interstate commerce. Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 556.

(i) The use of private cars by railroad carriers has been recognized by Congress, which has provided for control and use of such equipment by the Commission, under provisions of the act, by means of mandate addressed to carriers subject to the Commission's jurisdiction. The Commission does not deal with private-car owner as such. Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 556.

(j) When carrier permits use of a private car upon its rails, it is responsible for manner in which service is conducted in that car, and car becomes in all respects as if it were one of general stock of those owned by carrier, and subject to same liabilities and responsibilities as to use in interstate transportation. Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 557.

(k) Carrier, in permitting use of private car over its lines, must, at its peril, see that use of the vehicle does not permit, excuse, or justify discrimination, preference, or advantage in favor of owner of the private car, regardless of present ability of carrier to furnish on demand an adequate supply of equipment needed for transportation. Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 557.

ALL OTHER CITATIONS

Ruttle v. P. M. R. R. Co., 13 I. C. C. 179, 185; Rail and River Coal Co. v. B. & O. R. R. Co., 14 I. C. C. 86, 91, 92; Hillsdale Coal & Coke Co. v. P. R. R. Co. 19 I. C. C. 356, 365; Jacoby & Co. v. P. R. R. Co., 19 I. C. C. 392; Majestic Coal & Coke Co. v. I. C. R. R. Co., 162 Fed. 810, 811; U. S. v. B. & O. R. R. Co., 165 Fed. 113, 126; In Re Irregularities in Mine Ratings, 25 I. C. C. 286, 297; Deposit of $10 for Each Live Poultry Car Ordered, 66 I. C. C. 653, 656.

§14. Foreign Cars.

CASES 1887-1908

(a) Foreign cars must be counted in quota furnished mines. Railroad Commission of Ohio v. Hocking Valley R. Co., 12 I. C. C. 393.

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(b) All cars tendered by the Union Pacific R. R. for the movement of grain must be counted as cars of the Union Pacific Company. Nebraska-Iowa Grain Co. v. U. P. R. R. Co., 15 I. C. C. 90, 96.

(c) Where defendant carrier furnished a shipper his full quota of available cars, the latter cannot complain of unjust discrimination by reason of the fact that the cars furnished were secured from other carriers, while those supplied to competitors belonged to the defendant itself. Peale, Peacock & Kerr v. C. R. R. Co. of N. J., 18 I. C. C. 25, 34.

(d) Upon investigation instituted on Commission's own motion, HELD: Practice of respondents in assigning private cars, and system of foreign-line cars for railway fuel, to bituminous coal mines in excess of ratable share distributed to mines upon their lines not receiving assigned cars, found unjust, unreasonable and unduly and unreasonably preferential of mines furnished such cars in excess of ratable proportion, and discriminatory against and unduly prejudicial to such other mines not receiving assigned cars. Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 520.

(e) Practice of assigning private cars, and system of foreign-line cars for railway fuel, to bituminous coal mines in excess of ratable share distributed to bituminous mines upon their lines not receiving assigned cars, found unjust and unreasonable, and unduly and unreasonably preferential of mines furnished such cars in excess of ratable proportion and discriminatory against and unduly prejudicial to such other mines not receiving assigned cars. Finding not to preclude Commission, in exercise of emergency powers under paragraph (15), section 1 of the act, from requiring placement of cars for such loading at mines in excess of percentage allotment to mines generally upon lines of same carrier, or upon same division. Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 520.

§14½. Joint or Junction Point Mines.

IMPORTANT CASES SINCE 1908

(a) Mines which are given a joint status by reason of their being served under trackage agreements are in the same category as junction-point mines, and any preference and advantage which such mines enjoy is not undue, as actual or constructive location upon two or more lines substantially differentiates their situation from that of local mines, situated on and served only by one railroad. Ridge Coal Mining Co. v. M. P. R. R. Co., 62 I. C. C. 259; Dering Mines Co. v. Director General, 62 I. C. C. 265.

(b) While a joint mine has an advantage over local mines because of the additional markets which it can reach by reason of its location on two railroads, such mine can not always avail itself of its advantage because of the practice in the coal business to make contracts for yearly periods. Neither is it possible at all times to order all cars from the carrier having the greater supply, as its contracts may also require that shipments be made by the line having the lesser supply. It frequently happens that the joint mine receives a less car supply than the local mine situated on the road having the greater supply. Fairmont & Cleveland Coal Co. v. B. & O. R. R. Co., 62 I. C. C. 269, 275.

(c) A mine which is accorded a joint status by means of a trackage agreement is in the same category as a junction-point mine, and a carrier is not chargeable with undue prejudice because it extends its service to certain mines, either by extension of its rails or undue trackage agreements, thereby giving them the advantage of a joint or junction point status, while declining to make other extensions or trackage agreements. Benton Coal Mining Co. v. C., B. & Q. R. R. Co., 63 I. C. C. 396, 399.

(d) The service of a mine by a carrier under a trackage agreement is, in practical and legal effect, the substantial

equivalent of an extension of its rails to the mine. Benton Coal Mining Co. v. C., B. & Q. R. R. Co., 63 I. C. C. 396, 399.

(e) Trackage agreements can not be used as a cloak to cover unjust discrimination and where such arrangements are made they are to be condemned. Benton Coal Mining Co. v. C., B. & Q. R. R. Co., 63 I. C. C. 396, 399.

(f) In the matter of car supply and other transportation services, joint mines are treated by carriers the same as junction-point mines, and consequently are able to draw cars from two or more roads, while a local mine is dependent exclusively for car supply on the one line serving it. The advantages accruing to the joint mines are a better car supply in times of car shortage due to their ability to draw cars from more than one line, additional territory in which to market their products, and additional routes in reaching points available by one road. Iowa Railroad Commissioners v. Director General, 63 I. C. C. 405.

(g) Complainants attacked defendant's rules, regulations and practices governing the distribution of coal cars to complainant's mines served jointly by two or more roads during car shortage periods since October, 1918, as resulting in a smaller share of empty coal cars to complainant's mines than was distributed to its competitors; and have been unreasonable, unduly preferential and unduly prejudicial. In 62 I. C. C. 269, the Commission considered rule 4, Car Service Circular C. S. 31 Revised, and found that rule to be unreasonable and unduly prejudicial to joint mines to the extent it limited the aggregate orders for cars of the joint mine to 100 per cent of its gross daily rating and ordered the rule as laid down in 25 I. C. C. 286 to be followed, namely, that on days when the joint mine orders cars from only one carrier it shall be furnished cars based on its full rating from that carrier, and on days on which it orders cars from both carriers its rating on each of such carriers for the purpose of ordering cars should be 75 per cent of its full rating, subject to the limitation that on no day shall it be furnished with cars in excess of its maximum rating. The term local mine will be used to designate a mine situated on and served by only one railroad. The term joint mine will denote a mine served by two or more railroads with their own rails or a mine situated on one railroad, but actually served by one or more additional carriers under trackage agreements or switching absorption arrangements. The complaints herein are directed against the last sentence of rule 4, which limits the joint mine orders for cars from all the carriers to the gross daily rating of the mine. The rating of a local mine is determined by taking the total tonnage shipped by the mine during the preceding month over the carrier serving the mine, dividing it by the number of hours worked in producing it, and multiplying the quotient by the number of hours in the recognized work day. A rating so determined is called the daily rating, as distinguished from the gross daily rating which applies to a joint mine, and which is determined in a similar manner, but by taking the total tonnage shipped over the lines of all the carriers serving the mine. It is admitted by all that the joint mine enjoys advantages not possessed by the local mine, and has the right to so place its orders as to avoid, if it can, embargoes and congestion of traffic on particular roads. It has available a more extensive and more varied market for its coal. It may at times be able to dispose of its product upon the second line of railroad, while the mine local to the first road is unable to market its output. In case of car shortage the joint mine is able to select the outlet which affords the best and most liberal means of transportation. These are important advantages to which the joint mine is entitled and in the reasonable enjoyment of which it should be protected. HELD: The present facts considered, the Commission does not conclude the rule attacked is in principle unreasonable or unduly prejudicial, without prejudice to such determination of the questions before the Commission in the general proceeding, complaint dismissed. Bell & Zoller Co. v. B. & O. S. W. R. R., 74 I. C. C. 433.

(h) The mine-rating principles laid down in In Re Irregularities in Mine Ratings, 25 I. C. C. 286, were intended as a limitation upon the practice of the carrier in that proceeding, and not as a rule to be applied in places where they would not suitably and properly meet local conditions. The effect of the general application of that decision has been to encourage the greater development of joint mines over local mines, with a resulting duplication of trackage, a waste of car-

days, and dissatisfaction among mine labor through inequalities in opportunities for working time and wages thus produced. The rule should not be extended. Bell & Zoller Co. v. B. & O. S. W. R. Co., 74 I. C. C. 433.

(i) The term "joint mine" denotes a mine served by two or more railroads with their own rails or a mine situated on one railroad, but actually served by one or more additional carriers under trackage agreements or switching-absorptions agreements. Bell & Zoller Coal Co. v. B. & O. S. W. R. R., 74 I. C. C. 433, 435.

(j) A joint mine enjoys advantages not possessed by a local mine, and has the right to so place its orders as to avoid embargoes and congestion of traffic on particular roads. It has available a more extensive and more varied market and may dispose of its product upon the second line of railroad, while the mine local to the first road is unable to market its output. In case of car shortage, the joint mine is able to select the outlet which affords the best and most liberal means of transportation. These are important advantages to which the joint mine is entitled and in the reasonable enjoyment of which it should be protected. Bell & Zoller Co. v. B. & O. S. W. R. Co., 74 I. C. C. 438.

(k) An order of the Interstate Commerce Commission, establishing a rule under which in times of shortage of coal cars a "joint" mine, situated on the lines of two railroads, could order cars from both only on the basis of 100 per cent. of its rated capacity, while a "local" mine, situated on one only of such lines and having a like capacity, could order an equal number of cars, HELD discriminatory, in that it deprived the first mine of an advantage to which it had a legal right. New River Co. v. Chesapeake & O. Ry. Co., 293 Fed. 460.

ALL OTHER CITATIONS

In Re Irregularities in Mine Ratings, 25 I. C. C. 286, 289, 293; Empire Steel & Iron Co. v. Director General, 62 I. C. C. 157; Hillsboro Coal Co. v. C., C., C. & St. L. Ry. Co., 63 I. C. C. 401; Hillsboro Coal Co. v. C., C., & St. L. Ry. Co. 81 I. C. C. 216.

§15. Railway Fuel Cars.

CASES 1887-1908

(a) A carrier should give to owner or lessee of private cars the use of such cars, and should also give to a coal company the foreign railway fuel cars consigned to it, but that such "private" and foreign railway fuel cars should, in the distribution of cars, be counted against the company, which should not be given, in addition to such delivery, a share of the system cars except when the number of "private" and foreign railway fuel cars so delivered is less than its distributive share of the available cars, including system cars, foreign railway fuel cars, and so-called private cars. Railroad Commission of Ohio v. Hocking Valley Ry., 12 I. C. C. 398.

IMPORTANT CASES SINCE 1908

(b) An arbitrary allowance of system cars to an operator for another reason than encouraging development is unlawful discrimination unless justified by special conditions. Rail & River Coal Co. v. B. & O. R. R. Co., 14 I. C. C. 86, 93.

(c) On January 1, 1906, the defendant divided all coal cars into two classes, which it designated as "assigned" and "unassigned" cars. In the former class were its own fuel cars, foreign railway fuel cars, and individual or private cars, loaded by their owners or assigned by their owners to particular mines. The rule then made effective and still in force provides that the capacity in tons of any "assigned" cars shall be deducted from the rated capacity in tons of the particular mine receiving such cars, and that the remainder is to be regarded as a rated capacity of the mine in the distribution of all "unassigned" or system cars. HELD: That a mine owning individual cars would be able to ship out more coal than its competitor, while under the rule approved by the Commission (which treats all cars, whether individual cars or owned by the carrier or assigned by other carriers for fuel, as available car equipment as a whole, distributable pro rata to shippers desiring their use), no shipper is discriminated against, and, therefore, that the rule of the defendant is unlawful and discriminatory. Hillsdale Coal & Coke Co. v. P. R. R. Co., 19 I. C. C. 356, 364.

(d) Complainant alleged that in time of car shortage defendant furnished particular mines on certain days cars for loading with coal purchased by defendant for railway fuel; that the cars so furnished are not counted against the rates capacities of the mines receiving them,

and that this practice is unreasonable, and unduly prefers such mines to the undue prejudice and disadvantage of mines which do not sell coal for railway fuel. Each mine is given a rating, based upon its average requirements, and the available supply is distributed in accordance with the ratings so established. The chief cause for complaint has been the practice of the carriers not to count against a particular mine privately owned cars assigned to it cars assigned to be loaded with fuel for the use of other railways, and cars to be loaded with fuel for the carrier's own use. These cars are called, respectively, private cars, foreign railway fuel cars, and system fuel cars, and are known collectively as "assigned cars." At the hearing complainant admitted that the practice complained of had been discontinued and that defendant's practices at that time satisfactory. During the period of Federal control the conditions surrounding the matter of car service were so different from those theretofore existing that any action based on this record was then deemed inexpedient. Uniform mine rating and car distribution rules were promulgated by the Railroad Administration, which seem to have been generally satifactory. On April 15, 1920, the Commission issued a notice to carriers and shippers that the rules issued by the Railroad Administration be continued in effect The specific cause of complaint in this issue had ceased to exist at time of hearing and its future recurrence is expressly precluded by Section 402 of the Transportation Act. HELD, Complaint dismissed. Southern Appalachian Coal Operators' Asso. v. L. & N., 58 I. C. C. 348.

(e) When a railroad company becomes a purchaser of coal upon the lines of a connection, and ships it to itself as consignee, it is entitled to the same consideration as any commercial shipper or consignee and no more, and this is true when the shipment moves partly over the rails of the carrier that is in fact the shipper or consignee. Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 520, 546.

(f) A carrier in times of coal car shortage in making car distribution must charge against the percentage of a particular shipper its fuel cars, and the foreign fuel cars assigned to such shipper, and a failure to do so constitutes undue discrimination under the act as amended June 29, 1906. (McDowell, J., dissenting.) U. S. v. B. & O. R. R. Co., 165 Fed. 113, 126.

(g) Private coal cars, belonging to shippers and used by carriers in the transportation of commodities, and the fuel cars of foreign railroads must be treated as a part of the total equipment of the carriers in determining the percentage of cars due each shipper in the matter of car distribution. Fuel cars of the carriers, used only by themselves in transporting coal for their own use, are not, however, to be treated as a part of their available car supply for purposes of distribution to shippers. Such fuel cars are, however, to be taken into account in determining the producing capacity of a particular coal mine and the coal sold to a carrier by a mine and shipped to it in the carriers' fuel cars is not to be counted in arriving at the mine's producing capacity, for the purpose of determining the percentage of cars to which it is entitled. The order of the Interstate Commerce Commission, in 13 I. C. C. 451, is modified in so far as it counted the fuel cars of carriers in arriving at the total available car supply. C. & A. R. R. Co. v. I. C. C., 173 Fed. 930, 933, reversed, I. C. C. v. Ill. Cent. R. R. Co., 215 U. S. 452, 30 Sup. Ct. 155, 54 L. Ed. 280.

(h) Following Assignment of Freight Cars, 57 I. C. C. 760, paragraph (12), section 1 of the act, HELD not in terms to prohibit practice of assigning cars for railway fuel and private cars to coal mines under limitations fixed in Hocking Valley Case, 12 I. C. C. 398, and Traer Case, 13 I. C. C. 451. Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 520.

ALL OTHER CITATIONS

Traer v. C. & A. R. R. Co., 13 I. C. C. 451, 456, 459; Sustained in I. C. C. v. Ill. Cent. R. R. Co., 215 U. S. 452, 477, 30 Sup. Ct. 155, 54 L. Ed. 280, reversing 173 Fed. 930, enjoining the Commission's order; Coal and Oil Investigation, 31 I. C. C. 193, 218; National Coal Co. v. B. & O. R. R., Unrep. Op. A-617; Southern Appalachian Coal Operators' Asso. v. L. & N., 58 I. C. C. 348.

§16. Pooling by Shipper.

IMPORTANT CASES SINCE 1908

(a) Where a coal company owns and operates several openings, and is entitled in the daily distribution to a certain number of cars for each mine, it will not be prohibited from grouping or pooling

all these cars, or any portion of them, at one mine, instead of using them at each mine in accordance with their respective percentages, in the absence of definite evidence to show that such practice results in fact in undue and unlawful discriminatiton. Rail and River Coal Co. v. B. & O. R. R. Co., 14 I. C. C. 86, 97.

(b) Organization and operation of the Tidewater Coal Exchange, created by the U. S. Fuel Administrator for the handling of bituminous coal through the tidewater piers by establishment of pools. Wholesale Coal Trade Asso. v. Director General, as Agent, 58 I. C. C. 15, 18, 19.

(c) Under the pooling arrangement the rights of car ownership practically ceased and all the carriers were free to use cars for traffic to almost any point, although the obligation of each carrier to balance interchange continued; that is, it was agreed that a connection must return a load for every empty it received. Avella Coal Co. v. P. & W. V., 58 I. C. C. 313, 320.

(d) Contention that Pittsburg & W. Virginia Ry. Co. and West Side Belt R. R. Co. should be regarded as separate and distinct for the purpose of car distribution not sustained. Although incorporated under individual charters and endeavor made to allocate expenses and revenues, record clearly establishes that they were operated as one road and were so clearly regarded by their officials and connections, and by the car pool formed to control the distribution of cars during the war emergency. Avella Coal Co. v. P. & W. Va. Ry. Co., 59 I. C. C. 313, 317.

ALL OTHER CITATIONS

McCaa Coal Co. v. C. & C. Ry. Co., 33 I. C. C. 128, 131.

§17. Tank Cars.

See Supra §10; Tank Cars.

IMPORTANT CASES SINCE 1908

(a) Circumstances existed which prevented the economical use by plaintiffs of tank cars for the hauling of oil and they, therefore, made no demand of defendant carriers for the use of such cars. Their competitors used the tank cars. The defendants did not refuse to furnish them to plaintiffs. Plaintiffs shipped oil in barrels and defendants made a charge, which was not unreasonable, for the weight of the barrel package. They made no such charge for the weight of the tank cars. HELD: Since plaintiffs made no demand for the tank cars, there was no unjust discrimination against them in favor of their competitors. (Moody and Harlan, JJ., dissenting.) Penn Refining Co. v. W. N. Y. & P. R. R. Co., 208 U. S. 208, 221, 28 Sup. Ct. 268, 52 L. Ed. 456.

(b) Where a connecting carrier receives carloads of oil consisting of tank cars and carloads made up of barrel packages from the initial carrier, and merely joins with the initial carrier in a joint rate in itself reasonable, it is not liable for the alleged discriminatory acts of the initial carrier in charging for the weight of the barrel package used in shipments made by one class of shippers while at the same time making no charge for the weight of the tank cars against a competing class of shippers using such method of shipment. Penn. Refining Co. v. W. N. Y. & P. R. R. Co., 208 U. S. 208, 222, 28, Sup. Ct. 268, 52 L. Ed. 456.

§17a. Character of Shipment.

CASES 1887-1908

(a) If from peculiarity of traffic, carrier cannot supply such stock, and consignors supply it for themselves, carriers must not allow its deficiences in this particular to be made means of putting at disadvantage those who make use in same traffic of facilities it supplies. Rice v. Louisville & Nashville R. Co., 1 I. C. R. 722.

(b) When two methods for the transportation of an article of merchandise are nominally offered by the carrier, for only one of which it offers rolling stock, and for the other of which the shipper must supply his own rolling stock at considerable expense, it cannot be said that the resort to the latter by the shipper is so far a matter of choice that he has no concern with the charges for transportation in the other mode. The man of small means being compelled to make this choice, by reason of the carrier's failure to supply rolling stock for the other mode, has a right to insist that the charges for transportation in the two modes shall be relatively just and equal. Rice v. Louisville & Nashville R. R. Co., 1 I. C. R. 722.

(c) Making certain charges for the transportation of coal shipped in carloads when the coal is loaded by tipple, and exacting a higher charge when the coal is loaded in some other way, is unrea-

sonable and constitutes an unjust discrimination. Glade Coal v. Baltimore & O. R. Co., 10 I. C. C. 226.

(d) Complainant attacked as discriminatory rule of defendants to furnish no cars to be loaded with coal from wagons, though furnishing cars to competitors at the same time who load coal at tipples. During the anthracite coal strike of 1902, which caused an extremely large demand for bituminous coal and great increase in the price of that coal, complainant arranged for the purchase and sale of the surplus product of certain bituminous mines, called surface or country mines, and for hauling the coal by wagons to stations or sidings and loadings upon defendant's cars. Under normal conditions this could not be done at a profit. Complainant demanded and received several cars during the month of November, 1902. In that month defendant issued a rule limiting its coal cars to mines having track connection with its road, and this rule was kept in force during the strike period. The demand for coal throughout the strike resulted in the greatest tax upon the railroad equipment and in the congestion of lines, yards and terminals. The mines loading by tipple and by track connection received far less than their usual car supply. Under those and other attendant conditions, defendant's temporary rule, confining its comparatively few available cars to mines generally in operation, where quick loading could be accomplished, and declining to permit its sidings or switches to be further congested by loading coal from wagons, not only by complainant, but many others temporarily engaged in the same pursuit, was calculated to hasten rather than retard the movement of coal for public use, and was not unreasonable or unjust. HELD: Refusal of defendant to furnish cars for the loading of coal from wagons not unjust or unreasonable, complaint dismissed. Thompson v. Pennsylvania R. R., 10 I. C. C. 640.

(e) Complainant alleged refusal of defendant to furnish cars to complainant for interstate shipment of corn from Leipsic, O., while it contemporaneously furnished cars to its competitors as unduly discriminatory. Complaint owned no elevators and were track loaders, that is, they loaded from wagons into the cars. Its competitors at Leipsic owned elevators and were furnished cars for their shipment. HELD: Discrimination was practiced against complainant, but evidence as to damages sustained was meager and complainant allowed additional time to furnish proof. Gallogly & Firestine v. C., H. & D. Ry., 11 I. C. C. 1.

(f) Complainant attacked failure of defendant to furnish cars on demand for shipment of hay and other produce, while furnishing cars to complainants' competitors. Complainant is located at Grover Hill, O. He was a track buyer; that is, he buys of neighboring farmers for delivery from wagons to cars, with a little storage room in sheds on his farm. His competitors were elevator operators at the same point. HELD: Complainant was unjustly discriminated against, reparation awarded. Eaton v. C., H. & D. Ry., 11 I. C. C., 619.

§18. Detention of Cars.

IMPORTANT CASES SINCE 1908

(a) Under a complaint charging shortage of cars, it appearing that during the period complained of there were at the mine of the complainant from day to day from one to twenty-five unbilled cars; that complainant handled lump coal and small coal; that it found a ready market for the lump coal, but not for the small coal, and was obliged to keep the latter on hand for a longer time; and that unbilled cars were used for the storage of small coal. HELD: Complainant failed to make out a case of shortage of cars, since it had no right to require defendant to furnish cars for the storage of its small coal, and but for that purpose defendant was supplying an abundance of cars. Traer v. C., B. & Q. R. R. Co., 14 I. C. C. 165, 168.

(b) Cars which are partially loaded and remain over until next day should be charged against the mine loading the same as if such cars were empty. McCaa Coal Co. v. C. & C. Ry. Co., 33 I. C. C. 128, 132.

§19. When Counted for Loading.

IMPORTANT CASES SINCE 1908

(a) A rule that a car placed too late for loading will not be counted as available for loading until the following day is not unlawful. Hillsdale Coal & Coke Co. v. P. R. R. Co., 19 I. C. C. 356, 367.

(b) Cars which are partially loaded and remain over until the next day should be charged against the mine loading the same as if such cars were empty. McCaa Coal Co. v. C. & C. Ry. Co., 33 I. C. C. 128, 132.

§20. Car Famine.

CASES 1887-1908

(a) At times of special pressure, regular customers are not entitled to preference over occasional ones in obtaining cars. Riddle v. New York, L. E. & W. R. Co., 1 I. C. R. 787.

(b) When equipment of carrier usually applied to transportation of particular article is not equal to demand, carrier must appropriate other cars to such service. Riddle v. New York, L. E. & W. R. Co., 1 I. C. R. 787.

(c) It is the duty of a common carrier to provide adequate equipment for the business of its line; if in time of special pressure some one must wait, the annoyance must be distributed with all possible equality, and in this respect regular customers are not entitled to preference over occasional customers. Riddle, Dean & Co. v. N. Y., L. E. & W. R. R., 1 I. C. C. 787, 791.

(d) No unjust discrimination agair st complainant shippers in favor of other shippers is shown by evidence that, during the anthracite coal strike, defendant railroad companies gave a preference to bituminous coal, and also to live stock and perishable freights, which caused delay in the transportation of complainant's hay, where only two cars "slipped through" to destination, after the receipt and before the delivery of complainant's car, showing that the embargo was practically maintained and enforced. S. S. Daish & Sons v. Cleveland, A. & C. R. Co., 9 I. C. C. 513.

(e) Under the conditions that attended the anthracite coal strike of 1902, and which resulted in a great demand for bituminous coal, subjecting railroad equipments to a great tax and causing congestion of lines, yards, and terminals, the defendant's temporary rule limiting its coal cars to mines having track connection with its road, thereby confining its comparatively few available cars to mines generally in operation, where quick loading could be accomplished, and declining to permit its sidings or switches to be further congested by loading coal from wagons, was calculated to hasten, rather than retard, the movement of coal for public use, and was not unreasonable or unjust. Thompson v. Pennsylvania R. Co., 10 I. C. C. 640.

(f) A regulation of the Southern Pacific Company to the effect that, in the time of car shortage, cars will be furnished to the various shippers in proportion to the amount of fruit picked and actually in the packing houses at the time of the demand for cars, although not so satisfactory as the so-called "crop holding rule" under which cars were distributed in proportion to the season's business done by the various shippers, is not unduly discriminatory. California Fruit Growers Exchange v. Southern P. Co., 12 I. C. C. 553.

(g) Complainants attacked as unreasonable a regulation of the S. P., to the effect that, in times of car shortage, cars will be furnished to the various shippers in proportion to the amount of fruit picked and actually in the packing houses at the time of the demand for cars. Prior to April 1907, cars were distributed in proportion to the season's business done by the various shippers. This so-called "crop-holding" rule is still in force over the Santa Fe, but in the case of the S. P., has been displaced by the "house rule." HELD, the situation can not be adequately covered by any fixed inelastic regulation. Although the crop holding rule appears to work more perfectly to the satisfaction of shippers and carriers, nevertheless the house rule does not appear to be unduly discriminatory. Complaint dismissed. California Fruit Growers Exchange v. S. P.. Co., 12 I. C. C. 553.

(h) Commission instituted an investigation as to car shortage and other insufficient transportation facilities in the Northwest, on the Pacific coast, and in the southwest. COAL SHORTAGE IN NORTH DAKOTA. It is fair inference from all the testimony that the real cause of the coal scarcity in North Dakota was such an abundance of westbound traffic at the head of the Lakes that cars were not available in the congested state of that terminal for the carrying of coal to North Dakota—a comparatively short haul for a low class commodity. The Commission has gained indisputable proof of an agreement between coal dealers to maintain prices and to boycott all who do not so agree; but there is no evidence at all justifying the contention that this combination is chargeable with the coal shortage prevailing nor that the railroads were party in any way to such a conspiracy. GRAIN SITUATION IN THE NORTHWEST. The G. N., and N. P., roads did not suffer by reason of diversion of their cars

to other roads; the balance between these and other railroads was in favor of the G. N., to extent of 2,000 cars and of the N. P., to extent of 6,000 cars; both roads had more equipment than they had last year, when cars were furnished more promptly, better time was made, and less complaint was made by shippers. There was less evidence of inability to supply cars for loading at competitive points than at noncompetitive points; preference was shown to classes of freight calling for a long haul; the elevators at terminals made no delays in freeing equipment; from the standpoint of public service the best possible use of equipment is not secured by a policy of operation which subordinates time of transportation to tonnage transported; improvements under way and contemplated will greatly enlarge the capacity of the roads to handle their growing volume of freight, but such improvements will not relieve the needs of the Northwest unless the roads pursue a policy of operation aimed specifically to meet the needs of the grain raiser. PROPOSED REMEDIES. There is no division among railroad men as to the necessity for greatly increasing terminal facilities and for adopting new methods of handling freight at the larger terminals. This congestion has its effect upon all lines of railroad reaching such terminals, for once a terminal contains more traffic than it can promptly handle and deliver, it acts as a dam which floods a constantly increased area behind it. One of the causes of congestion at terminals is the reconsignment privilege granted on many of the principal articles of freight. Another cause is warehousing in cars. If it be true that any considerable part of the shortage of car service from which the country is suffering is due to the excessive and unnecessary time allowed by railroads, it is manifestly within the power of the railroads themselves to correct such abuse. The most conservative critic must hold that proper co-ordination of departments within individual roads and intelligent co-operation between independent roads, within entirely lawful lines, would leave far less foundation for criticism of car service than may at present be justly made. Car Shortage-Insufficient Transportation Facilities, 12 I. C. C. 561.

IMPORTANT CASES SINCE 1908

(i) It may well happen that if a carrier can supply during the major part of the year all the cars required by the coal mines located on its line, the most satisfactory basis for distribution during short and infrequent periods of car shortage would be furnished by the actual results of operation during the time of full supply. Traer v. C. B. & Q. R. R. Co., 14 I. C. C. 165, 169.

(j) During the period of car shortage complainant unable to obtain sufficient number of cars at congested grain elevators for outbound movement. Rules governing assessment of demurrage on grain shipped into transit points on local billing and there held for unloading into elevators, not shown unreasonable or unduly prejudicial. Armour Grain Co. v. Director General, 57 I. C. C. 398.

(k) In times of car shortage failure to furnish cars for outbound movement constitutes no reason for refraining from assessing demurrage charges on inbound shipments. Armour Grain Co., v. Director General, 57 I. C. C. 398, 408.

(l) Acute car shortage has taxed carriers to their utmost capacity and it may be questioned that the selfish interests, either of the roads serving the steel manufacturing sections of the east and middle west or of the transcontinental carriers, would lead them to offer competition or discourage the forwarding via rail-and-ocean routes, through eastern ports, of steel products hitherto moving all-rail to the Pacific coast. Application of United States Steel Products Co., 57 I. C. C. 513, 516.

(m) Owing to the long continued shortage of equipment, due to war conditions, the railroad companies have not recently leased any cars for live fish shipments and have attempted to withdraw all cars from that service. Lyons Co. v. Adams Exp. Co., 53 I. C. C. 633, 634.

(n) That periods of congestion and car shortage may occur at times and thus render temporarily unavailable the customary through routes provided by carriers is anticipated in the act, under which the Commission is authorized to establish temporary through routes, either upon application of shippers or upon its own initiative, without complaint and without the delays incident to formal hearing. Boston Wool Trade Asso. v. A. T. & S. F. Ry. Co., 62 I. C. C. 228, 230.

ALL OTHER CITATIONS

MacMurray v. U. P. R. R. Co., 13

I. C. C. 531, 533; Wagner, Zagelmeyer & Co. v. D. & M. Co., 13 I. C. C. 160, 164; Cox Bros. v. St. L. & S. F. R. R. Co., 14 I. C. C. 464, 466; Rail & River Coal Co. v. B. & O. R. R. Co., 14 I. C. C. 86, 92; National Coal Co. v. B. & O. R. R. Co., 28 I. C. C. 442, 444; Huerfano Coal Co. v. C. & S. E. R. R. Co., 28 I. C. C. 502, 506; Charles Becker v. P. M. R. R. Co., 28 I. C. C. 645, 657; Railroad Commissioners of Iowa v. C. R. I. & P. R. R. Co., 29 I. C. C. 396, 404; C. & N. W. Ry. Reconsignment Rules, 29 I. C. C. 620, 624; Wright v. C. & N. W. Ry. Co., Unrep. Op. A451; Coal and Oil Investigation, 31 I. C. C. 193, 217; Pittsburgh & Southern Coal Co. v. W. P. T. Ry. Co., 31 I. C. C., 660, 663; Farmers' Co-operative Asso. v. C. B. & Q. Co., 34 I. C. C., 60, 62; Boston Potato Receivers' Asso. v. B. & A. R. R. Co., 42 I. C. C. 454, 457; Northern Coal Co. v. M. & O. R. R., 55 I. C. C. 502; Northern West Virginia Coal Asso. v. Director General, 60 I. C. C. 569, 573; Trade Asso. v. Director General, 58 I. C. C. 15, 22; Reconsignments and Diversion Rules, 58 I. C. C. 568, 580; American Wholesale Lumber Asso. v. Director General, as Agent, 66 I. C. C. 393, 407; Northern West Virginia Coal Operators' Asso. v. P. & L. E. R. R. Co., 68 I. C. C. 167; Washington Mfg. Co. v. O. W. R. R. & N. Co., 69 I. C. C. 639.

§21. Reward from Prompt Release.

IMPORTANT CASES SINCE 1908

(a) Defendant carrier, to encourage a prompt discharge and return of coal cars, put in force a rule, by which all coal shippers who during the month averaged not more than five days' detention of the cars assigned to them were granted a premium of 50 per cent additional to their car supply for the next month. HELD, such rule constituted an unjust discrimination in the matter of car distribution under the Act as amended June 29, 1906, the proper method being to assess demurrage charges for delay in unloading. (McDowell, J., dissenting.) U. S. v. B. & O. R. R. Co., 165 Fed. 113, 128.

§21½. Shippers on Branch Lines.

See Advance Rates §12; Branch Lines; Evidence §37.

CASES 1887-1908

(a) Complainant attacked discrimination in furnishing cars for transportation of coal and demanding pecuniary damages. A railroad chartered by the state of Tennessee owns a short road wholly within that state, but never owned any rolling stock nor operated its road. The road was used and operated as a means of conducting interstate traiffc in coal by companies owning connecting interstate roads. HELD, that the short road is one of the facilities and instrumentalities of interstate commerce, and as such is subject to the act. In respect to such traffic the duties of such a road to the public are the same, without respect to ownership, corporate control the authority or means of its construction. As one of the instrumentalities of shipment or carriage it must be accessible to all interstate shippers on equal and reasonable terms. The public can not be deprived of this right by separate or joint action of defendants. The traffic in question is interstate traffic. The companies conducting it use this short road as a facility to such traffic. They can not be permitted to use it for purposes of discrimination between mine owners on its line. The claim for pecuniary damages presents a case at common law, in which defendants are entitled to a jury trial. Heck v. East Tennessee Virginia & Georgia R. Co., 1 I. C. C. 775, 777.

IMPORTANT CASES SINCE 1908

(b) Complainant alleged that five of its mines are situated with reference to the C. B. & Q., the same as mines at Logan, Ill., on the I. C., and at Bush and Royalton, Ill., on the M. P., and that it was subjected to undue preference and disadvantage because the Burlington serves the mines at Logan, Bush and Royalton but refuses to serve complainants mines; it asks that the Marion & Eastern be permitted to construct and maintain at its own expense a connection between the rails of the Burlington and I. C., at a point west of Marion where their lines cross; to require the I. C., to permit the Eastern the use of the I. C. tracks between Marion and the proposed connection; to require the Burlington to allot empty coal cars to complainants mines, and to require the establishment of the same group rates from complainants mines to destinations on the Burlington as are accorded other mines served by that line. The real purpose of this proceeding is to secure for the city of Marion a connection with the Burlington and for the complaining coal companies car service

from that carrier. The line of the Eastern extends for a distance of about 10 miles from Pittsburgh, Ill., to a point 1.1 miles east of Marion, where it connects with the I. C. From that point it operates, under a trackage agreement over the I. C., to Marion. The Burlington does not reach Marion, but crosses the I. C., overhead approximately two miles west of that point. About 95 per cent of its traffic is coal. It serves directly all of the mines of the complainants. Due to arrangements previously secured complainants mines have been treated by the I. C., M. P., and C. & E. I., in the matter of rates and car service as though located on their own rails. In placing empty cars to, and receiving loaded cars from, the Eastern and I. C., uses a portion of the track of the latter over which it has trackage rights. The evidence indicates that the Burlington furnishes better car service than the M. P., C. & E. I., or I. C., but it has not been able at all times to satisfy the requirements of the mines which it serves. The Burlington, by trackage right, is enabled to reach the mines at Logan and Royalton, on the I. C., and M. P., and the I. C. and M. P. reach certain mines on the Burlington in the same manner. HELD, public convenience and necessity do not require the extension of the rails of the Eastern as proposed. HELD, the Eastern tracks are situated more than two miles east of the Burlington and it is not a lateral branch line, within the meaning of paragraph 9 of section 1 of the act, complaint dismissed. Cameron Coal Co. v. Marion & Eastern R. R. Co., 63 I. C. C. 434.

(c) Under section 1 of the Act, coal shippers located on branch or lateral lines are entitled to the same kind of treatment as is accorded to those whose mines are located on the main line of the carrier, and in the matter of car distribution the allotment should be made to such branch or lateral lines on the same basis as to shippers on the main lines. (McDowell, J., dissenting.) U. S. v. B. & O. R. R. Co., 165 Fed. 113, 131.

ALL OTHER CITATIONS

Wright v. C. & N. W. Ry. Co., Unrep. Op. A451; Gallatin Coal & Coke Co. v. L. & N. Ry., 55 I. C. C. 491.

B. Rating of Mines.

§21¾. In General.

IMPORTANT CASES SINCE 1908

(a) Mine ratings should be based upon the ability to produce coal, and the commercial capacity to dispose of it, and if these elements fluctuate from time to time the ratings should, periodically, be changed. Northern Coal Co. v. M. & O. R. R., 55 I. C. C. 502, 510.

(b) Paragraph (12) of section 1 of the Interstate Commerce Act does not change the rule of law as laid down in the Hocking Valley Case, 12 I. C. C. 389 and the Traer Case, 13 I. C. C. 451, governing distribution of cars in accordance with the relative rating of the mines, but states in statutory form what had heretofore been the law pursuant to the decisions of the Commission and the Supreme Court. Assignment of Freight Cars, 57 I. C. C. 760, 766.

(c) Complainant attacked rules, regulations and practices of defendants in the distribution of cars for the transportation of coal from its mines to interstate destinations as unjust, unreasonable and unduly prejudicial. The defendants treated the joint mines the same as local mines in the distribution of cars. They had no information of the number of cars ordered from the other carrier. So far as they were concerned the joint mine operator could order and secure 100 per cent car supply from each road. Effective Oct. 10, 1918, Car Service Circular CS-31 became effective and under rule 2 prescribed a method for ordering cars for joint mines. On March 2, 1920, the Commission issued a notice to carriers and shippers recommending that this Circular be continued in effect. For purposes of economy the C. & O. arranged to serve certain of the mines located on its rails as agent for the Virginian, and the Virginian in turn agreed to place C. & O. cars at mines located on its rails. Each road retained the right to perform the service for itself in case complaint was made of the service performed by the other. Each of the mines is shown as being located on each of these roads and the rates are published as applicable by each. While it is true that the joint mine has an advantage by reason of its location on two railroads because of additional markets which it can reach, it is likewise true that the joint mine is not always in position to avail itself of its alleged advantage because of the practice in the coal business to make contracts for yearly periods beginning with April 1st. Neither is it possible at all times for the joint mines to order all their cars from the carrier having the

greater car supply. HELD, rule R Circular also require shipments to be made by the line having the lesser car supply in order to meet current obligations. It frequently happens that the joint mine receives a less car supply than the local mine situated on the road having the greater car supply. Held rule R. Circular CS-31 Revised, unreasonable and unduly prejudicial to joint mines to extent it limits the aggregate orders of the joint mine to 100 per cent of its rating from both roads; that for the future during periods of car shortage defendants should distribute cars to the joint mines on their lines here considered on the basis outlined in 25 I. C. C. 286. Defendants will promptly amend their car service rules so as to conform with the findings. Fairmont & Cleveland Coal Co. v. B. & O., 62 I. C. C. 269.

(d) Whatever tends to inflate the nominal mine ratings beyond the amount which can normally be produced and shipped is distinctly counter to the public interest. Bell & Zoller Coal Co. v. B. & O. S. W. R. R., 74 I. C. C. 433, 442.

(e) Modified mine run defined as coal as it comes from mine without preparation other than being passed through a round perforated screen having apertures not greater than 8 inches in diameter. Western Coal Rates, 80 I. C. C. 383, 450.

ALL OTHER CITATIONS

McCaa Coal Co. v. C. & C. Ry., 33 I. C. C. 128; Gallatin Coal & Coke Co. v. L. & N. Ry., 55 I. C. C. 491, 492.

§22. Coke-oven Basis.

IMPORTANT CASES SINCE 1908

(a) Complainant, coal operator in the Pocahontas Flat Top coal district in West Virginia, attacked the "coke oven basis" method of car distribution applied by defendant and asked for the institution of the "capacity basis." In the early days in this district the land owners were desirous of having the coal screened and the slack manufactured into coke, under the belief that they would thereby increase the products of the district and enhance the value of their holdings. It was, therefore, arranged with defendant that the operators should construct a certain minimum number of coke ovens on their holdings, and that the available supply of cars should be distributed according to the proportion which the number of ovens erected by each operator bore to the entire number of ovens in the field. In the course of time the number of ovens erected far exceeded the number actually needed, and new ovens were built at an expense of some $500 each for the sole purpose of increasing the proportion of cars to the operator building same. After the field developed, certain portions thereof had no practical use for coke ovens, and were assigned cars on the basis of imaginary use for coke ovens, with the idea of giving said portions a supply of cars according to the capacity of their mines. Under the system attacked some of the operators were getting more cars than they needed, to move their coal, and others were getting less. During a certain period, when the defendant was able to supply all the cars needed by anyone, operators, who under the basis attacked were entitled to a smaller number of cars, actually made larger shipments of coal than operators entitled to a larger number. HELD, the coke oven basis should be discontinued and defendant should arrange for car distribution on a basis which would not result in unlawful discrimination between the various operators in the field. Powhatan Coal & Coke Co. v. N. & W. Ry. Co., 13 I. C. C. 69, 83, 86.

§23. Commercial Plus Physical Capacity.

IMPORTANT CASES SINCE 1908

(a) Defendant established a percentage basis of car distribution resting on the physical and commercial capacity of the mine. The physical capacity was determined by the thickness of the coal seam, the number of rooms or working places, the capacity of the underground tram-tracks, and the facilities for getting the coal out of the mine into the tipple, and from the tipple into cars. A fixed per diem value was assigned to a man's labor, taking into consideration the character of the seam; and the number of places in which a man could work was taken into account, regardless of the number of men actually employed. The actual requirements of the mine for cars were tested by shipments made by the mine, which factor was arrived at by taking the volume of shipments made by the mine during a period of free car supply, usually from April 1 to August 1, in each of two preceding years. In figuring the actual shipments, all shipments were included except shipments of fuel coal to defendant carrier. The physical capacity, the commercial capacity for the first year, and the commercial capacity for the second year were added together

and divided by three. The result obtained was the capacity basis for determining the percentage a particular mine was entitled to. HELD, this system was not shown to be unreasonable. Rail & River Coal Co. v. B. & O. R. R. Co., 14 I. C. C. 86, 95.

(b) In apportioning its coal car equipment the defendant adopts the following plan: to the physical capacity of the mine it adds its commercial capacity for one year only and divides the sum by two. The commercial capacity, however, is not based upon shipments made from a mine during a substantial period of free car supply, but upon the entire volume of shipments made from the mines throughout the preceding twelve months. The ratings are revised quarterly on Feb. ruary 1, May 1, August 1 and November 1. The rating of any particular operator will also be revised by the defendant upon request, regardless of the quarterly tests; thus the commercial capacity of each mine is brought up to date at each quarterly rating period by taking into consideration its new tonnage for three months and adding to it the tonnage of the preceding nine months previously used in the preceding rating. In this manner the defendant endeavors to follow up as closely as possible the fluctuations in the market, labor conditions and car supplies. By combining the commercial capacity of a mine thus ascertained and constantly brought up to date with its physical capacity the rating of the mine and the distribution of coal car equipment is determined. HELD, if this system of rating is equitably applied to all mines served by the defendant, the Commission is unable so far as its investigations to the present time have informed it on the question clearly to see upon what grounds it may be said to result in an unequal, unfair or discriminatory distribution of equipment. Hillsdale Coal & Coke Co. v. P. R. R. Co., 19 I. C. C. 356, 360.

(c) A mine rating system of car distribution which combines commercial with physical capacity is not unlawful. Hillsdale Coal & Coke Co. v. P. R. R. Co., 19 I. C. C. 356, 360; Jacoby & Co. v. P. R. R. Co., 19 I. C. C. 392, 294.

(d) At this time and upon the present state of the Commission's information and experience it cannot accept the contention that physical capacity alone is the fair and sound basis for rating mines for car distribution. Speaking in precise terms, it is of no real concern to a carrier how large a particular mine may be, and what are its possibilities in the way of daily output, except that those factors may afford some measure of what its actual shipments will be. The utmost obligation that the law lays upon the carrier is to equip itself with sufficient cars, not to meet the hopes and expectations of the owner of a mine as expressed in its physical development, but to meet his actual shipment. A mine rating that is adjusted to the expectation of the operator, and altogether ignores his actual requirements, might easily result in a period of car shortage in giving him cars for every ton of coal that he can actually dispose of, while an adjoining mine with a small development, but a larger demand for its output, would get but a fraction of the equipment that it needs to meet its actual contracts. Hillsdale Coal & Coke Co. v. P. R. R. Co., 19 I. C. C. 356, 361.

(e) Mine ratings should be based upon the ability to produce coal, and the commercial capacity to dispose of it. If these elements fluctuate from time to time the ratings should periodically be changed. Northern Coal Co. v. M. & O. R. R., 55 I. C. C. 502, 510.

ALL OTHER CITATIONS

National Coal Co. v. B. & O. R. R., Co., 28 I. C. C. 442, 444; McCaa Coal Co. v. C. & C. Ry. Co., 30 I. C. C. 531.

§24. Idle-hour System.

IMPORTANT CASES SINCE 1908

(a) In what is known as the "idle-hour" system of rating coal mines, the number of days and hours a mine has been in actual operation is used in estimating its commercial capacity, instead of using the number of calendar days. Colorado Coal Traffic Ass'n. v. D. & R. G. R. R. Co., 23 I. C. C. 458, 462.

(b) Complainant alleged that defendant's method of distributing cars for the transportation of coal from mines in Huerfano and Las Animas Counties, Colorado, to interstate points was unlawful, and asked for the establishment of the idle-hour system. The testimony showed that no definite plan which might have served as guide and authority alike for shippers and operators had been in existence in this coal district. It appeared that when the operator was particularly

anxious for cars he would employ what is known as a "car rustler." The "car rustler" is a ubiquitous individual who, by means of good fellowship, free cigars and lunch money, prevails upon the carriers' employes to promptly move equipment for the rustler's employer. In the case of congestion the rustler helps the engine crew distribute the cars. It appeared that the chief dispatcher and conductor of each particular train is supposed to know the necessities of each mine and pro rate the cars accordingly. The record fairly established that some unjust discrimination had been practiced in the past. HELD, that a "plan" which rests in the minds of two men, dispatcher and conductor, cannot be a plan which can possibly satisfy many operators in rivalry with one another, no matter how conscientious and faithful those two men may be. It is the duty of the carrier to hire sufficient men to facilitate the distribution of cars, and not the operator. It is imperative that rules and regulations be formulated and published by the carriers at the earliest practicable date after proper conference with the operators, and sixty days is deemed a reasonable time in which to do this. If after such rules and regulations have been published and given a fair trial, they do not meet the situation and the carriers are willing to meet the views of the operators, the matter may be brought to the attention of the Commission. Colorado Coal Traffic Ass'n v. D. & R. G. R. R. Co., 23 I. C. C. 458, 463, 464.

(c) Complainant located on the P. & W. V. in Pennsylvania and West Virginia, Avella District, seek reparation for damages alleged to have been sustained through defendants unduly prejudicial practices in the distribution of empty coal cars, during the period from Oct. 1, 1917, to March 22, 1918. During that time the P. & W. V. was under federal control. The mines alleged to be favored are those of the Pittsburgh Terminal Railroad and Coal Co., located in the Pittsburgh district on the line of the West Side Belt R. R. Co. For all practical purposes, this case is one in which a carrier is alleged to have unlawfully preferred its own mines to the detriment of other producers. Complainants mines are located between 30 and 35 miles west of Pittsburgh. The Belt extends from West End, Pittsburgh in a southerly direction for a distance of about 21 miles to Clairton, Pa. and the Belt mines are located about 10 or 12 miles south of Pittsburgh. The idle hour basis of car distribution was in force on both roads. Under this plan the object is to give each mine a portion of the available car supply in order to keep all the mines in operation the same number of hours per day, and if due to car shortage any mine is idle a greater or lesser number of hours than the average of all mines in a common group or unit car distribution is equalized every few weeks by giving that mine a sufficiently increased or reduced supply of cars. During the period covered by the complaints complainants mines received a relatively smaller supply of cars than did the Belt mines, and of course were not able to work as many hours per day. The railroad properties of the West Virginia and the Belt were operated under a common management. It was defendants practice to handle the car supply as though the two companies were one, whenever practical considerations were deemed such as to make it advisable. It was their policy at all times so to distribute equipment as to keep all of the mines on both roads in operation an equal number of hours per day, so far as that was reasonably practicable under the circumstances, although the existence of a legal duty to do so is denied. Under the facts of record defendants contention that the two roads should be regarded as having been separate and distinct for the purposes of car distribution can not be sustained. While these two roads were incorporated under individual charters and while, as a matter of accounting, an endeavor was made to allocate their expenses and revenues, the record clearly establishes that during the period in question they were operated as one road in the matter of car distribution and were so regarded and treated not only by their own officials but by their connections and by the car pool which was formed to control the distribution of cars during the war emergency. Complainants mines and those on the Belt are, generally speaking, operated under substantially the same conditions. The record shows that during practically every day of the period complainants mines could be and were reached by locomotives and cars moving over the line of the West Virginia. The situation could have been relieved or equalized by moving to complainants mines foreign empties delivered to the Belt by the Belt's

connections. The record clearly shows that there was a great general shortage of fuel during the period in question, and that complainants could have disposed of their output in almost any direction and that if placed for loading they could have used cars which the Belt received from its connections and have forwarded them via those connections. No good reason appears why some of the empties which came to the Belt from the Belt's connections, other than in these trains, could not have been sent to complainants mines in order to balance the situation. HELD, the conditions were not such as to excuse or justify the defendants to serve all shippers equally, and that the prejudice in car distribution to which complainants were subjected during the period in question was undue and unlawful. Reparation with interest awarded. Avella Coal Co. v. P. & W. V., 58 I. C. C. 313.

ALL OTHER CITATIONS

Huerfano Coal Co. v. C. & S. E. R. R. Co., 28 I. C. C. 502.

§25. Mine Capacity Plus Shipments.

IMPORTANT CASES SINCE 1908

(a) A carrier may make arbitrary allotment of cars for the purpose of enabling the owner of a mine reasonably to develop it, so as to put it in a condition to operate and make shipment. Rail & River Coal Co. v. B. & O. R. R. Co., 14 I. C. C. 86, 93.

(b) In determining the number of cars to which various competing coal companies upon its line were entitled, defendant based the percentage on the capacity of the mine and on previous shipments, the capacity being allowed to count as 1, and the shipments as 2, in ascertaining the percentages. HELD, such system was improper and unfair to the shipper opening up new mines and that percentages should be based solely on physical capacity of the mine. (McDowell, J., dissenting.) U. S. v. B. & O. R. R. Co., 165 Fed. 113, 130.

ALL OTHER CITATIONS

Northern Coal Co. v. M. & O. Ry., 55 I. C. C. 502.

§26. Physical Capacity Less Railway Fuel.

IMPORTANT CASES SINCE 1908

(a) Complainant attacked defendant's method of car distribution in the Coal Creek district of Tennessee on shipments into the Carolinas and Georgia. Under the method in force the tonnage of the cars for defendant's railway fuel supplied to the fuel contract mines was deducted from the rated capacity of such mines, and the remainder was considered the rating of these mines on which they shared with purely commercial mines in the pro rata distribution of cars available for commercial shipments. As a result complainant's competitors, being fuel contract mines, obtained more than their percentage of cars on the basis of mine capacity as compared with complainant and other purely commercial operators. Defendant was thereby enabled to secure lower prices for coal used by it in consideration of furnishing a larger supply of cars to fuel mines. HELD, this method resulted in unjust discrimination, and that where there was an inadequate supply of coal cars the only regulation or practice in respect to the transportation of coal from the mines that was just, fair and reasonable, was to allot to each mine its fair and just proportion of the coal cars estimated upon its justly ascertained capacity and without regard to whether the mine furnished partly fuel coal and partly commercial coal, or commercial coal only. Railroads are entitled and required by law to take all proper and just measures to assure the regularity and certainty of their fuel supply; but in securing such supply they are not justified in beating down the price of coal by means of plans of car distribution or in penalizing mines that refuse to sell fuel coal by lowered mine ratings or lessened car supply. Royal Coal & Coke Co. v. Southern Ry. Co., 13 I. C. C. 440, 444, 448.

(b) A carrier must be free to contract for the total output of a mine if it so desires; or it may contract for any part of a mine's output less than the whole, and it is entitled to get its fuel coal first, for without fuel it cannot haul even commercial coal to its destination, to say nothing of complying with its obligations to the public at large; but in all its acts it must deal even-handed justice in the matter of car distribution. If a mine contracts to furnish only a part of its output to the railroad for fuel, and if the filling of its contract with the railroad calls for its full pro rata of cars, or more, then it should not receive other cars for commercial shipments. If such a mine, in filling its contract to supply fuel coal to the railroad, does not ex-

haust its equitable pro rata of cars, then cars should be given it for commercial shipments sufficient to complete its full pro rata share of all available cars. Wyatt Coal & Coke Co. v. Southern Ry. Co., 13 I. C. C. 440, 448.

(c) Complainant assailed defendants' system of distributing coal cars during car shortage periods by adding to the estimated physical capacity the commercial capacity taken for the 12-month prior period, dividing the result by two, provided that if the resultant was greater than the tipple or haulage capacity, the lesser of these was to be taken as the basis of the mine rate, as discriminatory. In estimating the physical capacity a mine was supposed to have two miners working, with a capacity per miner as reported, in each working place reported, even though tracks may not have been laid into them or they had been exhausted and the matters of whether machines were used in the mine, the thickness of seam were not considered. The rules requiring that the entire daily allotment of cars must be ordered if any were wanted, was so enforced against complainants that their entire monthly allotments were exhausted in a few days, while not enforced as to other coal companies controlled by defendant, which were thus enabled to run continuously. Miners would not stay at mines that did not run regularly. Cars were often delivered to complainants late in the afternoon. HELD, (1) that distribution of cars based on physical capacity worked injustice; (2) that the best basis for distribution was the proportionate necessities of the mines, as indicated by past performances, extending over periods of car shortage as well as periods of free distribution; (3) that defendant should thereafter base distribution on average shipment per days worked by mines located on its line taken for a 2-year period prior to Jan. 1, 1913; (4) that cars must be supplied all operators as of 7 a. m. of the day charged. Reparation denied. McCaa Coal Co. v. C. & C. Ry. Co., 30 I. C. C. 531.

(d) A system of car distribution based on physical capacity, which takes into account only the reported number of working places available in the mine, the number of miners that could be worked to advantage, and the average capacity of each miner, ignoring the data as to whether or not machines are used in the mine and thickness of seam, will permit of arbitrary inflations, enabling the carrier to unjustly discriminate. McCaa Coal Co. v. C. & C. Ry. Co., 30 I. C. C. 531, 534.

(e) The best that can be said for calculations as to physical capacity is that they are arbitrary inflations, which furnish nothing real or tangible. McCaa Coal Co. v. C. & C. Ry. Co., 30 I. C. C. 531, 535.

(f) Car distribution based upon the element of physical capacity is wholly unsatisfactory and works injustice. McCaa Coal Co. v. C. & C. Ry. Co., 30 I. C. C. 531, 536.

(g) Distribution of coal cars based on the element of physical capacity is wholly unsatisfastory and works injustice. In some cases the best basis for distribution is the proportionate necessities of the mines, as indicated by past performances, extending over periods of car shortage as well as periods of free distribution. No basis of distribution can be absolutely precise. But it is not necessary to imagine anything or deal in speculations or possibilities. McCaa Coal Co. v. C. & C. Ry. Co., 30 I. C. C. 531, 536.

C. Removal of Discrimination.

§27. Effect.

IMPORTANT CASES SINCE 1908

(a) Under the complaint of a mine owner at Virden, Ill., it appeared that defendant supplied sufficient cars and that any apparent shortage was due to the practice by complainant of storing small coal in unbilled cars. Defendant served mines producing varying qualities of coal in five different states. It never established any rating for distribution of the different mines upon any part of its system. The evidence showed that, with the exception of the inquiry in question, no complaint had ever been filed by any of its coal operators on the ground of discrimination and but few complaints on the ground of insufficient supply of cars. HELD, in view of the fact that to establish mine ratings and a system of car distribution for all the different collieries served by it would be a complex and difficult task, defendant was not required to do so in the absence of a probable future discrimination. Traer v. C. B. & Q. R. R. Co., 14 I. C. C. 165, 168.

(b) Refusal of defendants to furnish, upon reasonable request therefor, cars,

to complainant for the transportation of bituminous coal, while contemporaneously furnishing cars to other mine owners and operators, competitors of complainant and similarly located on private sidings on which two tipples were maintained, found to subject complainant to undue prejudice and disadvantage in favor of such competitors. Meyersdale Smokeless Coal Co. v. B. & O. R. R. Co., 62 I. C. C. 429.

IV. CONTRACTS FOR CAR SUPPLY.

§28. In General.

CASES 1887-1908

(a) Defendant railway company published a tariff containing the following: "For the purpose of facilitating quick dispatch of the coal cars of this company, a discount of 10 per cent will be made from the following rates, to any person, firm or company, who shall receive consignments of coal, in any one year, amounting to 30,000 tons or upwards, at any one station on the line of this road. Quick dispatch to be construed as immediate unloading of coal on its arrival at destination." Defendant claimed that this discount was offered to secure, and was conditioned upon, quick dispatch in unloading its coal cars, and that it was a reasonable regulation for the proper conduct of its business. HELD: (a) That by the wording of the offer, "quick dispatch" was not made a condition of the offer, and, therefore, it cannot be supported on that ground. (b) That even if "quick dispatch" were made a condition of the discount, such offer would have neither justice nor reason to support it, as its limitation to consignees receiving a specified number of tons would be an unjust discrmiination. (c) That the offer of discount cannot be supported on the consideration of quantity, on the analogy of the distinction usually made in ordinary business transactions, between wholesale and retail dealers. Providence Coal Co. v. Providence & W. R. Co., 1 I. C. R. 363.

(b) A carrier is not forbidden from obtaining cars from a shipper for the transportation of freight over its line, but in such case, after deducting reasonable rent published in the tariff as part of the rate and paid by the carrier to the shipper for the use of the cars, the rates must be actually the same as upon freight transported in the same service in the carrier's own cars. Scofield v. Lake Shore & M. S. R. Co. (Com.), 2 I. C. R. 67.

(c) A carrier is not forbidden by the law from obtaining cars from other carriers, but the rates of freight must be exactly the same. Scofield v. Lake Shore & M. S. R. Co., (Com.), 2 I. C. R. 67.

(d) A firm of cattle dealers in the City of New York, who procured their cattle on a large scale from Chicago and other western points for domestic consumption as well as for export, make an arrangement with two interstate rail carriers constituting a through line from Chicago to New York that the said firm will, under the name of an express company of their own creation, furnish not less than 200 or more than 400 improved live-stock cars for the transportation of these cattle. For the rental of these improved stock cars the carriers pay this express company ¾ of a cent per mile, whether loaded or empty. Extraordinary facilities and rights of way are given these cars to enable them to make a large mileage, and they make more than twice the mileage of ordinary stock cars. Besides this, the carriers pay 50 cents for the loading of each of said cars with cattle at the Union Stock Yards in Chicago, for which no charge is made against the express company or the firm represented by it. In addition to this, the carriers pay this firm yardage at the rate of 3½ cents per hundred pounds on all their cattle, and upon all other cattle hauled for other firms in the care of this firm, owning the express company, to its yards at pier 45, East River. This yardage charge is thus paid to the said firm by the said carriers for keeping their cattle in the firm's own yards after delivery of them to the firm, and then this yardage charge is deducted from the tariff rate charged by the carrier. The amount of these rebates to this firm in rates on these cattle by these carriers more than pays the entire cost of the improved stock cars within two years after operations are commenced with them, including the expense of operation, leaving said firm owning the cars and still operating them with all these advantages and rates and facilities. HELD: (1) This is an unlawful preference to the firm owning these improved stock cars and a violation of the Act to Regulate Commerce. (2) It is an unlawful and unjust prejudice to other cattle firms and dealers in New York who are competitors in the business of said firm

owning said improved stock cars. Shamberg v. Delaware, Lackawanna & W. R. Co., 3 I. C. R. 502.

(e) Arrangements by which shippers are allowed to furnish improved stock cars, receive extraordinary mileage upon them amounting to large rebates on their rates, and determine whether other competitive shippers shall forward freight in them or not,—are unlawful. Shamberg v. Delaware, L. & W. R. Co., (Com.), 3 I. C. R. 502.

IMPORTANT CASES SINCE 1908

(f) Defendant applied its system of car distribution and ratings thereunder to three mines not located on its lines. but which it reached through switching connections with other railroads, and with which it had no fuel contracts, and at a time when it was unable to supply the full demand for cars upon its own lines. HELD, such practice was unlawful. The carrier owes a special duty to shippers who are entirely dependent upon it for transportation facilities. It may send its equipment from its line for the things that are necessary and essential for its own operation, such right arising from considerations of public policy, which recognizes the duty of a carrier to operate its line, and being predicated on necessity and not on the carrier's right of private contract. Traer v. C. & A. R. R. Co., 13 I. C. C. 451, 456.

(g) If a carrier and a mine owner make a contract for the fuel supply of the carrier which does violence to the Act to Regulate Commerce or to the decisions of the courts, or is opposed to public policy, they are in no better position than the parties to any other contract which violates the legal principles relating thereto. Traer v. C. & A. R. R. Co., 13 I. C. C. 451, 457.

(h) The Commission recognizes the right of a railroad company to contract with a particular operator for its fuel supply; it recognizes the rights of a connecting line also to do this; and each may send its cars to those mines to the exclusion of other mines. It also insists that the owner of private cars is entitled to their exclusive use. But in each case it holds that all such cars must be counted against the distributive share of the mine receiving them. Hillsdale Coal & Coke Co. v. P. R. R. Co., 19 I. C. C. 356, 364.

(i) A carrier may make a contract for transportation, but it can not thereby absolve itself from the obligation to furnish suitable cars operated under reasonable schedules to serve the needs of its shippers. In Re Private Cars, 50 I. C. C. 652, 708.

(j) Carriers can not be compelled against their will to employ cars of other ownership. The use of such cars as instrumentalities or facilities of commerce in interchange service, in short, is a matter of contract, and whether they were accepted by defendants for such use in the present case or received as articles of freight for transportation to destination is a question of fact to be determined by the evidence. McCloud River Ry. Co. v. S. P. Ry., 56 I. C. C. 287, 290.

(k) It is within the discretion of carriers whether they shall receive and use cars of other ownerships as facilities of carriage in interchange service, and it follows that consent to do in one case and refusal in another is not necessarily unlawful discrimination under the Act to regulate commerce. McCloud River Ry. Co. v. S. P. Ry., 56 I. C. C. 287, 291.

(l) Whether complainant had or had not a specific contract with the carriers for delivery of a definite number of cars at stipulated periods, for the breach of which it would be entitled to damages, raises an issue not before the Commission nor within its jurisdiction to decide. Armour Grain Co. v. Director General, 57 I. C. C. 389, 409.

(m) While matters of car supply must be considered, they do not constitute ground for depriving a shipper of nonprejudicial rates. Gillespie Coal Co. v. I. T. S., 62 I. C. C. 335, 337.

(n) A contract with the shipper by which a carrier binds itself to furnish a specific number of cars, at specific times and places, is not contrary to public policy so long as its provisions do not require the supply of cars to the shipper in such a way as to discriminate against other shippers. Oregon R. R. & Navigation Co. v. Dumas, 181 Fed. 781, 785.

ALL OTHER CITATIONS

Huerfano Coal Co. v. C. & S. E. R. R. Co., 28 I. C. C. 502, 505, 506; Rental Charges for Insulated Cars, 31 I. C. C. 255, 256; New Orleans Live Stock Exchange v. L. & N. R. R. Co., 31 I. C. C. 609, 611, 678; National Casket Co. v. S. Ry. Co., 31 I. C. C. 678, 690, 693; Green-

field & Co. v. Penn. R. R. 47 I. C. C. 403; In the Matter of Private Cars, 50 I. C. C. 652, 680; Pittsburgh, C., C. & St. L. Ry. v. Freedom Oil Works, 247 Fed. 573, 574.

V. DUTY TO TRANSPORT CARS.

§29. In General.

See Transportation II.

CASES 1887-1908

(a) The refusal by a railroad company to transport freight on foreign cars originating east of a certain meridian, when its own cars are not in use but are free to be employed in the transportation desired, or where a transfer of freight will not be injurious to it, is not an unreasonable discrimination against another railroad company, or a denial to it of reasonable and proper facilities under the Interstate Commerce Act, although it accepts in such cars freight originating west of such meridian. Oregon Short Line & U. N. R. Co. v. Northern Pacific R. Co., 4 I. C. R. 718.

IMPORTANT CASES SINCE 1908

(b) A common carrier is bound to accept a car for transportation whenever such a car is offered at places where it can reasonably receive it. To determine whether or not it will transport the car, the carrier cannot lawfully inquire into the ownership and origin of the contents, nor into the route over which it has been moved in order to reach its rails. It can only ask that it be given reasonable compensation for the service it performs. St. Louis, Springfield & Peoria R. R. v. P. & P. U. Ry. Co., 26 I. C. C. 226, 237.

(c) A carrier has no right to transfer a one-car shipment into two cars. If a transfer at all is necessary, it should be into a car large enough to accommodate the entire shipment. Follmer & Co. v. C. P. Ry. Co., 26 I. C. C. 512, 513.

(d) Carrier may secure the economical use of its equipment. Minimum Weight on Fresh Meats and Other Commodities, 30 I. C. C. 349, 350.

(e) Effect of general business depression upon volume of traffic indicated by a comparative statement giving number of idle cars or car surplus. Five Per Cent Case, 31 I. C. C., 351, 424.

(f) A charge for the movement of a car from the point where it may be at the time, to point where it is wanted unjustly discriminates against shippers at stations to which empty cars must usually be hauled for varying distances and unduly prefers shippers at points where empty cars are always available. City Ice Delivery Co. v. P. M. R. R. Co., 39 I. C. C. 589, 591.

(g) It is all important that freight cars be kept moving and terminal congestion obviated. Any reasonable action upon the part of carriers in that direction is manifestly in the public interest, and should not only be approved but encouraged by the Commission. Export Freight Free Time, 47 I. C. C. 162, 179.

(h) It is the primary duty of a carrier to afford carriage or transportation. As a part of such transportation it is its duty to afford the consignee, after the actual movement has ceased, a reasonable time to remove the lading from the car. It is no part of the carrier's duty to furnish the consignee cars to be used for warehouse or storage purposes. Export Freight Free Time, 47 I. C. C. 162, 196.

(i) Requirement by G. N. Ry. that grain from South Dakota points to Omaha, shall be held indefinitely at Sioux City to await the ability of G. N. Ry. to secure suitable foreign cars, is an unreasonable interference with the through movement of freight. Omaha Grain Exchange v. G. N. Ry., 47 I. C. C. 532, 536.

(j) The failure to return cars to the smaller packers is due to the neglect of a lawful duty by carriers. The obligation to treat each shipper fairly, no matter how small his shipments may be in comparison with those of another shipper, is one carriers can not escape. The duty imposed on the carrier by law is to give equal treatment to all shippers who are in position to demand it. Where the same carrier or carriers serve two shippers, who by their location, the character of their output, and distance from markets where their products must be disposed of, are in substantially similar circumstances and conditions, the serving carrier or carriers can not lawfully prefer one to the other in any manner whatsoever. In the Matter of Private Cars, 50 I. C. C. 652, 692.

(k) Carriers should refuse to accept any shipment tendered in an unfit car as to which the shipper had failed to properly install the grain doors or oth-

erwise prepare the car for the safe transportation of grain. Claims for loss and damage of grain, 56 I. C. C. 347, 349.

(l) Cars, as well as other property, may be the matter of carriage by a common carrier. U. S. v. Union S. & T. Co., 192 Fed., 330, 337.

ALL OTHER CITATIONS

Standard Lime & Stone Co. v. C. V. R. R. Co., 15 I. C. C. 620, 626.

§29½. Confiscation of Fuel.

See Confiscation of Fuel.

IMPORTANT CASES SINCE 1908

(a) The rule of law as to the distribution of cars in accordance with the relative ratings of the mines as set forth in the Traer Case 13 I. C. C., 451, and sustained by the Supreme Court in 215 U. S., 452 and 479, remained the controlling rule during the war and under the rules of the Fuel Administration, when the use of assigned cars was abandoned, followed by the imperative necessity of railroads confiscating coal in transit in order to keep their roads in operation. Assignment of Freight Cars, 57 I. C. C. 760, 763.

§30. Interchange of Cars.

See Interchange of Traffic; Through Routes and Joint Rates.

CASES 1887-1908

(a) An order of the Interstate Commerce Commission to one railroad company to desist from refusing to furnish another equal facilities to those furnished a third company for interchange of through traffic may be enforced by compelling a desistance from discrimination by changed arrangements, as well as by those in force at the time of the order. New York & N. R. Co. v. New York N. E. R. Co., C. C. S. D. N. Y. 4 I. C. R. 116.

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(b) The duty of the initial carrier to furnish equipment for a shipment which moves on to other lines is universally recognized, and in cases where that is impracticable or deemed unwise, the carrier is assumed to bear the burden of the transfer from the equipment of one line to that of another. Missouri & Illinois Coal Co. v. I. C. R. R. Co., 22 I. C. C. 39, 46.

(c) Carriers are required to make reasonable rules and regulations with respect to the exchange, interchange, and return of cars used upon through routes and for the operation of such through routes, and where they have failed in this respect the Commission is empowered to determine the individual or joint regulation or practice that is just, fair, and reasonable. Missouri & Illinois Coal Co. v. I. C. R. R. Co., 22 I. C. C. 39, 49.

(d) Carriers may properly make rules to secure return of empty cars from or to foreign lines, but may not, under the guise of enforcing transportation rules, impose undue burdens upon shippers. Pine Belt Lumber Co. v. G. & S. I. R. R. Co., 33 I. C. C. 117, 118.

(e) Railroads are under obligation to serve through routes without respect to the fact that in rendering such service their equipment may be carried beyond their own lines. Doran & Co. v. N., C. & St. L. Ry., 33 I. C. C. 523, 530.

(f) The Commission does not think that the law imposes upon a railroad the duty in all cases to give to mines on a connecting independent railroad the same rates to market that it gives to mines on its own branch lines in the same region. Brush Creek Mining & Mfg. Co. v. L. & N. R. R. Co., 39 I. C. C. 449, 452.

(g) The power of the Commission to require a carrier to permit its cars to move from its line to the rails of a foreign line is clearly defined, and it is a necessary corollary that the observance of a reasonable rule for the return of such cars to the owning line may also be required. Car Supply Investigation, 42 I. C. C. 657, 672.

(h) It would be an anomaly if certain carriers could with impunity violate section 1 by failure to observe reasonable rules for the "exchange, interchange and return of cars," and by so doing prevent other carriers from furnishing transportation upon reasonable request which is required by the same section. Car Supply Investigation, 42 I. C. C. 657, 674.

(i) No operating rule is reasonable or lawful which requires holding of traffic in cars for an indefinite period at junction points. Omaha Grain Exchange v. G. N. Ry. Co., 47 I. C. C. 532, 538.

(j) Common carriers may decline to accept cars of other ownership employed solely as instruments of carriage in lieu of their own, although bound to accept them when offered merely as articles to be transported. Pacific Engineering &

Construction Co. v. C., R. I. & P. Ry., 56 I. C. C. 247, 249.

(k) Carriers can not be compelled against their will to employ cars of other ownership. The use of such cars as instrumentalities or facilities of commerce in interchange service, in short, is a matter of contract, and whether they were accepted by defendants for such use in the present case or received as articles of freight for transportation to destination is a question of fact to be determined by the evidence. McCloud River Ry. Co. v. S. P. Ry., 56 I. C. C. 287, 290.

(l) Carriers must observe reasonable rules and practices with respect to car service as defined in the act; however, car interchange is primarily a matter of agreement. The common-carrier status of a road gives no inherent right to per diem or reclaim. Birmingham Southern R. R. Co. v. Director General, 61 I. C. C. 551, 556.

(m) Fact that interchange facilities are inadequate for convenient operation is not of itself a defense if through routes are shown to be necessary or desirable in the public interest. If inadequate, they may be made adequate to perform the service which the law requires. York Mfrs. Asso. v. P. R. R. Co., 73 I. C. C. 40, 50.

(n) Fact that connecting rail lines furnish cars to a switching line while the Mississippi-Warrior River barge line does not furnish cars is not a justification for rail carriers assessing higher switching charges on the barge line's traffic. U. S. War Dept. v. A. & S. Ry., 77 I. C. C. 317, 360, 361.

(o) By operating directions carrier prohibited diversion of cars to points off its line. Carriers at reconsignment point transferred lading to car of foreign line, assessing switching, demurrage, penalty, and transfer charges for this service. HELD: Carriers can not by operating instructions restrict equipment to their own rails when it results in additional expense to shippers when they publish rates to points on rails of other carriers and do not publish equipment restriction in tariff. Charges assessed at reconsignment point found unreasonable and unlawful and reparation awarded. Hixon Lumber Co. v. C., B. & Q. R. R. Co., 80 I. C. C. 295.

(p) Without passing on question whether duty of participants in a through movement to supply appropriate shares of equipment necessary for transportation of coal rests upon carriers jointly (compare Huerfano Coal Co., 28 I. C. C. 502), or severally, in the aggregate the duty of providing adequate supply of equipment rests upon railroad carriers. Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 520, 546.

(q) Paragraph (3) of section 3 of the act, among other things, requires carriers to "afford all reasonable, proper and equal facilities for interchange of traffic between their respective lines." Miller Paper Co. v. P. R. R. Co., 80 I. C. C. 316.

(r) Under the Transportation Act 1920, the Interstate Commerce Commission finding that an emergency existed, ordered without notice or hearing that the Peoria and the Pekin Railroad Co. should continue to interchange freight traffic between the Minneapolis & St. Louis Railroad Company and connecting carriers at the regularly established interchange points at and near the vicinity of Peoria, Ill. The Peoria Company insisted that the commission was without authority under its emergency power to require one carrier to switch cars for another. The order of the commission required the terminal company to switch by its own engine and over its own tracks, freight cars tendered to it by the Minneapolis & St. Louis, and which it had refused to switch because the payment demanded, therefor had not been made. HELD that under a proper construction of the statute the commission did not have the power it exercised and that an injunction should be granted restraining enforcement of its order. Peoria & P. U. Ry. Co. v. United States. 44 Sup. Ct. 194.

ALL OTHER CITATIONS

Missouri & Illinois Coal Co. v. I. C. R. R. Co., 22 I. C. C. 39, 44, 47; Colorado Coal Traffic Assn. v. D. & R. G. R. R. Co., 23 I. C. C. 458, 460; Colorado Coal Traffic Asso. v. C. & S. Ry. Co., 24 I. C. C. 618; Wichita Board of Trade v. A., T. & S. F. Ry. Co., 25 I. C. C. 625, 631; National Lumber Exporters' Asso. v. K. C. S. Ry. Co., 25 I. C. C. 78, 84; Spiegle v. S. Ry. Co., 25 I. C. C. 71, 75; St. Louis Springfield & Peoria R. R. v. P. & P. U. Ry. Co., 26 I. C. C. 226, 234; Refuge Cotton Oil Co. v. St. L., I. M. & S. Ry. Co., 27 I. C. C. 117, 120; Downie Pole Co. v. N. P. Ry. Co. v. W. P. T. Ry. Co., 31 I. C. C. 660, 662; City of Nashville v. L. & N. R. R. Co., 33 I. C. C. 76, 86, 89, 90;

Mixed Car Dealers' Asso. v. D., L. & W. R. R. Co., 33 I. C. C. 133, 142; Chattanooga Packet Co. v. I. C. R. R. Co., 33 I. C. C. 384, 391; Grain Rates from Milwaukee, 33 I. C. C. 417, 420; Pennsylvania Paraffine Works v. P. R. R. Co., 34 I. C. C. 179, 193; Lourie Manufacturing Co. v. C. N. R. R. Co., 42 I. C. C. 448, 453; Omaha Grain Exchange v. G. N. Ry. Co., 47 I. C. C. 532, 536, 539; McCloud River Ry. Co. v. S. P. Ry., 56 I. C. C. 287, 291; William Schuette & Co. v. Director General, 57 I. C. C. 709, 711; Chicago, Lake Shore & South Bend Ry. Co. v. Director General, 58 I. C. C. 135, 140; 647, 652; U. S. War Dept. v. A. & S. Ry., 77 I. C. C. 317, 360, 261; Miller Paper Co. v. P. R. R. Co., 80 I. C. C. 314.

§31. Private Cars.

See Supra §4; §10½, §13; Infra §32; Common Carrier §6; Private Cars.

CASES 1887-1908

(a) Complainant charged unjust discrimination in exacting an extra rate for transporting cattle in a Burton stock car; the answer denied the fact of unjust discrimination and no proof was given on either side. HELD: It is impossible for the Commission to say that if all the facts were before it, the greater charge could not be justified, and hence as it is not suggested further proceedings are desired, the case is dismissed. Where the pleadings present issues of fact which can not be disposed of by a decision which shall reach the merits without some evidence, and no evidence is presented, the case must be dismissed. Leonard v. U. P. R. R., 1 I. C. C. 627.

(aa) Ownership of a car rented to a carrier and for the use of which the carrier pays a full consideration does not of itself entitle the owner to the exclusive use of such car; and if the owner may, in the contract of hire to the carrier, stipulate for the exclusive use of the car, it must be upon such terms as shall not constitute an unjust discrimination against hired shippers of like traffic in cars owned by the carrier and who are excluded from the use of the car so hired. Independent Ref. Asso. v. Pennsylvania R. R. Co., 6 I. C. C. 52.

(b) The regulating statute is opposed to every species of favoritism and seeks to secure like treatment for all persons in like relations to the carrier. A carrier may lawfully decline to haul private cars at all, or it may haul private cars of one class and refuse to haul others of a wholly different class; but if it transports private cars of any class, it must in like manner and upon like terms transport all private cars occupied for the same or similar purposes. Carr v. N. P. Ry., 9 I. C. C. 1, 12.

IMPORTANT CASES SINCE 1908

(c) A carrier may no doubt lawfully refuse to carry certain classes of private equipment, but it may not distinguish between private cars that are owned by negroes and private cars that are owned by whites, nor may it discriminate between private cars that are owned by Armour & Co. and private cars of the same class that are owned by any other concern. Rehearing denied. Chappelle v. L. & N. R. R. Co., 19 I. C. C. 456, 457.

(d) When a shipper furnishes his own car for transportation of articles in common use and which move in large volume, he relieves the carrier of so much of its obligations as a common carrier. In the Matter of Private Cars, 50 I. C. C. 652, 680.

(e) The private car owner has no right to demand that his cars be transported over the lines of a carrier which has not consented thereto. Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 520, 556.

(f) The Commission has held to the central idea that the carrier, in permitting the use of the private car, must at its peril see that the use of the vehicle does not permit, excuse, or justify a discrimination, preference, or advantage in favor of the owner of the private car, regardless of the present ability of the carrier to furnish on demand an adequate supply of equipment needed for transportation. The Commission has recognized that when the carrier permits the use of the private car upon its rails, it is responsible for the manner in which the service is conducted in that car, and that the car becomes in all respects as if it were one of the general stock of those owned by the carrier, and subject to the same liabilities and responsibilities as to its use in interstate transportation. Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 520, 557.

(g) A car owner can claim no advantage as a shipper that would not accrue to him if the car was owned by a different person having no interest in the freight. Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 520, 558.

(h) Carrier, in permitting use of a private car over its lines, must at its peril see that use of the vehicle does not permit, or justify, discrimination, preference, or advantage in favor of owner of the private car, regardless of present ability of carrier to furnish on demand an adequate supply of equipment needed for transportation. Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 520, 557.

(i) The private-car owner has no right to demand that his cars be transported over lines of a carrier which has not consented thereto. Obligation of furnishing an adequate supply of equipment by statute rests upon carrier, and does not rest upon shipper. The duty can not be transferred to nor required of shipper. Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 556.

ALL OTHER CITATIONS

Oklahoma Producing & Refining Corp. v. Director General, as Agent, 58 I. C. C. 193; Weissbaum & Co. v. Director General, as Agent, 59 I. C. C. 711.

§32. Rates on Private Cars.

See Cars and Car Supply §31; Classification §7½, §12⅞.

IMPORTANT CASES SINCE 1908

(a) Carriers should publish in their tariffs a rule that privately owned or leased cars when unloaded at destination unless otherwise ordered by the owner or lessee, must be promptly transported, loaded, or empty, in the direction of the plant of the owner or lessee. In Re Private Cars, 50 I. C. C. 652, 692, 709.

(b) New cars were delivered to the carriers as articles, rather than as instruments of commerce for transportation to particular destinations. Despite the authorized lading, the cars were received by the carriers under a duty and subject to a restriction unlike those governing the use of privately owned or foreign equipment voluntarily employed in the usual interchange service. From the beginning to the end of the transportation the cars, independently of their lading, were under consignment, and their status as articles of commerce was not changed by reason of the fact that at the same time they earned revenue by the carriage of other freight. The defendants were not lessees, but common carriers of the cars, and throughout the several transactions the relations of the parties were those of shipper and carrier, with their correlative duties and liabilities. As to the cars, as well as to their contents, defendants had a common carrier service to perform, and the compensation derived from the lading had no tariff relation to the transportation of the cars. Pacific Engrg. & Constrn. Co. v. Director General, 56 I. C. C. 247, 249.

(c) Carriers are within their rights in declining, as provided by their tariffs, to treat new cars moving on own wheels under load as instruments of commerce and at the same time assume common-carrier duties and liabilities with respect to them. Pacific Engineering & Construction Co. v. C., R. I. & P. Ry., 56 I. C. C. 247, 249.

(d) Common carriers may decline to accept cars of other ownership employed solely as instruments of carriage in lieu of their own, although bound to accept them when offered merely as articles to be transported. Pacific Engineering & Construction Co. v. C., R. I. & P. Ry., 56 I. C. C. 247, 249.

(e) Complainant attacked rates charged on 155 new empty tank cars moving on their own wheels from Milton, Pa., to North Carolina and South Carolina during federal control as illegal to extent they exceeded the combinations on Lynchburg and Petersburg, Va. Original report found in 64 I. C. C. 637. HELD: Rates charged illegal. Reparation awarded. Proctor & Gamble Co. v. Director General, 78 I. C. C. 47.

(f) Reparation awarded for switching charges on bituminous slack coal during federal control, between points at Ellsworth, Cokeburg, and Bentleyville, Pa., to basis of $5.50 per car where cars were furnished by shipper, and $6.50 per car where cars were furnished by carrier. Lackawanna Steel Co. v. Director General, as Agent, 77 I. C. C. 465.

ALL OTHER CITATIONS

Chappelle v. L. & N. R. R. Co., 19 I. C. C. 56, 58, 59; Du Pont De Nemours Powder Co. v. P. & R. Ry. Co., 41 I. C. C. 725; In the Matter of Private Cars, 50 I. C. C. 652, 683, 685, 686, 691, 692; Express Charges on Empty Fish Cars,

50 I. C. C. 24; Zelnicker Supply Co. v. C. B. & Q. R. R. Co., 53 I. C. C. 15; Zelnicker Supply Co. v. T. & S. F. Ry. Co., 53 I. C. C. 129; Cairo, Truman & Southern R. R. Co. v. Director General, 53 I. C. C. 189; Zelnicker Supply Co. v. S. Ry. Co., 53 I. C. C. 308; McCloud River Ry. Co. v. S. P. Co., 56 I. C. C. 287, 289, 290, 291; Producing & Refining Corp. v. Director General, 58 I. C. C. 193; San Diego & Arizona Ry. Co. v. A., T. & S. F. Ry. Co., 62 I. C. C. 675; Proctor & Gamble v. Director General, 64 I. C. C. 637.

§32⅛. Repair of Private Cars.

See Private Car.

CASES 1887-1908

(a) The rule requiring a shipper to clean and repair cars furnished on a side track is unreasonable. Hezel Milling Co. v. St. Louis, A. & T. H. R. Co. (Com.), 3 I. C. R. 701.

IMPORTANT CASES SINCE 1908

(b) It is not unreasonable to expect shipper to make minor and inexpensive repairs. Farmers' Cooperative Asso. v. C., B. & Q. R. R. Co., 34 I. C. C. 60, 64; Construction and Repair of Ry. Equipment, C. & N. W. Ry. Co., 69 I. C. C. 143.

§32¼. Quarantine Regulations.

IMPORTANT CASES SINCE 1908

(a) Complainants attacked defendant's tariff provisions establishing a charge of $2.50 per car for cleaning and disinfecting cars, as required by government regulations, as unreasonable and unduly discriminatory against New Orleans, La. Similar rules as to stock cars coming from quarantined districts were maintained by all carriers operating in the Southern Classification territory. Florida, Georgia, Alabama, Mississippi and Louisiana were within the federal Texas fever quarantine area; and the federal regulations required the cleansing and disinfecting of cars used for transportation of cattle within the transportation area before such cars were permitted to move to points outside the disinfected area. The shipments of cattle to New Orleans were principally from the other states named. No charge was imposed by carriers at many northern destinations, but it appeared that the competition of carriers was much keener at those points. HELD: That the charge of $2.50 was reasonable where proper, but that it could not properly be applied to cars which had moved between points and via lines wholly within the quarantined area. New Orleans Live Stock Exchange v. L. & N. R. R. Co., 31 I. C. C. 609.

(b) Such cars as move interstate wholly within a federal quarantine area are not subject to a cleaning and disinfecting charge imposed by carriers under the regulations promulgated by the U. S. Department of Agriculture. New Orleans Live Stock Exchange v. L. & N. R. R. Co., 31 I. C. C. 609, 610.

(c) The Commission has no jurisdiction of a proceeding involving the justice of a charge for cleansing and disinfecting cattle cars which have moved wholly within the limits of one state, even though that state be included in a federal quarantine area. New Orleans Live Stock Exchange v. L. & N. R. R. Co., 31 I. C. C. 609, 612.

ALL OTHER CITATIONS

Boyd v. King (Mich. 1918), 167 N. W. 901; State v. Chicago, M. & St. P. R. R. (Mo. 1918), 206 S. W. 419.

VI. REMEDIES AND DAMAGES.

See Actions at Law; Reparation.

§32½. In General.

CASES 1887-1908

(a) In view of the fact that by an agreement between the N. Y., L. E. & W. R. R. Co., extending (over the leased line of the N. Y., P. & O. R. R. Co.) to Dayton, Ohio, and the C., C., C. & I. R. Co., extending from Dayton to Cincinnati, the N. Y., L. E. & W. Co. is considered an initial road to Cincinnati, with the right to make rates thereto and therefrom on its own responsibility. HELD: That Cincinnati must be treated as a point upon the line by the N. Y., L. E. & W. Co. for the purpose of a proceeding against that Company under the Act to Regulate Commerce, for unjust discrimination in furnishing coal cars. Riddle, Dean & Co. v. N. Y., L. E. & W. R. R. Co., 1 I. C. R. 787.

(b) Complainant charged discrimination in furnishing of coal cars. A statement of the evidence, from which it appears that it was the duty of the Yough Slope Mine, its owners and agents, to have inquired of the station agent of the railroad nearby the mine on August 30, 1887, and on the next day, by which they would have learned that the mine could

have obtained cars for the shipment of coal to Cleveland, O., and they having failed to do this, in consequence of which the Youghiogheny and Ashtabula mines received nearly all the cars for this purpose, without any partiality or preference on the part of the railroad company. HELD: Upon these facts, that a complaint of unjust discrimination against the Yough Slope Mine can not be sustained. Where a complaint is made by a shipper that an unjust discrimination was perpetrated by a railroad company against him at a particular time named, to rebut the inference arising from the circumstances, calling for explanation, among other evidence, the carrier may show that during a long course of business neither it nor any of its agents have ever shown any unfriendly spirit whatever toward the shipper, and that, on the contrary, its agents, immediately before the matter complained of, made extra exertions in good faith to serve the shipper in obtaining cars for him from the connecting line to whom the shipper had to look for such cars. In the absence of some rule and custom of business placing such duty on the carrier to notify the shipper, without any inquiry on the part of the latter of the fact that he can there obtain cars for the movement of his freight, it is the duty of the shipper, by reasonable inquiry made to the proper agent of the railroad company, to obtain this information for himself. HELD: No case of preference or unjust discrimination is made out by the evidence. Complaint dismissed. Riddle, Dean Co. v. B. & O. R. R., 1 I. C. C. 778.

(c) Defendant's refusal to furnish cars to complainants between February 25 and March 26 on the Deal sidetrack at Meyersdale and the sidetrack of the Savage Fire Brick Company at Keystone Junction, while furnishing and offering to furnish cars to complainants' competitors at other points, under the circumstances disclosed by the evidence and described in the findings, was undue and unlawful discrimination against complainants, for which they are entitled to reparation. Glade Coal Co. v. Baltimore & O. R. R. Co., 10 I. C. C. 226.

(d) Reparation awarded to complainant for defendant's refusal to furnish cars for the shipment of cross ties while it did furnish cars to other persons for the interstate shipment of lumber, stone and many other freight articles, and also supplied cars for the shipment of cross ties destined almost entirely for its own use. Paxton Tie Co. v. Detroit S. R. Co., 10 I. C. C. 422.

(e) In the furnishing of cars, defendant unjustly discriminated against the complainant, which desired to ship hay from various points in Michigan, but the proof fails to indicate with any degree of certainty the damage caused by the wrongful discrimination, and the amount which the complainant was entitled to recover by way of reparation. Richmond Elevator Co. v. Pere Marquette R. Co., 10 I. C. C. 629.

(f) Every shipper is legally entitled to fair opportunity and treatment in the use of the carrier's utilities, and any discrimination which in a substantial degree deprives shippers of such use must be considered unjust, unless forced by justifying conditions. In such a case the burden of proof is upon the complainant for the purpose of showing discrimination, and then upon the carrier to show that the discrimination was justified. Richmond Elevator Co. v. Pere Marquette R. Co., 10 I. C. C. 629.

(g) It appears generally from the facts in this case that in furnishing cars defendant unjustly discriminated against the complainant, which desired to ship hay from various points in Michigan, but the proof fails to indicate with any degree of certainty the damage caused by the wrongful discrimination and the amount which the complainant is entitled to recover by way of reparation. Complainant granted leave to apply within a limited time for further hearing. Richmond Elevator Co. v. Pere Marquette R. Co., 10 I. C. C. 629.

(h) Complainant attacked as discriminatory refusal of defendants to furnish it cars for the movement of hay and grain from Valley Center, Doyle, Avoca, Croswell and Memphis, Mich., to the east and south. The reason given by defendants as to refusal to furnish equipment was the scarcity of equipment at time the commodities were tendered. The record is meager as to the damage sustained, if any, because of inability to secure equipment. HELD: Complainant unduly discriminated against, but no proof of damages was shown, and case held open for further proof. Richmond Elevator Company v. Pere Marquette R. R., 10 I. C. C. 629.

(i) A case before the Commission in-

volving alleged discrimination in furnishing cars, and demanding reparation, is not barred, under section 9 of the act, by the previous institution in the state court of a suit for damages between the same parties based on such discrimination. Gallogly v. Cincinnati, H. & D. R. Co., 11 I. C. C. 1.

(j) A case before the Commission involving violation of the Act to Regulate Commerce through alleged discrimination in furnishing cars, and for which reparation is demanded, is not barred under section 9 of the act by the previous institution in a state court of a suit for damages between the same parties, based upon such discrimination. Gallogly & Firestone v. Cincinnati, H. & D. R. Co., 11 I. C. C. 1, 9.

(k) Defendant's refusal to furnish to complainants cars for interstate shipments of corn from Leipsic, Ohio, while it contemporaneously furnished to complainants' competitors cars for like shipments, was unlawful discrimination. Gallogly & Firestone v. Cincinnati, H & D. R. Co., 11 I. C. C. 1.

(l) In September, October and November, 1905, defendant unjustly discriminated in furnishing cars for hay and grain shipments against the complainant and in favor of other shippers including the operation of an elevator. Complainant awarded reparation in the sum of $200. Eaton v. Cincinnati, H. & D. R. Co., 11 I. C. C. 619.

(m) Reparation awarded in the sum of $200 for unjustly discriminating against complainant in furnishing cars for hay and grain shipments. Eaton v. Cincinnati, H. & D. R. Co., 11 I. C. C. 619.

IMPORTANT CASES SINCE 1908

(n) Complainant coal company sought reparation for alleged discrimination in car distribution for the period from September 1, 1912, to November 9, 1912. Prior to March, 1912, its rating for car supply was 38 cars per day. From September 1, 1912, until September 19, 1912, this rating was fixed at 19 cars per day. On the latter date it was raised to 21 cars per day. On November 9, 1912, it was still further increased to 50 cars per day. The Method employed in making the distribution was one that had been agreed upon by complainant and other shippers and by it the railroad company each year established the rating of each mine upon the basis of the month, then a period of full car supply, showing the highest average of daily shipments. In the case of defendant carrier the period of full car supply included the months of April, May, June and July. In 1912 during these months, complainant's mine was either closed or its operation restricted through labor troubles, and in anticipation of these troubles complainant's customers had purchased heavily in March, 1912, thereby reducing the possible market during the summer. As a consequence, the rating given on the mine based on the month of largest shipments in the period of full car supply was less than that given for the previous years and resulted in the decreased car supply complained of. It appeared that the defandants had acted in good faith in the matter. HELD: That reparation should be denied, since where carriers have in good faith attempted to distribute cars on some fair basis, they cannot be held guilty of unjust discrimination against the shippers whose commercial misfortunes operate to reduce their ratings. National Coal Company v. B. & O. R. R. Co., 28 I. C. C. 442.

(o) Complainant attacked defendant's practices in the distribution of coal cars to its mines during the period, October 1, 1917, to March 22, 1918, as unduly prejudicial to complainants, first report found in 58 I. C. C. 313. The damage claims rest upon the theory that by reason of defendant's unlawful practices complainants have suffered loss in two respects, viz: (1) Loss of profits on coal that could have been produced and sold, but for the unlawful practices, and (2) increased cost of producing the coal produced. Evidence in support of the first element of damage is directed mainly to showing working time of which complainant's mines were deprived by defendant's unlawful practices; additional tonnage that could have been produced in such additional time; supply and demand for coal during the period under consideration, and contracts of sale which complainants were unable to complete, as indicating that the additional tonnage could have been disposed of; proportion of additional tonnage that would have moved in interstate commerce; selling prices; and cost of production. For the purpose of showing loss sustained on coal produced complainants separated their expenses of operation into what are termed "variable charges" and

"fixed charges." Variable charges represent expenses which vary substantially in direct proportion to the quantity output, such as wages paid to miners who work on a ton basis. Fixed charges comprise expenses of operation which do not differ substantially with varying production, such as taxes, depreciation and annual salaries. HELD: By reason of the undue prejudice found to have existed and complainant's show of damage incurred, reparation awarded variable amounts according to time lost. Avella Coal Co. v. P. & W. V. Ry. Co., 77 I. C. C. 731.

(p) The ascertainment of the damages occasioned by a carrier's rules as to car distribution, which are unduly discriminatory, is as much within the scope of the Interstate Commerce Commission's authority, under the Act, §§ 8, 9, 13, 16, as though the damages were due to the exaction of unreasonable rates. Pennsylvania R. Co. v. Clark Bros. Coal Min. Co., 35 Sup. Ct. 896, 901; 238 U. S. 456, 59 L. Ed. 1406.

(q) Where an appropriate ruling from the Commission as to discrimination in furnishing cars which had been practised was made, the claimant was then entitled to proceed for the recovery of damages in accordance with the act, and not otherwise. The fact that the Commission had not made its award of damages at the time the action was brought is immaterial, since the claimant's right and remedy were fixed by the Federal act. Pennsylvania R. Co. v. Clark Bros. Coal Min. Co., 35 Sup. Ct. 896, 902; 238 U. S. 456, 59 L. Ed. 1406.

(r) No recovery may be had in a suit brought in a state court by a shipper to recover damages arising in interstate commerce out of the carrier's failure to furnish a shipper with the cars to which it claimed to be entitled under the carrier's own rule for car distribution, where, before the trial, though after the period covered by the suit, the Interstate Commerce Commission, upon complaint of other shippers and after a full hearing, had found that such rule was unjustly discriminatory and had directed the carrier to give no further effect to it, and, recognizing that shippers who had been injured through its operation in the past were entitled to reparation, had proceeded to award reparation to such shippers as appeared and adequately proved their injury and the amount of damages sustained, the Commission's report making it plain that the finding was not based upon any temporary condition, but upon what inhered in the rule, and therefore was true from the time of its adoption. Pa. R. Co. v. Stineman Coal Min. Co., 37 Sup. Ct. 118, 242 U. S. 298, 61 L. Ed. 316.

(s) Where damage is shown to be directly traceable to unduly prejudicial distribution of coal cars available under existing car supply, carriers can not evade liability therefor by computing what might or could have happened if a full car supply had been available for all shipping mines. Avella Coal Co. v. P. & W. V. Ry. Co., 77 I. C. C. 736.

(t) Every item of cost which does not diminish with decreased production, i. e., which is properly a fixed charge, will increase the total amount of damage resulting from enforced curtailment of production through prejudicial distribution of cars; whereas, every item of cost which does diminish with decreased production, i. e., which is properly a variable charge, will reduce the total amount of damage. Avella Coal Co. v. P. & W. V. Ry. Co., 77 I. C. C. 736.

(u) The initial carrier held liable for additional charges as may be imposed on the shipper by reason of its failure to furnish a car of the capacity ordered. Peninsular Portland Cement Co. v. Director General, 83 I. C. C. 10, 12.

ALL OTHER CITATIONS

National Coal Co. v. B. & O. R. R., Unrep Op. A-617; Downie Pole Co. v. N. P. Ry., 31 I. C. C. 142; Oden-Elliott Lumber Company v. A. C. Ry., 51 I. C. C. 403, 409; Penn. R. R. Co. v. Minds, 39 Sup. Ct. Rep. 531; Baltimore & O. Co. v. Lambert Run Coal Co., 267 Fed. 776; Hobart Mill & Elevator Co. v. Director General, 69 I. C. C. 412.

§33. Actions at Law.

See Action at Law.

IMPORTANT CASES SINCE 1908

(a) It appeared that at an expense of $5,000 complainant had constructed a tipple at its mine No. 2 and also a siding connecting it with what is known as the "Fuller Run tracks," a road about 1 mile long extending from the defendant's line to mines from which shipments had been made for a number of years, but which at the time seemed to have been closed. From its mine No. 2 the complainant was ready to make shipments in April,

1903, but the siding, as it asserts, was spiked down by the defendant and kept in that condition for about 19 months. Requests were made by the complainant from June 28 to July 31, 1903, for cars enough to ship 100 tons of coal per day from that mine, but no cars were furnished by the defendants until January 17, 1905, and then only after mandamus proceedings had been instituted in the court. The defendant's failure to supply cars for that mine while supplying cars for other mines in the district was one of the discriminations alleged in the complaint. What reason it had for refusing or failing to set cars there was not satisfactorily explained of record, but for some reason also not explained, the complainant allowed the matter to rest in that condition for many months without taking any steps against the defendant and without even renewing its demand for cars so far as the record discloses. HELD: It is not clear that the alleged closing of that siding by the defendant can fairly be regarded as a basis for a charge of discrimination; it has more the character of a tort or a wrongful violation of the defendant's general duty to the complainant as a common carrier, for which an appropriate action in the courts would doubtless lie to recover any damages thus sustained. Hillsdale Coal & Coke Co. v. P. R. R. Co., 19 I. C. C. 356, 367.

(b) It was obvious that the absolute refusal of a carrier to furnish a shipper cars would be a violation requiring no administrative determination and of which the courts could take primary jurisdiction. Vulcan Coal & Mining Co. v. I. C. R. R. Co., 33 I. C. C. 52.

(c) It is obvious that if a carrier should absolutely refuse to furnish a shipper cars under any circumstances, the court could take primary jurisdiction. Vulcan Coal & Mining Co. v. I. C. C. R. R. Co., 33 I. C. C. 52, 65.

(d) It is the carrier's duty to maintain a reasonably adequate car supply, and the question of what is a reasonably adequate car supply is just as much an administrative one as the question of what is a reasonable rate. Vulcan Coal & Mining Co. v. I. C. R. R. Co., 33 I. C. C. 52, 64.

(e) Insofar as the car service rules of carriers are reasonable, but are not observed, the Commission is authorized to require their observance by writ of mandamus under sections 12 and 20 of the act. Car Supply Investigation, 42 I. C. C. 657, 673.

(f) Congress having given the Commission power of supervision and enforcement under Section 1 of the act, a federal district court is without power, in advance of action by the Commission, to entertain a bill in equity to compel carriers to return coal cars to owning lines in compliance with car service rules. Car Supply Investigation, 42 I. C. C. 657, 674.

(g) The liability of carriers for general damages growing out of their failure to furnish cars is determinable by the court. The law does not require them to define their liability by tariff publication and the Commission has no jurisdiction to require carriers to establish reciprocal demurrage regulations. Deposit for Live-Poultry Car Ordered, 66 I. C. C. 653, 656.

(h) An award by the Interstate Commerce Commission in favor of a shipper on account of discrimination in furnishing cars is only prima facie evidence of the amount of the damages, and in an action thereon that question can be litigated. P. R. Co. v. Minds, 244 Fed. 53.

(i) Where the method of coal car distribution followed by a carrier and its assigned car rule is not clearly in violation of the statute or orders of the Interstate Commerce Commission, a court is not warranted in granting a preliminary injunction. Cleveland & Western Coal Co. v. Baltimore & D. R. R. Co., 283 Fed. 995.

(ia) An order of the Interstate Commerce Commission, reversing a former decision relating to distribution of cars to coal mines, and reinstating a former rule of distribution, HELD in effect an affirmative order, and subject to review by a District Court. New River Co. v. Chesapeake & O. Ry. Co., 293 Fed. 460.

(j) A carrier is liable in an action at law for refusing to furnish cars for the shipment of cross-ties while at the same time furnishing cars to others for the interstate shipment of other freight. American Tie & Timber Co. v. K. C. S. Ry. Co., 175 Fed. 28, 31.

(k) A party claiming to be injured by a discriminatory rule for the distribution of coal cars cannot maintain in a court of law an action for the recovery of damages before the Interstate Com-

merce Commission has investigated the case and determined by its report that the rule is or was discriminatory, and this is true, even though the action at law is not begun until after the rule has been canceled by the carrier. Morrisdale Coal Co. v. Pennsylvania R. R. Co., 183 Fed. 929, 934, 938.

(lm) Where verdict, in an action by shipper for damages for railroad company's discrimination in the furnishing of cars, was much less than the amount of the award by the Interstate Commerce Commission, and there was evidence as to the damage other than the award of the commission, the verdict will be presumed to have been based on the evidence instead of the award, and is not subject to attack on the ground that the commission in making its award adopted the wrong theory as to distribution of cars. P. R. Co. v. Minds, 244 Fed. 53.

(n) Shippers being, under the Inter-State Commerce Act, entitled to full compensation for damages from discrimination by carrier in car distribution, neither allowance of interest as part of award by Interstate Commerce Commission nor instruction, in action on the award, that the jury might do so, is error, though recovery was less than amount of claim before Commission, the carrier never having offered any payment. Penn R. R. Co. v. Minds, 39 Sup. Ct. Rep. 531.

(o) For a carrier's refusal to accept proper shipments, or to supply reasonably adequate facilities of carriage, the shipper has a remedy by action. Louisville & Nashville Railroad Co. v. F. W. Cook Brewing Co., 223 U. S. 70, 32 Sup. 189, 223 U. S. 70, 56 L. Ed. 355; Danciger et al. v. Wells Fargo & Co. (C. C.) 154 Fed. 379; Pennsylvania Railroad Co. v. Puritan Coal Mining Co., 327 U. S. 121, Sup. Ct. 484, 59 L. Ed. 867; Illinois Central Railroad Co. v. Mulberry Hill Coal Co., 238 U. S. 275, 35 Sup. Ct. 760, 59 L. Ed. 1306; Missouri Pacific Railway Co. v. Larabee Flour Mills Co., 211 U. S. 612, 29 Sup. Ct. 214, 53 L. Ed. 352; Chicago, Burlington & Quincy Railway Co. v. Burlington, C. R. & N. Railway Co., et al. (C. C.), 34 Fed. 481; Butchers' & Drovers' Stock Yards Co. v. Louisville & N. R. Co., 67 Fed. 35, 14 C. C. A. 290; Moore on Carriers, C., R. I. & P. Ry. Co. v. Lawton Refining Co., 253 Fed. 705, 706.

(p) Where the method of coal car distribution followed by a carrier and its assigned car rule is not clearly in violation of the statute or orders of the Interstate Commerce Commission, a court is not warranted in granting a preliminary injunction. Cleveland & Western Coal Co. v. Baltimore & D. R. R. Co., 283 Fed. 995.

(q) A state court has jurisdiction of an action for a penalty under a state statute for failure to furnish cars without prior reference to the Interstate Commerce Commission. Illinois C. R. Co. v. Mulberry Hill Coal Co., 35 Sup. Ct. 760; 238 U. S. 275, 59 L. Ed. —.

(r) Under sections 8 and 9 of the act and of the proviso in § 22, which declares that "nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies," it is HELD that while the act gave shippers new rights, it at the same time preserved existing causes of action; that it did not supersede the jurisdiction of state courts in any case, new or old, where the decision did not involve the determination of matters calling for the exercise of the administrative power and discretion of the Commission, or relate to a subject as to which the jurisdiction of the federal courts had otherwise been made exclusive; that in actions against railroad companies for unjust discrimination in interstate commerce where a rule of car distribution itself is attacked as unfair or discriminatory, a question is raised which calls for the exercise of the authority of the Interstate Commerce Commission, but if the action is based upon a violation or discriminatory enforcement of the carrier's own rule for car distribution no administrative question is involved, and such an action, although brought against an interstate carrier for damages arising in interstate commerce, may be prosecuted either in the state or the federal courts. And because in that case the action was not based upon the ground that the carrier's rule of car distribution was unreasonable or discriminatory, but the plaintiff was damaged by reason of the carrier's failure to furnish it with cars to which it was entitled even upon the basis of the carrier's own rule of distribution, it was held that the state court had jurisdiction without previous application to the Interstate Commerce Commission. Illinois C. R. Co. v. Mulberry Hill Co., 35 Sup. Ct. 760, 763; 238 U. S. 275, 59 L. Ed. —.

(s) A shipper who has demanded and obtained a ruling from the Interstate Commerce Commission that a carrier's practice in the matter of the distribution to mine owners of cars intended for the interstate transportation of coal was unjustly discriminatory cannot maintain an action in a state court to recover damages under a state statute with respect to the same transaction, although the Commission may not yet have made its award of damages, since the express requirement, in the Interstate Commerce Act, § 9, of an election between a proceeding before the Commission and a suit in the federal courts, leaves no room for the conclusion that there is an option to resort to a state court in the first instance, and the suit on reparation orders, authorized by § 16, either in the state or federal court, may be brought only after the Commission's award has been made. Pennsylvania R. Co. v. Clark Bros. Coal Min. Co., 35 Sup. Ct. 896, 901, 238 U. S. 456, 59 L. Ed. 1.

(t) The question whether a rule or method of car distribution practiced by a railroad company is unjustly discriminatory is one which the Commission has authority to pass upon. Interstate Commerce Commission v. Illinois C. R. Co., 215 U. S. 452, 54 L. Ed. 280, 30 Sup. Ct. Rep. 155; Interstate Commerce Commission v. Chicago & A. R. Co., 215 U. S. 479, 54 L. Ed. 291, 30 Sup. Ct. Rep. 163; Morrisdale Coal Co. v. Pennsylvania R. Co., 230 U. S. 304, 313, 57 L. Ed. 1494, 1497, 33 Sup. Ct. Rep. 938; Pennsylvania R. Co. v. Puritan Coal Min. Co., 237 U. S. 121, 131, 35 Sup. Ct. Rep. 484. Further, by reason of the nature of the question involved in an attack upon the rule or method of the company in distributing cars, no action is maintainable in any court to recover damages alleged to have been inflicted thereby until the Commission has made its findings as to the reasonableness of the rule. Texas & P. R. Co. v. Abilene Cotton Oil Co., 204 U. S. 426, 441, 448, 51 L. Ed. 553, 559, 562, 27 Sup. Ct. Rep. 350, 9 Ann. Cas. 1075; Baltimore & O. R. Co. v. United States, 215 U. S. 481, 493, 54 L. Ed. 292, 297, 30 Sup. Ct. Rep. 164; Robinson v. Baltimore & O. R. Co., 222 U. S. 506, 511, 56 L. Ed. 288, 290, 32 Sup. Ct. Rep. 114; United States v. Pacific & A. R. & Nav. Co., 228 U. S. 87, 107, 57 L. Ed. 742, 749, 33 Sup. Ct. Rep. 443; Morrisdale Coal Co. v. Pennsylvania R. Co., 230 U. S. 304, 313, 57 L. Ed. 1494, 1497, 33 Sup. Ct. Rep. 938; Pennsylvania R. Co. v. Puritan Coal Min. Co., 237 U. S. 121, 131, 35 Sup. Ct. Rep. 484. The Commission also has authority to make examination and report upon the amount of damages which a shipper has suffered from the unjust discrimination alleged in its complaint. The provisions of the act are clear upon this point. There is nothing in the act to suggest that the damages which may thus be ascertained are only those arising from unreasonable or unjustly discriminatory rates. Rules as to car distribution that are unjustly discriminatory are within the purview of § 3, and damages thereby occasioned, as well as those due to the exaction of unreasonable rates, arise from the violation of the act, and their ascertainment is within the scope of the Commission's authority. Interstate Commerce Commission v. Illinois C. R. Co., 215 U. S. 452, 54 L. Ed. 280, 30 Sup. Ct. Rep. 155; Mitchell Coal & Coke Co. v. Pennsylvania R. Co., 230 U. S. 247, 257, 57 L. Ed. 1472, 1476, 33 Sup. Ct. 916; Morrisdale Coal Co. v. Pennsylvania R. Co., 230 U. S. 304, 313, 57 L. Ed. 1494, 1497, 33 Sup. Ct. Rep. 938; Pennsylvania R. Co. v. Puritan Coal Min. Co., 237 U. S. 121, 131, ante, 484, 33 Sup. Ct. Rep. 484; Pennsylvania R. Co. v. Clark Bros. Coal Min. Co., 35 Sup. Ct., 896, 901; 238 U. S. 456, 59 L. Ed. —.

(u) A shipper complaining of discrimination in the furnishing of coal cars has the option of either proceeding under the Interstate Commerce Act or under a state statute which is applicable. If he elects to go before the Interstate Commerce Commission he cannot afterwards in addition to an award granted by that Commission also recover treble damages under a state statute. Pennsylvania R. Co. v. Clark Bros. Coal Min. Co., 35 Sup. Ct. 896. 902, 238 U. S. 456, 59 L. Ed.—.

(v) Where it appears that the act has been violated through a discriminatory method of car distribution, and the requisite ruling as to the unreasonableness of the practice assailed has been made by the Commission, the provisions of § 9 are applicable. This section provides: "Sec. 9. That any person or persons claiming to be damaged by any common carrier subject to the provisions of this act may either make complaint to the Commission as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this act, in any

district or circuit court of the United States of competent jurisdiction; but such person or persons shall not have the right to pursue both of said remedies, and must, in each case elect which one of the two methods of procedure herein provided for he or they will adopt. * * * (24 Stat. at L. 382, chap. 104, Comp. St. 1913, § 8573.) This provision defines the remedies to which a person in the situation of the plaintiff is entitled, and the terms of the provision clearly indicate that these remedies are exclusive. The express requirement of an election between the proceeding before the Commission and suit in the Federal court leaves no room for the conclusion that there is an option in such case to resort to the state court. Where the proceeding has been had before the Commission and reparation awarded, suit under §16 (as amended in 1910 (36 Stat. at L. 554, chap. 309, § 13, Comp. Stat. 1913, § 8584) may be brought in either a state or a federal court, but this is after the Commission's award has been made. Pennsylvania R. Co. v. Clark Bros. Coal Min. Co., 35 Sup. Ct. 896, 901; 238 U. S. 456, 59 L. Ed. —.

(w) Under the Commerce Act, "transportation" includes the entire body of services rendered in connection with the receipt, handling and delivery of property transported, and includes the furnishing of cars. The term "transportation" shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage * * * and all services in connection with the receipt, delivery * * * and handling of property transported, and it shall be the duty of every carrier subject to the provisions of this act to provide and furnish such transportation upon reasonable request therefor. Interstate Commerce Act, § 1, provides that, in case any carrier shall omit to do any act required to be done, it shall be liable for the full amount of damages sustained. Section 20 (section 8604a, 8604aa) provides that any carrier shall be liable to the holder of a bill of lading for any loss, damage, or injury to the property which it causes. Section 22 (section 8595) preserves other rights and remedies not inconsistent with the act, and the form of the action for failure to furnish cars is not material. Penn. R. R. v. Puritan Oil Co., 237 U. S. 121; 35 Sup. Ct. 484, 59 L. Ed. 867.

(x) The carrier's defense at the trial of a suit brought by a shipper to recover the damages arising in interstate commerce out of the carrier's failure to furnish such shipper with the cars to which it claimed to be entitled under the carrier's own rule for car distribution, that the rule invoked by the shipper was discriminatory and therefore not an appropriate test of the shipper's right or the carrier's duty, did not oust the state court of jurisdiction, where the administrative question thus presented was not then an open one, such rule having theretofore been found by the Interstate Commerce Commission, upon complaint of other shippers, to be unjustly discriminatory. Penn. Ry. v. Stineman Coal Min. Co., 37 Sup. Ct. 118.

(y) A state court has jurisdiction over a suit by a shipper against a carrier for damages arising from unjust discrimination by the carrier in departing from its established method of distributing cars so as to favor plaintiff's competitor and unduly prejudice plaintiff, and nothing in the Interstate Commerce Act with respect to the authority granted to the Commission in such matters deprives a state court of jurisdiction where the Interstate Commerce Commission has issued no order respecting the discrimination involved. Puritan Coal Mining Company v. Pennsylvania R. R. Co. (Pa. 1812), 85 A. 426, 434.

(z) In a suit for damages in a state court against a carrier for unjust discrimination in the distribution of cars, the period of discrimination complained of antedated the ruling of the Interstate Commerce Commission holding it to be the duty of the interstate carrier in making distribution of its cars in times of shortage to include in the computation private cars in addition to its own. Under its adopted practice, acquiesced in by all the shippers in the district, the carrier was accustomed to compute distribution on the basis of its own cars exclusive of those owned by private parties. It appeared that the carrier disregarded its accustomed basis of distribution, not because it was inequitable for the reason that the private cars had not been included in the computation, but solely with a view of giving a particular shipper an unlawful preference. HELD: A judgment in favor of the plaintiff should be sustained in spite of the fact that the court did not take into account the private or individual cars in determining the extent of the discrimination against the plaintiff. Puritan Coal Mining Co. v.

Pennsylvania R. R. Co. (Pa. 1912), 85 A. 426, 438.

(aa) Nothing in the Interstate Commerce Act deprives a state court of jurisdiction to entertain a suit for damages arising from discrimination in the supply of cars to be used in interstate commerce, such suit being founded on the common law or on the state statute, since in the absence of specific legislation by Congress of such offense the jurisdiction of the state courts remains undisturbed. Walnut Coal Co. v. Pennsylvania R. R. Co. (Pa. 1912), 85 A. 440, 442

(bb) The fact that a shipper has not only filed his complaint with the Commission and secured a ruling or order declaring a carrier's practice relative to assignment of coal cars to be discriminatory, but has also been awarded reparation, will not bar action by the shipper under state law for damages for discrimination, where the discrimination relates to coal sold f. o. b. cars at the mines, and therefore not subject to interstate commerce regulation. Clark Bros. Coal Mining Co. v. Pennsylvania Ry. (Pa. 1913), 88 Atl. 754, 760.

(cc) In an action against a carrier for failing to furnish cars, founded upon the carrier's common law duty, the suit is not one to enforce the Interstate Commerce Act, and although the damages arise by the act of a carrier engaged in interstate commerce with respect to shipments intended to be interstate, a state court has jurisdiction. Pittsburgh, C., C. & St. L. Ry. Co. v. Wood (Ind. 1908), 84 N. E. 1009, 1012.

(dd) An action for damages resulting from failure of the carrier to furnish cars for the shipment of freight within a reasonable time after the date agreed upon between the shipper and the station agent of the carrier, is not prohibited by the Interstate Commerce Act, as amended June 29, 1906. C., R. I. & P. Ry. Co. v. Beatty (Okla. 1914), 141 Pac. 442.

(ee) Under a contract to supply cars for shipment of live stock, which the carrier broke by delay in supplying cars, knowing that the stock was intended for sale on the market in a distant city, the measure of damages is not the amount of depreciation at the point of shipment, but the depreciation in market value at the destination, that being within the reasonable contemplation of the parties. Levy v. Nevada - California - Oregon Ry. (Ore. 1916), 160 Pac. 808.

(ff) In a suit for treble damages for discrimination in preferring shippers who ordered and were furnished cars after claimant ordered cars for shipping lumber, wherein the carrier endeavored to show cars furnished others on subsequent orders were for shipping mine material, prefered by an Interstate Commerce Commission order, and the evidence showed some cars so furnished were for such material, and some of the preferred shippers shipped lumber and mine material, an instruction for the claimant, based on a preference of other shippers, requiring the jury to find that after claimant's cars were ordered other shippers at the station in question "engaged in the business of shipping lumber," ordered cars, and were preferred, was erroneous in not requiring the jury to find that such cars were not loaded with mine material. Stroud v. Missouri Pac. R. Co. (Mo. 1922), 236 S. W. 891.

(gg) Congress has defined "transportation" to include all cars, instrumentalities, and facilities of shipment, etc. All interstate shipment does not confine transportation to the actual voyage or trip. See above, §8563, Railway Co. v. Dettlebach, 239 U. S. 588, 36 Sup. Ct. 177, 60 L. Ed. 453; Railway Co. v. Smyth, 189 S. W. 70; Railway Co. v. White, 188 S. W. 714. Congress evidently recognized that the duty to the public included a variety of services that, according to the theory of the common law, were separable from the service of carriers as carriers, so that by the Act of Congress the entire body of the services to be performed falls under the general head of transportation, among which is furnishing cars. So it is made the duty of the carrier to "furnish suitable" cars as part of the transportation. Appellant cites cases in which recovery for a penalty is sought under the state statutes. R. C. S. arts, 6683 et seq. Some of the cases allege as grounds therefore a contract to furnish cars at a specified time, with no allegation that they were not furnished within a reasonable time after the order. In such cases the courts held that the pleadings did not justify a recovery for withholding the cars an unreasonable length of time. Railway Co. v. Cannington, 110 S. W. 965; Railway Co. v. Arnett, 40 Tex. Civ. App. 76, 88 S. W. 488, and other authorities. In that class of cases it is usually held a party suing for a penalty is required to bring himself strictly within the terms of the statute,

both by the pleadings and the evidence, and that he is charged with the burden of showing he is within the letter of the statutes authorizing a recovery of the penalty. Ft. Worth & D. C. Ry. v. Strickland (Tex. 1918), 248 S. W. 410.

ALL OTHER CITATIONS

Atchison, T. & S. F. Ry. Co. v. Smyth, (Tex. 1916), 189 S. W. 70; Ft. Worth & D. C. Ry. Co. v. Strickland (Tex. 1918) 208 S. W. 410; Weber v. Penn. R. Co. (Pa. W. 246; Cecil v. Southern Express Co. (Ky. 1921), 229 S. W. 1041; Cornwell v. Davis, (Mont. 1923), 213 Pac. 218; J. C. Francesconi & Co. v. Baltimore & O. R. Co., 274 Fed. 687.

§34. Defenses.

See Courts §2.

IMPORTANT CASES SINCE 1908

(a) A carrier cannot give a shipper a preference in car distribution in order that it may profit thereby; neither can it give the shipper a preference in order that the shipper may profit thereby, and, when called upon by an individual shipper for full car service, the only defense which the carrier can interpose is that the supply which it has furnished is sufficient for normal demands, and that in times of stress it has fairly and impartially prorated all of its car equipment. (McDowell, J., dissenting.) U. S. v. B. & O. R. Co., 165 Fed. 113, 126.

(b) In a suit for damages by a shipper for the refusal of defendant carriers to furnish cars and transport cross-ties, defendants set up that they had on file with the Interstate Commerce Commission no published rates on cross-ties. Defandants' tariffs so on file did, however, contain interstate rates on "lumber, all kinds," of 24c. No specific rate on cross-ties was included in these tariffs. HELD: The published rates on lumber were applicable to cross-ties and the defense set up was not valid. American Tie & Timber Co. v. K. C. S. Ry. Co., 175 Fed. 28, 32.

ALL OTHER CITATIONS

Ft. Worth & D. C. Ry. Co. v. Strickland (Tex. 1918), 208 S. W. 410; Ft. Worth & D. C. Ry. Co. v. Strickland (Tex. 1918), 258 S. W. 410.

§35. Res. Adjudicata.

See Evidence V.

CASES 1887-1908

(a) A case before the Commission involving alleged discrimination in furnishing cars, and demanding reparation, is not barred, under section 9 of the Act, by the previous institution in the State court of a suit for damages between the same parties based on such discrimination. Gallogly v. Cincinnati, H. & D. R. Co., 11 I. C. C. 1.

IMPORTANT CASES SINCE 1908

(b) A suit to determine a question of car distribution brought between one shipper and a carrier does not render the question res adjudicata with respect to other shippers who were not parties to the proceedings, and had no opportunity to be heard therein, and such shippers may raise the same questions in a mandamus suit against the same carrier. (McDowell, J., dissenting.) U. S. v. B. & O. R. Co., 165 Fed. 113, 124.

ALL OTHER CITATIONS

Merchants' Coal Co. v. Fairmont Coal Co., 160 Fed. 769, 778.

§36. Evidence.

See Supra §9; Evidence §39.

CASES 1887-1908

(a) Merely putting in evidence defendants rule of apportionment is unsufficient to show discrimination against the complainant; the actual effect of the car distribution rule, during the time covered by the complaint is necessary to a determination of the question of unfairness in the distribution of cars. Richmond Elevator Company v. Pere Marquette R. R. Co., 10 I. C. C. 629, 637.

IMPORTANT CASES SINCE 1908

(b) Handling of empty cars causes nearly as much damage to the car for which repairs are necessary as the loaded movement, and there is little difference in the depreciation during the period of each movement. In Re Private Cars, 50 I. C. C. 652, 685.

(c) The corporate builder and owner of such instrumentalities of commerce as refrigerator, tank, and box cars, which it leases to railway companies and shippers, has the general immunities of an ordinary witness, unless and until it is shown to be merely the tool of the users of the cars, against an inquiry into its private business affairs in an investigation ordered by the Interstate Commerce Commission for the purpose of determining whether the allowances, practices, or minimum carload weights obtaining where private cars are used to violate the provisions of the Act, §1-3, 15, as being unjust, unreasonable, or unduly

discriminatory. Ellis v. Interstate Com. Com., 35 Sup. Ct., 645, 646, 647; 237 U. S. 434, 59 L. Ed. 1056.

(d) Evidence of the number of the carrier's coal cars on other railway lines is immaterial in an action to recover damages arising out of the carrier's failure, upon reasonable demand, to supply to a shipper in interstate commerce a sufficient number of cars to transport the output of the latter's coal mine, where there is no claim of a car shortage, or that conditions in the coal trade were other than normal. Pennsylvania R. Co. v. Sonman Shaft Coal Co., 37 Sup. Ct., 46; 242 U. S. 120, 61 L. Ed. 188.

ALL OTHER CITATIONS

Royal Coal & Coke Co. v. Southern Ry. Co., 13 I. C. C. 440, 448; Ft. Worth & D. C. Ry. Co. v. Strickland, (Tex. 1918), 208 S. W. 410.

VII. LIMITATION OF LIABILITY.

§37. In General.

See Tariffs.

IMPORTANT CASES SINCE 1908

(a) Tariffs are not the proper place for rules prohibiting the practice of car peddling; on the other hand the privilege if accorded to shippers, seems to be lawful only when provided for in the carriers tariffs. The Car Peddling Case, 45 I. C. C. 494, 502.

§38. Open Cars.

CASES 1887-1908

(a) Upon the facts found in these cases, the Commission will not order the rail carriers to transport cotton on flat cars instead of in box cars to New Orleans, the rate being the same on each, no injury being shown to have resulted to petitioners or to that city, or to any shipper or producer from the carriage in box cars. New Orleans Cotton Exchange v. Illinois Central R. Co., 2 I. C. R., 777.

IMPORTANT CASES SINCE 1908

(b) Certain kinds of goods may, and of necessity must, be transported in open cars. Carriers commonly hold themselves out to transport such goods, and they must therefore receive and transport them when offered for shipment. In the absence of statutory prohibition, it seems, the carrier may stipulate for a limitation of its liability in receipt of goods so transported except, of course, that it can make no stipulation for exemption on account of loss or damage caused by its own negligence, 2 Hutch. Carr. (3rd Ed.), §506, and under the law, when a consignor of goods agrees that they may be loaded and transported in open cars, the carrier, in the absence of negligence on its part, is not liable for any damage caused to the goods by their being so loaded and transported. Western & A. R. Co. v. Exposition Cotton Mills, 81 Ga. 522. But the carrier must exercise ordinary care and diligence even when the shipper agrees to or requests the transportation in open cars. C. St. L. & N. O. R. Co. v. Moss, 60 Miss. 1003; Michie, Carriers, §1020. Bills of Lading, 52 I. C. C. 671, 707.

VIII. TARIFFS AND PUBLICATION.

§39. Car Service Rules.

CASES 1887-1908

(a) It is the legal duty of defendant to publish and file its rates and regulations for the movement of private cars, certain kinds of which are more or less frequently handled over its line. Carr v. N. P. Ry., 9 I. C. C. 1, 15.

IMPORTANT CASES SINCE 1908

(b) The complainant's further contention that the car service rules not incorporated in schedules on file with the Commission is without merit. No direction that they should be so incorporated and filed had been made by the Commission under the car service amendment to section 1 of the act, and their publication in such manner is not otherwise required by the act. Armour Grain Co. v. Director General, 57 I. C. C. 398, 405.

(c) Under paragraph 13 of section 1 of the Act of the Commission is authorized by general or special orders to require all the carriers by railroad subject to the act to file with it from time to time their rules and regulations with respect to car service, and the Commission may, in its discretion, direct that such rules and regulations be incorporated in the schedules showing rates, fares and charges for transportation and thereby subject to any or all of the provisions of the act relating thereto. Fairmount & Cleveland Coal Co. v. B. & O., 62 I. C. C. 269, 276.

(d) The Commission has not required that car service rules be filed as tariff schedules. Fairmont & Cleveland Coal Co. v. B. & O. R. R. Co., 62 I. C. 269, 276.

(e) While the Commission did not direct that certain car service rules be filed, as it may have required carriers

to do under the provisions of section 1 of the act, it was expected that carriers promptly amend such rules to conform to the findings and evidence same by filing copies with the Commission. Fairmont & Cleveland Coal Co. v. B. & O. R. R. Co., 62 I. C. C. 269, 276.

(f) Car Distribution: Practice of respondent in assigning private cars, and system of foreign-line cars for railway fuel, to bituminous coal mines in excess of ratable share distributed to bituminous coal mines upon their lines not receiving assigned cars, found unjust and unreasonable, and unduly and unreasonably preferential of mines furnished such cars in excess of ratable proportion and discriminatory against and unduly prejudicial to such other mines not receiving assigned cars. Finding not to preclude commission, in exercise of emergency powers under paragraph (15) of section 1 of the act, from requiring placement of cars for such loading at mines in excess of percentage allotment to mines generally upon lines of same carrier, or upon same division. Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 520.

(g) By paragraph (11) of section 1 of the act it is made the duty of carriers to establish, observe, and enforce just and reasonable rules, regulations, and practices with respect to car service; and every unjust and unreasonable rule, regulation, and practice with respect to car service is prohibited and declared to be unlawful. Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 520, 556, 557.

(h) By paragraph (14) of section 1 of the act the commission is given jurisdiction to establish reasonable rules, regulations, and practices with respect to car service, including compensation to be paid for use of any car not owned by carrier using it. Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 557.

ALL OTHER CITATIONS

Assignment of Freight Cars, 57 I. C. C. 760, 763, 765, 766, 707, 771; American Wholesale Lumber Asso. v. Director General, 66 I. C. C., 393, 397, 405; Republic of France v. Director General, as Agent, 68 I. C. C. 419.

IX. RULES AND REGULATIONS.

§40. In General.

IMPORTANT CASES SINCE 1908

(a) If a shipper habitually delays cars for unloading at destination the carriers may place an embargo against freight consigned to him and thus prevent further detention of equipment; if the shipper habitually delays loading cars the carrier may refuse further supply and thus prevent detention and accumulation of cars at the loading point. American Wholesale Lumber Asso. v. Director General, as Agent, 66 I. C. C. 393, 405.

(b) A charge in the nature of a penalty is not unlawful if its purpose is to secure for the public a more efficient use of equipment, and while it should not be so high as to work an undue hardship, it should be sufficient in amount to accomplish the purpose for which it is intended. American Wholesale Lumber Asso. v. Director General, 66 I. C. C. 393, 397.

ALL OTHER CITATIONS

Assignment of Freight Cars, 57 I. C. C. 760, 763, 765, 766, 767, 771; Armour Grain Co. v. Director General, 57 I. C. C. 398, 405; Assigned Cars for Bitumionus Coal Mines, 80 I. C. C. 520, 556, 557.

CARTAGE AND DRAYAGE

See Drayage.

CASES 1887-1908

(a) Where a common carrier subject to the Act to Regulate Commerce has established and published its schedule of rates and charges for a station on its line, free cartage furnished by the carrier for the collection and delivery of freight carried on its road to or from such station operates as a reduction or rebate from the schedule charge, and is unlawful. If free cartage at a station has the effect to reduce a rate below the charge at another station nearer the point of shipment it is unlawful as a less charge for a longer distance over the same line and in the same direction, the less being included within the greater. Stone & Carter v. Detroit, Grand Haven & Milwauke R. Co., 3 I. C. R. 60.

(b) It is not material to the question of the lawfulness of free cartage furnished at one town and not at another that the business was done in that way for many years before the Act to Regulate Commerce was enacted. If what was done and is now done works unjust discrimination or is in any particular obnoxious to the Law, it is an abuse, and one that it must be assumed was intended to be corrected by the Act. Stone & Carter v. Detroit, Grand Haven & Milwaukee R. Co., 3 I. C. R. 60.

(c) The respondent company had a tariff schedule in effect grouping the rates from eastern points to Ionia and Grand Rapids in Michigan, Ionia being the shorter distance, and furnished free cartage at Grand Rapids and not at Iona. Upon complaint by a firm of dealers at Ionia. HELD, that the free cartage at Grand Rapids was in effect a rebate and unlawful. Stone & Carter v. Detroit, Grand Haven & Milwaukee R. Co., 3 I. C. R., 60.

(d) It is not material to the question of the lawfulness of free cartage furnished at one town and not at another, that the business was done in that way for many years before the Act to Regulate Commerce was enacted. A shipper from whose mill flour is taken in cars cannot complain that the carrier bears a portion of the cartage expenses of other millers. Hezel Milling Co. v. St. Louis, A. & T. H. R. Co. (Com.) 3 I. C. R. 701.

(e) The furnishing of free cartage at one place, and not at another at a less distance from the point of shipment, is a violation by a railway company of the long and short haul clause of the Interstate Commerce Act, where the transportation is under substantially similar circumstances and conditions. Interstate Commerce Commission v. Detroit, G. H. & M. R. Co. (C. C. W. D. Mich.), 4 I. C. R. 722.

(f) The furnishing of free cartage by a railroad company at one place and not at another cannot be justified as analogous to the providing of a switch track for the benefit of customers whose storehouses are convenient to the railway track, since the latter is usual railway business, while cartage is something not usually undertaken by railways. Interstate Commerce Commission v. Detroit G. H. & M. R. Co. (C. C. W. D. Mich.), 4 I. C. R. 722.

(g) That the competitors of a railway company have their stations in a certain place in the business center, while its own is at a distance, does not create a dissimilar condition which will allow such company to furnish free cartage of goods while at another station it does not do so, if it would justify it in furnishing cartage at a price equal to that for which cartage can be obtained from the stations of such competitors. Interstate Commerce Commission v. Detroit, G. H. & M. R. Co. (C. C. W. D. Mich.), 4 I. C. R. 722.

(h) The fact that the station of a railroad company is at a greater distance from the business center of one town than in another does not justify it in furnishing free cartage in the former on the ground that the circumstances and conditions are dissimilar, since in any case the consignees would have to pay cartage though the price might be less. Interstate Commerce Commission v. Detroit, G. H. & M. R. Co. (C. C. W. D. Mich.), 4 I. C. R. 722.

(i) The fact that one city is a larger place than another does not create different circumstances and conditions which will justify a railroad company in furnishing free cartage for goods transported by it in the former and not in the latter, though it may reduce the cartage cost to the shipper at the former place in so far as the greater amount of business enables it to do carting at a cheaper rate than at the latter place. Interstate Commerce Commission v. Detroit, G. H. & M. R. Co. (C. C. W. D. Mich.), 4 I. C. R. 722.

(j) A carrier's furnishing free cartage between its station and the warehouse of shippers and consignees at one point which is refused at a point nearer the place of shipment but which has been lawfully grouped with the former for a common charge from the place of shipment, is an undue discrimination against the latter, violative of the Interstate Commerce Act, and is not justified by the facts that the business at the former point is much greater than at the latter, and at the former the stations of rival carriers are much nearer than its station to the business portion of the town, since the advantage of free cartage is more than enough to equalize conditions. Interstate Commerce Commission v. Detroit, G. H. & M. R. Co., 4 I. C. R. 722.

(k) Furnishing free cartage or delivery of goods at one town but not at another to which the same rates are charged for a shorter haul is not equivalent to charging a greater compensation for the shorter distance in violation of §4 of the Act to Regulate Commerce, since that section relates only to the transportation by rail and the charges therefor. The failure of a railroad company to publish in its schedules of rates the fact of free cartage at a certain place where it has been openly and notoriously granted to shippers and consignees for a quarter of a century, is not a violation of §6 of the act, at least when the Interstate Commerce Commission has

not made any general order requiring free cartage to be included in such schedules. Interstate Commerce Commission v. Detroit, Grand Haven & Milwaukee Ry. Co., 7 I. C. C. app. LVII.

(l) Although carting to and from stations when it becomes an element of interstate commerce is within the control of Congress and falls within the regulation of the Interstate Commerce Act in determining how far the provisions of such act apply, the fact that it is a separate and independent business not usually carried on by the railroad companies, nor within the scope of the act, nor under the power of Congress, should be kept in mind, and it is only by combining the rail carriage and cartage into one continuous cartage that carting service can be brought within the act pertaining to the equality of rates. Detroit, Grand Haven & Milwaukee Ry. Co. v. Interstate Commerce Commission, 7 I. C. C. app. LXXIV.

(m) A dissimilarity of circumstances which will justify the inclusion without extra charge at one place of cartage to and from the station of a railroad company while the same rate is charged without such cartage at a place involving a shorter haul, but not in mercantile rivalry with the former, is created by the fact that the custom has been established at the former place to give such cartage for many years prior to the adoption of the Interstate Commerce Act, and that the station of the company is located much farther from the business portion of the town than at the latter place,—especially where to abandon such custom and obtain access to the business portion of the city would entail an enormous cost for right of way and necessaries of construction and reconstruction, and there is great competition of rival carriers for the same traffic at the former place while there is not at the latter. Detroit, Grand Haven & Milwaukee Ry. Co. v. Interstate Commerce Commission, 7 I. C. C. app. LXXIV.

(n) The provision of the Interstate Commerce Act denouncing a greater compensation in the aggregate for transportation for a shorter than for a longer distance means only that, taking all the rates of fare and charges incidental to the transportation together, these shall not be more for the shorter haul, and is not necessarily violated where they are precisely the same, although the charge at one station includes cartage while it does not at the other, where such cartage is reasonable under the circumstances and conditions made by the carrier in the due course of its business at the place. Detroit, Grand Haven & Milwaukee Ry. Co. v. Interstate Commerce Commission, 7 I. C. C. app. LXXIV.

(o) An order of the Interstate Commerce Commission that a carrier discontinue cartage without extra charge at a certain place is not a lawful order or requirement which the courts can be invoked to enforce while it operates to deprive the carrier of its business at that place, whatever power the Commission may have to prevent inequality of rates between such place and another. Detroit, Grand Haven & Milwaukee Ry. Co. v. Interstate Commerce Commission, 7 I. C. C. app. LXXIV.

(p) An arbitrary and preemptory order of the Interstate Commerce Commission to abandon accessorial cartage at one place, as a discrimination against another place, without regard to rates or option as to readjustment of them, is an interference with the rights of property and its use beyond the power of the Commission. Detroit, Grand Haven & Milwaukee Ry. Co. v. Interstate Commerce Commission, 7 I. C. C. app. LXXIV.

(q) An allowance for cartage made by a railroad company to a shipper who had no siding connection with that line, although he had such connection with another competing line, is in violation of the section of the Interstate Commerce Act prohibiting rebates, drawbacks, and special rates, when a similar allowance was not made to another person who shipped goods over the same line, under the same circumstances except that he had no siding connection with either road. The phrase "under substantially similar circumstances and conditions" in §2 of the Interstate Commerce Act refers to the matter of carriage, and does not include competition. The court says: The wrong prohibited by the section is a discrimination between shippers. It was designed to compel every carrier to give equal rights to all shippers over its own road and to forbid it by any device to enforce higher charges against one than another. Wight v. U. S., 7 I. C. C. app. XCV.

IMPORTANT CASES SINCE 1908

(r) Cartage may, of course, be furnished as an accessorial service by the delivering carrier, and it may charge therefor as a distinct and separate terminal

service, but such cartage presupposes delivery upon the team tracks of the carrier and is supplementary thereto. Associated Jobbers of Los Angeles v. A. T. & S. F. Ry. Co., 18 I. C. C. 310, 316.

ALL OTHER CITATIONS

Mitchell Coal & Coke Co. v. Penn. R. R. Co., 33 Sup. Ct. 916, 922, 230 U. S. 304.

CIRCUS TRAINS

See Long and Short Haul §4, §4¾; Routing and Misrouting §4; Through Routes and Joint Rates §6.

IMPORTANT CASES SINCE 1908

(a) Following Snook Case, 17 I. C. C., 375, without determining whether the commission has jurisdiction over charges subsequent to termination of Federal control for transportation of circus and carnival trains, in private equipment, under special contract as provided in rule 63 of Tariff Circular 18-A. HELD, Charges can not be regarded as in violation of the interstate commerce act or the transportation act, 1920. The level of such charges does not appear unreasonable as compared with rates on various commodities, the traffic is of a peculiar nature and requires special handling, and no discrimination to its prejudice is apparent. Coma v. St. L.-S. F. Ry. Co., 74 I. C. C. 400.

(b) Complainant attacked rates actually charged and sought to be charged by defendants for the movement of carnivals as illegal, unreasonable, and unjustly discriminatory. Carnival shows vary in size from 1 to 30 cars, but complainant is attacking only the charges on circuses and shows of not less than 6 or more than 30 cars. Ordinarily, circuses exhibit in different places each week day, and move during the night, while carnival or fair shows continue an engagement for a week and move on Sundays. All circus and carnival outfits of five cars or more are handled by the carrier's freight departments and are moved in special trains on special schedules arranged to suit the convenience of the show management. The owners provide the equipment which consists of flat, stock, box and passenger cars, owned or leased by them, while the carrier furnishes the engine, caboose and crew, the crew for each train consisting of an engineer, fireman, conductor and two or at times three brakemen. Transportation has been performed under special contracts executed by the show owners and the carrier's general officers, new contracts being made for each movement or series of connected movements. The contracts stipulate that they are not made by the carrier in its capacity as a common carrier. The contracts are filed with the Commission on one days' notice, in compliance with rule 63 of the tariff circular 18-A. It does not appear that defendants have discriminated in their charges or practices as between the different show owners, or unduly discriminated against this traffic in any respect. It, moreover, does not appear that the level of these charges are unreasonable or that complainant is entitled to the relief asked even if the Commission were authorized to exercise jurisdiction, and no opinion need be or is here expressed with respect to the jurisdictional question. HELD, charges complained of can not be regarded as in violation of the act even if those acts should be construed as giving the Commission power to enter such orders as are here prayed. Complaint dismissed. Coma v. St. L. S. F. Ry., 74 I. C. C. 400.

(c) The uniform scale of charges for transportation of circus and carnival trains promulgated by the railroad administration during Federal control, was merely an administrative authority and not a rate or charge, and as such not governed by section 208 (a) of the transportation act, 1920. Coma v. L.-S. F. Ry. Co., 74 I. C. C. 400, 402.

(d) The courts, both state and federal, have with practical unamity held that a railroad company is not required as a common carrier to transport circus trains. Coma v. St. L.-S. F. Ry. 74 I. C. C., 400, 407.

(e) The holding of State and Federal courts that a railroad is not required as a common carrier to transport circus trains is not determinative of whether the commission has jurisdiction over charges for such transportation under special contracts as provided in rule 63 of Tariff Circular 18-A. These cases were based on negligence, and the question of the commission's jurisdiction was not in issue. Moreover, the major portions were decided prior to the 1906 amendment to the act, while rule 63 was adopted subsequent thereto. Coma v. St. L.-S. F. Ry. Co., 74 I. C. C. 400, 407, 408.

(f) In the performance of a contract entered into by a railway company with

a circus for hauling its train from place to place, the railway company was not acting as a common carrier. Dierick v. Davis, (Ind. 1922), 137 N. E. 685.

CLAIMS

I. WHEN STATUTE OF LIMITATION RUNS.
§1. In general.
§1½. Transportation Act.
§2. Claims accruing before August 28, 1906.
§2½. Reliance on carrier.
§3. Date of delivery of shipment.
§4. Date of payment of charges.
§5. Date of amending claims.
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II. INFORMAL COMPLAINTS.
§6. Effect of informal letter.
§7. Necessity and form of formal complaint.
§8. Requisites of informal complaint.
III. PRESENTATION TO CARRIERS.
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§11. Penalties for non-payment.

CROSS REFERENCES

See Action at Law; Advance Rates VII; Allowances VI; Cars and Car Supply VI; Express Companies §30; Legal Rates; Loss and Damage; Overcharges; Passenger Fares and Facilities IV; Reparation; Undercharges.

I. WHEN STATUTE OF LIMITATION RUNS.

See Actions at Law; Crimes §28; Loss and Damage §11¼, §13½; Overcharges §7; Reparation; Statute of Limitations.

§1. In general.

CASES 1887-1908

(a) The Statute of Limitations does not begin to run against the claim of a shipper to recover back excessive payments of freight charges so long as he has no knowledge of his rights, owing to the fraudulent concealment of the cause of action by the carrier. Cook & Wheeler v. Chicago R. I. & P. R. Co., 3 I. C. R. 383.

(b) The Statute of Limitations does not commence to run while plaintiff has no knowledge of his rights owing to a fraudulent concealment of the cause of action by defendant. Cook v. Chicago, R. I. & P. R. Co. (Iowa), 3 I. C. R. 383.

(c) The concealment from a shipper of the fact that the rates charged him were excessive and that rebates were secretly given to others and false representations as to these facts, do not take a cause of action for the recovery of the excess paid by him out of the statute of limitations, as the case is not based on fraud. Murray v. Chicago & N. W. R. Co., 4 I. C. R. 806.

(d) Where the statute establishes a method of procedure for the enforcement of a right of action which finally results in bringing that matter by the prescribed course before a court for determination, the principle established by leading cases is that the first step which must be taken in the proceeding to enforce the claim should be treated as the beginning of the suit which finally results. Therefore when a party elects to proceed before this Commission for the recovery of damages his petition filed with this Commission should be considered the beginning of his action in all its subsequent stages. In this case the suit of members of the Cattle Raisers' Association of Texas for the recovery of damages should be treated as having been begun by the filing on their behalf of the original petition of that Association herein, and there is, consequently, no room for application of a statute of limitations. Cattle Raisers' Asso. v. C. B. & Q. R. Co., 10 I. C. C. 83.

IMPORTANT CASES SINCE 1908

(e) Where there is no privity of interest between the consignor and consignee, the filing of a claim for reparation by the consignee does not constitute a filing by or on behalf of the consignor. Traffic Bureau, Sioux City Com. Club v. A. & S. R. R. R. 37 I. C. C. 353.

(f) The commission cannot therefore consider claims which accrued more than two years before they were filed. Salem Iron Works v. S. P. Co., 38 I. C. C. 600.

(g) The right to recover damages on account of a rate alleged to be excessive and therefore unlawful is subject to a provision in section 16 of the Act to regulate commerce, as follows: "All complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues, and not after." The bar of this provision commences to run, not from the time when the shipper pays the rate, but

from the time when the law imposes upon him the obligation to pay it, namely upon the delivery of the shipment to him at destination. Navassa Guano Co. v. C. M. & St. P. Ry. 39 I. C. C. 171, 172.

(h) The filing of an intervening petition tolls the statute of limitations irrespective of the date of the Commission's order permitting the intervention. Cotton Manufacturers' Asso. of S. C. v. C., C. & O. Ry., 57 I. C. C. 584, 588.

(i) Contention that section 206 (f) of the Transportation Act, 1920, in so far as it undertakes to revive claims which had become barred when that act was approved is unconstitutional, in that it operates to deprive carriers of property without due process of law. HELD, Following Kalbfleisch Corp., 68 I. C. C., 333, such shipments as come within the terms of the statute are not barred. Calivada Fertilizer Co. v. S. P. Co., 73 I. C. C. 496, 498.

(j) Objection of carriers to consideration of shipments on the ground that they were all barred by the statute of limitations at the time of the passage of the Transportation Act, 1920. HELD, Not sustained following Pittsburg Grain & Hay Exchange, 62 I. C. C., 506. Nicholas Oil Co. v. A., T. & S. F. Ry. Co., 73 I. C. C. 725, 727.

(k) Following Thomas Iron Co., 57 I. C. C., 657, contention that section 206 (f) of the Transportation Act, 1920, which provides that the period of Federal control shall be disregarded in computing the period of limitation in claims for reparation to the commission for causes of action arising prior thereto, is inapplicable to claims that accrued more than two years prior to the passage of the Transportation Act, not sustained. Lakewood Engineering Co. v. N. Y. C. R. R. Co., 74 I. C. C. 465, 466.

(l) Complainant at the hearing asked leave to amend its complaint to include a prayer for reparation on additional shipments. HELD, Claim, at time amendment presented, found barred by the statute of limitations and can not be considered. Lackawanna Steel Co. v. Director General, as Agent, 77 I. C. C. 465, 468.

(m) Amendment of February 24, 1922, to limitations provision of interstate commerce act made no change in the provision that complaints for causes arising out of Federal control might be filed with commission within one year after termination thereof. Lay Fish Co. v. Director General, as Agent, 80 I. C. C. 4, 5.

(n) The period of limitation is computed from the date of delivery or tender of delivery of the shipments. Lindeteves Stokvis v. Director General, 89 I. C. C. 3.

ALL OTHER CITATIONS

In re Accrual of Cause of Action, 15 I. C. C. 201, 204; Anaconda Copper Mining Co. v. C. & E. R. R. Co., 19 I. C. C. 592, 594; Arkansas Fertilizer Co. v. U. S., 193 Fed. 667, 673; Fels & Co. v. P. R. R. Co., 23 I. C. C. 483, 487; National Wool Growers' Assn. v. O. S. L. R. Co., 25 I. C. C. 675, 677; Marion Coal Co. v. D. L. & W. R. R. Co., 27 I. C. C. 441, 442; Commercial Club of Omaha v. A. & S. R. Ry. Co., 27 I. C. C. 302, 307; Michigan Hardwood Mfrs. Assn. v. Transcontinental Freight Bureau, 27 I. C. C. 32, 38; M. K. & T. Ry. Co. v. Harriman, 227 U. S. 657, 33 Sup. Ct. 397; C. B. & Q. Ry. Co. v. Miller, 226 U. S. 513, 33 Sup. Ct. 155; C. St. P. M. & O. Ry Co. v. Latta, 226 U. S. 519, 33 Sup. Ct. 155; A. J. Phillips Co. v. G. T. W. R. Co., 35 Sup. Ct., 444, 445; Adams Express Company v. Croninger, 226 U. S. 491, 33 Sup. Ct. 148; Michigan Hardwood Mfrs. Assn. v. Freight Bureau, 27 I. C. C. 32, 35; In re Rates on Live Stock, Packing House Products and Fresh Meats from Southwestern Points, 28 I. C. C. 332, 335; In re Advances on Live Stock, 28 I. C. C. 332, 335; International Agricultural Corporation v. L. & N. R. R. Co., 29 I. C. C. 391, 395; Miller Brothers v. O. S. L. R. R. Co., Unrep. Op. A478; Tennessee Copper Co. v. L. & N. R. R. Co. Unrep. Op. A-523; Tennessee Copper Company v. L. & N. R. R. Company, Unrep. Op. A-598; Humphreys-Godwin Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A-598; Low Moor Iron Co. v. C. & O. Ry. Co., 36 I. C. C. L. R. R. Co. 40 I. C. C. 86, 87; Traffic Bureau, Sioux City Commercial Club v. A. & S. R. R. Co., 37 I. C. C. 353, 354, 355, 356; Cherokee Lumber Co. v. A. C. L. R. R. Co., 40 I. C. C. 86, 87; Lexington Mirror Company v. S. Ry. Co., 42 I. C. C. 33; Lamb-Fish Lumber Co. v. Y. & M. V. R. R. Co., 42 I. C. C. 458, 459; Buffalo Union Furnace Co. v. L. S. & M. S. Ry., 44 I. C. C. 267, 269; Arlington Heights Fruit Exchange v. S. P. Co., 45 I. C. C. 248, 253; California Pine B. & L. Co. v. S. P. Ry., 47 I. C. C. 372, 375; Blackman & Griffin Co. v. A. C. & Y. Ry., 49 I. C. C. 649, 651; Sharon Steel Hoop

Co. v. Penn. Co., 51 I. C. C. 545, 548; Cuneo Importing Co. v. New York Cent. R. R., 170 N. Y. S. 940; Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R., 51 I. C. C. 635, 639, 640, 643; City of Springfield, Tenn. v. L. & N. R. R. Co., 53 I. C. C. 603, 605; Western States Portland Cement Co. v. Director General, 59 I. C. C. 195, 196; Chevrolet Motor Co. v. Director General, as Agent, 59 I. C. C. 685; Ryan Fruit Co. v. S. P. 60 I. C. C. 733, 736; British United Shoe Machinery Co. (Ltd.) v. P. R. R. Co., 66 I. C. C. 661; United States v. Interstate Commerce Commission, 38 Sup. Ct. 408; Phillips Case, 236 U. S., 662; Barrett Co. v. Director General, as Agent, 80 I. C. C. 55; United States v. Director General, as Agent, 80 I. C. C. 143, 150, 151; Todd Dry Dock & Construction Corp., 74 I. C. C., 291; American Lumber Mfg. Co., v. G. R. R., 80 I. C. C. 759; Whalen Pulp & Paper Mills v. Director General, as Agent, 83 I. C. C. 516.

§1½. Under Transportation Act.

See Transportation Act.

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(a) Under section 206 (f) of the transportation act, 1920, the period of federal control is not to be computed as part of the period of limitation in claims for reparation for causes of actions arising prior thereto, and claims named in a complaint filed during federal control based on causes of action which arose within two years prior thereto are not barred by the statute. Lazarus v. N. Y. C. R. R. Co., 271 Fed. 93; Pittsburgh Grain & Hay Exchange v. Director General, as agent, 62 I. C. C. 506, 508.

(b) Section 206 of the transportation act, 1920, provides that the period of federal control shall not be computed as a part of the periods of limitation in claims for reparation for causes of action arising prior to federal control. Claims based on causes of action which, excluding the period of federal control, arose within two years prior to May 25, 1921, the date of filing complaint are, therefore, not barred. Ball, Seligman & Co. v. N. Y. P. & N. R. R. 73 I. C. C. 223.

(c) Section 206f of the transportation act, 1920, provides that the period of federal control shall not be computed as a part of the period of limitation in claims for reparation for causes of action arising prior to federal control. Crown Willamette Paper Co. v. Director General 78 I. C. C. 273, 277.

(d) Motion to dismiss complaint on the ground that the statute of limitations had run against the shipments. HELD, Excluding the period of Federal control as provided under section 206 (f) of the transportation act, 1920, claim not barred. American Shipbuilding Co. v. Director General, as Agent, 77 I. C. C. 439, 440.

(da) Following Bloedel-Donovan Lumber Co., 68 I. C. C., 95, contention that section 206(f) of transportation act, 1920, which provides that period of Federal control shall be disregarded in computing statutory period of limitation in claims for reparation for causes of action arising prior to Federal control, is inapplicable to claims that accrued more than two years prior to passage of transportation act, not sustained. Pacific Coast Shippers' Asso. v. Director General, as Agent, 78 I. C. C. 10, 11.

(e) Amendment of February 24, 1922, to limitations provision of interstate commerce act made no change in provision that complaints for causes arising out of Federal control might be filed with commission within one year after termination thereof. Lay Fish Co. v. Director General, as Agent, 80 I. C. C. 4, 5.

(f) Complainant attacked refusal of defendant to accept for transportation in carload lots 12 shipments of toys and other commodities which were received by steamer from the Orient and were tendered to defendant at the dock and team tracks of the C. M. & St. P., at Tacoma, Wash., and that by reason of such refusal complainant was put to the expense of draying the shipments to another carrier for transportation. Complainant did not submit the case within one year after the termination of federal control. HELD, Complaint dismissed. Frank P. Dow Co. v. Director General, 81 I. C. C. 351.

ALL OTHER CITATIONS

Thomas Iron Co. v. Director General, 57 I. C. C. 657; Hirth-Krause Co. v. Director General, as Agent, 61 I. C. C. 350; San Diego & Arizona Ry. Co. v. A. T. & S. F. Ry. Co., 62 I. C. C. 675; Le Prestre Miller Stock Farms (Inc.) v. E. R. R. Co., 64 I. C. C. 149; 150; Armour & Co. v. C. & N. W. Ry. Co., 64 I. C. C. 641; Lakewood Engineering Co. v. N. Y. C. R. R. Co., 74 I. C. C. 465, 466; Hamilton Furnace Co. v. B. & O. R. R., 77 I. C. C., 377, 378; Bloedel-Donovan Lumber Co. v. Director General, as Agent, 68 I. C. C. 95, 96; Thomas Iron Co., 57 I. C. C. 657; Kalbflesch Corp. v. C. of Ga. Ry. Co., 68

I. C. C. 333, 334; Tanners Council v. Director General, as Agent, 78 I. C. C. 27, 28, 29; Crown Willamette Paper Co. v. Director General, as Agent, 78 I. C. C. 273, 277; Pfitzenmayer Construction Co. v. Director General as Agent, 78 I. C. C. 287, 288; Gulf Refining Co. of La., v. Director General, as Agent, 78 I. C. C. 347, 348; Little Fork Co. v. E. K. R. Co., 78 I. C. C. 699, 700; Arcadia Mills v. Carolina, C. & O. Ry. 293 F. 639; Allied Machinery Co. v. Director General, as Agent, 81 I. C. C. 204; Davison & Namack Foundry Co. v. P. R. R. Co., 81 I. C. C. 345; Inland Empire Paper Co. v. S. I. Ry. Co., 81 I. C. C. 603, 608; Western Silo Co. v. I. C. R. R. Co., 81 I. C. C. 614; Fairbanks Co. v. B. & A. R. R., 87 I. C. C. 725, 726.

§2. Claims Accruing before Aug. 28, 1906.

IMPORTANT CASES SINCE 1908

(a) Where a complaint is filed within one year from the passage of the Act of 1906, recovery of damages is not limited to causes of action that accrued within two years prior to filing of complaint; but if complaint is filed more than one year subsequent to the passage of that law, it is subject to the two-year limitation. Meeker & Co. v. L. V. R. R. Co., 23 I. C. C. 480, 482.

(b) Any claim accruing before or after August 28, 1906, may be presented within two years from the time it accrued, and claims accruing before Aug. 28, 1906, may be presented within one year from that date, even though accruing more than two years previous to the date named. L. & N. R. R. Co. v. Dickerson, 191 Fed. 705, 711.

ALL OTHER CITATIONS

Nicola, Stone & Myers Co. v. L. & N. R. R. Co., 14 I. C. C. 199, 206; Nollenberger v. M. P. Ry. Co., 15 I. C. C. 595, 598; Woodward & Dickerson v. L. & N. R. R. Co., 17 I. C. C. 9, 10; Sondheimer Co. v. I. C. R. R. Co., 20 I. C. C. 606, 610; L. V. R. R. Co. v. Meeker, 211 Fed. 785, 802.

§2½ Reliance on Carrier.

IMPORTANT CASES SINCE 1908

(a) Claims filed by complainant for purpose of tolling the statute of limitations and like action by defendant who never filed special docket application. Complainant was advised that application would be filed and have prompt consideration. HELD, as complainant lulled into belief that its rights were protected finding in 49 I. C. C. 586, in which claims held abandoned, reversed herein. Rockford Paper Box Board Co. v. C. M. & St. P. Ry., 55 I. C. C. 262.

§3. Date of delivery of shipment.

IMPORTANT CASES SINCE 1908

(a) The statute of limitations runs against a claim for reparation on discriminatory freight charges, on shipments delivered to complainant more than two years prior to the filing of the formal complaint for reparation. St. Louis Blast Furnace Co. v. V. Ry. Co., 21 I. C. C. 215, 216.

(b) Claims on shipments delivered more than two years prior to filing of complaint are barred by the statute of limitations. Melrose Milling Co. v. G. N. Ry., 43 I. C. C. 741.

(c) The limitation period prescribed in section 16 of the Act begins to run at the time of the delivery of the shipment, since the shipper's cause of action arises from the existence of the unreasonable rate, not from the payment of the excessive charge. (Carland and Hunt, JJ., dissenting.) Arkansas Fertilizer Co. v. U .S., 193 Fed. 667, 670.

ALL OTHER CITATIONS

South West Smelting & Refining Co. v. E. P. & N. E. Ry. Co., Unrep. Op. 280; Blinn Lumber Co. v. S. P. Co., 18 I. C. C. 430, 435; Shoecraft & Son v. I. C. R. R. Co., 19 I. C. C. 492; Standard Oil Co. v. C. T. T. R. R. Co., 21 I. C. C. 460, 461; Memphis Freight Bureau v. St. L. I. M. & S. Ry. Co., 24 I. C. C. 547; St. Louis Blast Furnace Co. v. V. Ry. Co., 24 I. C. C. 360, 364; In re Wool, Hides and Pelts, 25 I. C. C. 675, 679; Arkansas Fertilizer Company v. St. L. I. M. & S. Ry. Company, 25 I. C. C. 266, 267; Coffins Box & Lumber Co. v. C. & N. W. Ry. Co., 25 I. C. C. 249, 250; Du Pont de Nemours Powder Co. v. P. R. R. Co., 27 I. C. C. 59, 61; Switzer Lumber Co. v. K. C. S. Ry. Co., 25 I. C. C. 611; Standard Mirror Co. v. P. R. R. Co., 27 I. C. C. 200, 201; Miller Brothers v. O. S. L. R. R. Co., Unrep. Op. A-478; Best Company v. G. N. Ry. Company, 33 I. C. C., 1, 2; Louisiana Central Lumber Co. v. C. B. & Q. R. R. Co., 35 I. C. C. 38, 40; Amory & Co. v. S. P. Co., 36 I. C. C. 291, 292; Mutual Wheel Co. v. N. C. & St. L. Ry., 40 I. C. C., 612; Choctaw Lumber Co. v. T. O. & E. R. R. Co., 41 I. C. C. 615, 616; Northern Lumber Co. v. S. Ry., 41 I. C. C., 629; Crowe & Co. v. G. N. Ry., 41 I. C. C. 742; Friedman & Hasson v. A. G. S. R. R. Co., 42 I. C. C. 353; Zelnicker

Supply Co. v. L. W. R. R. Co., 42 I. C. C. 365; Tampa Fuel Co. v. A. C. L. R. R. Co., 43 I. C. C. 231; Williams & Sons v. B. & O. R. R., 45 I. C. C. 107; Friedman v. C. & N. W. Ry., 45 I. C. C. 91; Beaumont Timber Co. v. I. & G. N. Ry., 46 I. C. C. 410; California Pine B. & L. Co. v. S. P. Ry., 47 I. C. C. 372, 374.

§4. Date of payment of charges.

IMPORTANT CASES SINCE 1908

(a) A claim based on section 3 or 4 is entirely different from one based on section 1, the measure of damages may be different, and the kind of evidence necessary to support the claims is not the same. In determining the application of the statute of limitations in respect thereto, the basis of an informal claim can not be broadened or otherwise varied by the formal complaint subsequently filed, i. e., as to shipments on which the charges were paid more than two years prior to the filing of the formal complaint. Blackman & Griffin Co. v. A. C. & Y. Ry., 49 I. C. C. 649, 651.

(b) Following decision of Supreme Court in Louisville Cement Co. Case, 246 U. S. 638, in which it was held that the cause of action accrues and the statute begins to run on the date the freight charges are actually paid, original report modified and reparation awarded on certain portions of the claim previously held barred by the Commission in Unrep. A-333. Louisville Cement Co. v. L. & N. R. R., 50 I. C. C. 538.

(c) Defendants objection that the claim is barred by the statute is not well taken, as complaint was filed within two years after the payment of charges. Fred R. Allen v. L. V. Ry., 53 I. C. C. 33.

(d) The cause of action accrues when unlawful charges are collected. Lamb Fish Lumber Co. v. Transcontinental Freight Bureau, 53 I. C. C. 221, 222.

(e) Following Louisville Cement Co., 246 U. S., 638, the Commission announced that it would reconsider any complaints denied under ruling in Blinn Lumber Co., 18 I. C. C. 430, and that such petitions should be filed not later than December 31, 1918. Present complaint filed after the designated time limit but within two years from date charges were paid found not barred, as the purpose of the ruling was administrative to encourage prompt action. Young v. Director General, 59 I. C. C. 305, 306.

(f) Under the Interstate Commerce Act, declaring that all complaints for the recovery of damages shall be filed with the Commission within two years after the cause of action accrues and not after, the cause of action to recover overcharges must be deemed to have accrued when the overcharges were paid, and not when the shipments were made, particularly as, when the amendment was adopted, it had repeatedly declared in decisions of the Supreme Court that a cause of action does not accrue until suit may be legally instituted upon it. United States v. Interstate Commerce Commission, 38 Sup. Ct. 408.

ALL OTHER CITATIONS

In Re Accrual of Cause of Action, 15 I. C. C. 201, 204; West Texas Fuel Co. v. T. & P. Ry. Co., 15 I. C. C. 443; Pleasant Hill Lumber Co. v. St. L. S. W. Ry. Co., 15 I. C. C. 532, 533; Kile & Morgan Co. v. Deepwater Ry. Co., 15 I. C. C. 235; Marshall and Michel Grain Co. v. St. L. & S. F. R. R. Co., 16 I. C. C. 385; Northern Lumber Co. v. S. Ry., 41 I. C. C. 629. Plymouth Coal Co. v. P.R.R., 56 I. C. C. 699, 706; Portland Cattle Loan Co. v. Director General, 55 I. C. C. 597, 598; Cohen-Schwartz Rail & Steel Co. v. M. L. & T. S. S. Co., 59 I. C. C. 202, 203.

§5. Date of amending claims.

IMPORTANT CASES SINCE 1908

(a) Complainant attacked the rate of $3.70 per 100 lbs. collected for the transportation of a carload of uncompressed cotton from El Centro, Cal., to New Bedford, Mass., as unreasonable. By an amendment filed more than two years after the shipment was delivered, the consignor was made a party complainant. HELD, (1), That so far as the consignor was concerned the claim was barred; and (2) that the rate charged was lawfully applicable. Complaint dismissed. Amory & Co. v. S. P. Co., 36 I. C. C. 291.

(b) Consolidated shipment belonging to complainant and a second party showed only complainant as consignee. Charges paid by third party. Second party's interest in claim made known at hearing more than two years after charges were paid is not barred by the statute to extent of his interest in the claim. Knopke Bros. v. C. & A. R. R., 50 I. C. C. 465, 466.

ALL OTHER CITATIONS

East St. Louis Walnut Co. v. St. L. S. W. Ry. Co. of Texas, 17 I. C. C. 582, 584; Virginia-Carolina Chemical Co. v. St. L.

I. M. & S. Ry. Co., 18 I. C. C. 1, 2; Dillion Coal & Transfer Co. v. O. S. L. R. R. Co., 28 I. C. C. 91; Michigan Hardwood Mfrs. Association v. Transcontinental Freight Bureau, 27 I. C. C. 32, 38.

§5½. After notice to file formal complaint.

IMPORTANT CASES SINCE 1908

(a) Where formal complaint is received more than two years after certain of the shipments on which reparation is sought had been delivered, and more than six months after complainant had been notified that its claim could not be disposed of informally, the claim for reparation must be considered abandoned. Coffeyville Vitrified Brick & Tile Co. v. St. L. & S. F. R. R., 38 I. C. C., 355.

(b) Delay in filing of formal complaint pending the outcome of another case where similar claims were in issue affords no ground for an exception to Rule III of the rules of practice. Blackman & Griffin Co. v. A. C. & Y. Ry., 49 I. C. C. 649, 651.

(c) On shipments of commodities from eastern defined territories to Utah common points informal complaints were filed and notice was sent that claims could not be adjusted informally. HELD, claims on shipments moving more than two years prior to date of filing of formal complaint and six months after notice that claims could not be determined informally, barred. Blackman & Griffin Co. v. A. C. & Y. Ry., 49 I. C. C. 649, 651, 652.

(d) Complaint filed informally January 12, 1916, and complainants advised on March 21, that claim could not be adjusted. Formal complaint received September 19, but returned for addition of participating carrier as party defendant. Amended complaint received October 10, 1916. HELD, complaint as originally received sufficient to stop the running of the statute. Knopke Bros. v. C. & A. R. R., 50 I. C. C. 465, 466.

(e) The Commission finds that complainant failed to file its formal complaint within two years after the cause of action accrued or within a reasonable time after notice that the claim was of such a nature that it could not be determined informally, and that the claim must therefore be regarded as having been abandoned. Citing Rule 3, Rules of Practice and Swift & Co. v. S. Ry., 40 I. C. C. 93. Naylor & Co. Inc. v. C. N. O. & T. P. Ry., 56 I. C. C. 265, 266.

(f) Complaint filed informally within two-year period and formally within six months after notification that it could not be disposed of informally, as required by paragraph (g), rule III, of the Commission's Rules of Practice, found not barred. Gulf Refining Co. v. St. L. S. F. Ry. Co., 64 I. C. C. 201.

ALL OTHER CITATIONS

Pence & Brother v. C. & O. Ry. Co., Unrep. Op. A476; Palen & Burns v. L. V. R. R. Co., Unrep. Op. A479; Kenefick-Quigley-Russell Const. Co. v. S. Ry. Co., 36 I. C. C. 324; Meeds Lum. Co. v. Fernwood & Gulf R. R., 38 I. C. C. 490; Bradley Timber & Ry. Supply Co. v. M. & I. Ry., 38 I. C. C. 497; East St. Louis Cotton Oil Co. v. St. L. & S. F. R. R., 38 I. C. C. 498; Greenbaum Co. v. S. Ry., 38 I. C. C. 715; Bland & Fisher Lumber Co. v. T. & N. O. R. R. Co., Unrep. Op. 2197; Florence Wagon Works v. S. L. Ry. Co., Unrep. Op. 2210; Marietta Knitting Co. v. N. C. & St. L. Ry. Co., Unrep. Op. 2233; Traffic Bureau, Sioux City Commercial Club v. A. & S. R. R. Co., 37 I. C. C. 353, 354, 355; Elm City Lumber Co. v. A. C. L. R. R. Co., 37 I. C. C. 571; Skinner Bending Co. v. T. St. L. & W. R. R. Co., 37 I. C. C. 582; Staten & King Hdw. Co. v. Penn. Co., 38 I. C. C. 736; Coffeyville Vitrified Brick & Tile Co. v. M. P. Ry., 39 I. C. C. 208; Swift & Co. v. S. Ry. 40 I. C. C. 93; Detroit Stove Works v. Wabash R. R. Co., 39 I. C. C. 597, 599; Trexler Lumber Co. v. S. Ry. Co., 39 I. C. C. 753; Cherokee Lumber Co. v. A. C. L. R. R. Co., 40 I. C. C. 86, 87; Swift & Co. v. S. Ry. Co., 40 I. C. C. 93; Bruner Co. v. S. Ry. Co., 40 I. C. C. 549, 550; Havana Metal Wheel Co. v. C. P. & St. L. Ry., 40 I. C. C., 677; Trexler Lumber Co. v. S. Ry., 39 I. C. C. 753; Newport Mining Co. v. C. & N. W. Ry. Co., 41 I. C. C. 465; Bagdad Land & Lumber Co. v. N. Y. C. R. R. Co., 41 I. C. C., 729; Western Carolina Lumber & Timber Asso. v. S. Ry. Co., 41 I. C. C. 753; John-Manville Co. v. N. Y. C. R. R. Co., 42 I. C. C. 25; Terhune Lumber Co. v. N. O. & N. E. R. R. Co., 42 I. C. C. 28; Transcontinental Freight Co. v. C. B. & Q. R. R., 42 I. C. C. 53; Williamson v. A. T. & S. F. Ry. Co., 42 I. C. C. 11; Zelnicker Supply Co. v. L. W. R. R., 42 I. C. C. 365; Guggenhime & Co. v. A. T. & S. F. Ry., 45 I. C. C. 60; Edwards & Loomis Co. v. P. C. C. & St. L. Ry., 45 I. C. C. 20, 21; Browning Bros. Co. v. B. & A. R. R., 45 I. C. C. 63; Florence Wagon Works v. L. & N. R. R., 46 I. C. C. 373, 374; Graham v. A. T.

& S. F. Ry., 49 I. C. C. 619; Rockford Paper Box Board Co. v. C. M. & St. P. Ry.; 55 I. C. C. 262; Acme Cement Plaster Co. v. Director General, as Agent, 81 I. C. C. 298, 299. Williams & Son v. V. B. R. Ry., 87 I. C. C. 721; Santa Rosa Mercantile Company v. Director General, 88 I. C. C. 753.

§5¾. Interveners.

See Interveners.

IMPORTANT CASES SINCE 1908

(a) The filing of an intervening petition tolls the statute of limitations irrespective of the date of the Commission's order permitting the intervention. Cotton Manufacturers' Asso. of S. C. v. C., C. & O. Ry. 57, I. C. C. 584, 588.

(b) Amending of complaint for reparation by permitting intervention of parties who paid and bore the freight charges had no effect and claim of interveners barred as they were not joined as parties complainant within the statutory period. Oden & Elliott v. S. A. L. Ry. Co., 57 I. C. C. 698, 699.

(c) Original complaint brought to recover reparation for account of complainant only, and not as agent for vendors. Amending of complaint by permitting intervention of the latter who paid and bore the freight charges can have no effect, as they were not joined as parties complainant within the statutory period. Interveners claim for reparation found barred. Oden & Elliott v. S. A. L. Ry Co., 57 I. C. C. 698, 699.

II. INFORMAL COMPLAINTS.

See Reparation §22.

§6. Effect of informal letter.

IMPORTANT CASES SINCE 1908

(a) Where, within two years after the cause of action accrued the Commission receives from complainant's attorney for filing a letter, with which is enclosed a statement claiming overcharge in the amount set forth in the formal complaint subsequently filed, showing the commodity and its weight, points of origin and destination, and car number and initials, the claim is "presented informally" to the Commission within two years after the cause of action accrued. Sanguinetti v. U. P. R. R., 39 I. C. C. 515, 516.

(b) Charges upon four shipments were paid more than two years prior to the date upon which complaint was filed. Complainant contends a letter addressed to the Commission May 8, 1917, containing the statement, "We should have had a $2.20 rate from California terminals to eastern defined territory during the time covered by our complaint. That is what we require now and what we should have had at all times," was sufficient to toll the statute. This is not a filing of a complaint for the recovery of damages as is contemplated by the statute. Savage Tire Co. v. Director General, 53 I. C. C. 578, 579.

(c) Claims filed by complainant for purpose of tolling the statute of limitations and like action taken by defendant tion. Complainant was advised that application would be filed and have prompt consideration. HELD, as complainant lulled into belief that its rights were protected, finding in 49 I. C. C. 586, in which claims held abandoned, reversed herein. Rockford Paper Box Board Co. v. C. M. & St. P. Ry., 55 I. C. C. 262.

(d) Complainant by letter in a very general way, and without specifying rates or shipments or indicating any intention of claiming reparation, first expressed to the Commission its dissatisfaction with the rate adjustment. The Commission is of the opinion that this letter was not such a complaint as would toll the statute of limitations. Plymouth Coal Co. v. P. R. R., 56 I. C. C. 699, 705.

(e) Complainant's letter, in a very general way, expressed dissatisfaction with the rate adjustment, without specifying rates or shipments or indicating any intention of claiming reparation HELD, letter not such a complaint as would toll the statute of limitations. Plymouth Coal Co. v. P. R. R., 56 I. C. C. 699, 705.

ALL OTHER CITATIONS

Amos Rehberg & Co. v. Erie R. R. Co., 17 I. C. C. 508, 510; Woodward & Dickerson v. L. & N. R. R. Co., 15 I. C. C. 170, 172, sustained, 187 Fed. 874, 878, 191 Fed. 705; Kaye & Carter Lumber Co. v. M. & I. Ry. Co., 16 I. C. C. 285, 286; Youngblood v. T. & P. Ry. Co., 21 I. C. C. 569, 570; Liberty Mills v. L. & N. R. R. Co., 23 I. C. C. 182, 183; Duluth Log Co. v. M. & I. Ry. Co., 15 I. C. C. 627, 630; Hartman Furniture & Carpet Co. v. W. C. Ry. Co., 15 I. C. C. 530, 531; Otis Elevator Co. v. C. G. W. Ry. Co., 16 I. C. C. 502, 503; Fathauer Co. v. St. L. I. M. & S. Ry. Co., 18 I. C. C. 517, 520; Memphis Freight Bureau v. St. L.

S. W. Ry. Co., 18 I. C. C. 67; Youngblood v. T. & P. Ry. Co., 21 I. C. C. 569, 570; Beekman Lumber Co. v. St. L. & S. F. R. R. Co.,21 I.C.C. 270, 272, 276; Beekman Lumber Co. v. M. C. R. R. Co., 21 I. C. C. 276; St. Louis Blast Furnace Co. v. V. Ry. Co., 24 I. C. C. 360, 365; Esson Granite Co. v. So. Ry. Co., 26 I. C. C. 449; Commercial Club of Omaha v. A. & S. R. Ry. Co., 27 I. C. C. 302, 307; Dillon Coal & Transfer Co. v. O. S. L. R. R. Co., 28 I. C. C. 91; In re Advances on Livestock, 28 I. C. C. 332, 335; International Agricultural Corporation v. L. & N. R. R. Co., 29 I. C. C. 391, 394; Humphreys Goodwin Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A-685; Cincinnati, Ohio to Pacific Coast Terminals, Farrin Lumber Co. v. A. T. & S. F. Ry. Co. Unrep. Op. A-685; Mutual Oil Co. v. A. T. & S. F. Ry. Co., 38 I. C. C. 591, 592; Humphreys-Godwin Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A-598.

§7. Necessity and form of formal complaint.

See Reparation §21.

Important Cases Since 1908

(a) The Act does not specify the manner of presentation of complaints and it is therefore not essential that claims in writing made to the Commission should be by a formal petition, as prescribed by the Commission's Rules of Practice, to prevent the operation of the statute of limitations. Venus v. St. L. I. M. & S. Ry. Co., 15 I. C. C. 136, 137.

(b) A complaint stating a good cause of action is sufficient to stop the running of the statute, though the amount of damages claimed is not set forth. Fels & Co. v. P. R. R. Co., 23 I. C. C. 483, 487.

(c) Complaint, containing no specific statement that complainants made shipments, but stating that their business was imperiled by rates attacked, held sufficient to stop running of statute. Michigan Hardwood Mfrs.' Association v. Transcontinental Freight Bureau, 27 I. C. C. 32, 34.

(d) Possession by complainant of original bills of lading and paid freight bills held not a prerequisite to filing of formal complaint; and, as formal complaint was not filed within a reasonable time after complainant was notified that claim could not be disposed of informally, claim for reparation must be considered to have been abandoned. Coffeyville Vitrified Brick & Tile Co. v. M. P. Ry. Co., 39 I. C. C. 208.

(e) Intervening petition received on April 30, 1917, order permitting the intervention entered April 14, 1919, and served upon defendants five days later. Defendants contended that the statute of limitation was not tolled until the entry of the Commission's order permitting the intervention, and therefore, that the claims for reparation on shipments moving during the period in question are barred. It is the opinion of the Commission that this contention is not well founded and that the filing of the intervening petition tolled the statute irrespective of the date of the order. Cotton Manufacturers Asso. of S. C. v. C. C. & O. 57 I. C. C. 584, 588.

(f) A general description in the complaint of the shipments on which reparation is asked is sufficient to meet the requirements of the statute. Coakley v. Director General, as Agent, 59 I. C. C. 141, 144.

(g) Formal complaint should have been filed within a reasonable time after notice, and reparation is denied. It has been held that more than six months' delay is unreasonable. Sloan v. S. Ry. Co. Unrep. Op. 1932.

(h) Claim presented informally within the two-year period stops the running of the statute only when formal complaint is filed, within a reasonable time after notice that formal complaint is necessary. Williamsburg Lumber Co. v. G. & S. I. R. R. Co. Unrep. Op. 1995.

ALL OTHER CITATIONS

Arizona Ry. Comm. v. E. P. & So. W. Co., Unrep. Op. 526; Pioneer Pole & Shaft Co. v. C. H. & D. Ry. Co., Unrep. Op. 123; Beekman Lumber Co. v. St. L. I. M. & S. Ry. Co., 15 I. C. C. 274, 275; Larrowe Milling Co. v. C. & N. W. Ry. Co., 17 I. C. C. 548, 551; Southern Bitulithic Co. v. I. C. R. R. Co., 17 I. C. C. 300.

§8. Requisites of informal complaint.

IMPORTANT CASES SINCE 1908

(a) Where there is no joint rate in effect and charges are exacted in accordance with the separately published tariffs of the initial and intermediate and delivering carrier and the shipper fails to file claim for reparation within the statutory period, and informal request filed by the intermediate carrier for permission to refund to the shipper the switching charge exacted by it will not serve to prevent the claim for excessive charges by the initial and delivering carriers from being barred by the statute of lim-

itations. Acme Cement Plaster Co. v. St. L. & S. F. R. R. Co., 18 I. C. C. 376, 377.

(b) A letter from a shipper to the Commission, making inquiry as to whether the shipment made by him was interstate or intrastate, and containing no complaint as to charges is not sufficient to stop the running of the statute of limitations. George Henley v. C. M. & St. P. Ry. Co., 18 I. C. C. 382, 384.

(c) A letter received by the Commission which sets forth the precise nature of the claim and has attached to it expense bills showing the shipments and the amount paid stops the running of the statute of limitations. Gamble-Robinson Commission Co. v. St. L. & S. F. R. R. Co., 19 I. C. C. 114.

(d) Although the Commission has announced that ordinarily it will not award reparation upon informal proceedings unless the complaint is filed or the rate complained of is reduced within six months after the traffic moves, that rule is only an expression of the administrative discretion of the Commission and is confined to informal matters. It does not in any way modify the rule heretofore made that informal complaints showing the date of shipment, its weight, and the rate charged and collected, coupled with an allegation that the rate assessed is unreasonable, is a sufficient presentation of a claim to come within the provisions of section 16 of the Act. Riverside Mills v. Georgia R. R., 20 I. C. C. 423, 424.

(e) Neither statute nor rules of Commission prescribe what act or acts shall constitute filing of claim for reparation with Commission. Marian Coal Co. v. D. L. & W. R. R. Co., 27 I. C. C. 441, 442.

(f) A petition asked reparation based on reasonable rates to be found. Points of origin and destination appeared, but no particulars as to amount of reparation. HELD, a "filing of claim" with the Commission. Marian Coal Co. v. D. L. & W. R. R. Co., 27 I. C. C. 441, 442.

(g) Where, in a claim for reparation, there is a general allegation showing the point of origin, the point of destination, etc., but there is no detailed statement by cards accompanying the petition, it is sufficient to constitute a filing with the Commission of the claims fully covered, and will not be stricken from the docket as not being sufficiently precise. In re Rates on Live Stock, Packing House Products and Fresh Meats from Southwestern Points, 28 I. C. C. 332, 335.

(h) Stating merely in general terms the number of cars received and amount of damage, held sufficient to toll the statute. City Ice & Supply Co. v. C. & N. W. Ry. Co., 36 I. C. C. 514, 515.

(i) Possession by complainant of the original bills of lading and paid freight bills is not a prerequisite to the filing of formal complaint. Coffeyville Vitrified Brick & Tile Co. v. M. P. Ry., 39 I. C. C. 208.

(j) A letter addressed by a shipper to the Commission setting forth in substance all that a formal complaint would contain and which, while not asking for a judgment for a specified sum, does ask for relief by way of damages for the wrongdoing alleged in it, is a sufficient petition to stop the running of the statute of limitations. Dickerson v. L. & N. Ry. Co., 187 Fed. 874, 878.

ALL OTHER CITATIONS

Liberty Mills v. L. & N. R. R. Co., 23 I. C. C. 182, 183; Fisk & Sons v. B. & M. R. R., 19 I. C. C. 299, 300; Sunderland Bros. Co. v. C. & N. W. Ry. Co., Unrep. Op. 148; Robertson Bros. v. M. P. Ry. Co., Unrep. Op. 126; Prest-O-Lite Co. v. B. & A. R. R. Co., 36 I. C. C. 545, 549.

III. PRESENTATION TO CARRIERS

See Loss and Damage §2.

§9. Advisability.

IMPORTANT CASES SINCE 1908

(a) In cases involving no principle and only small amounts, the shipper should first make his claim upon the carrier for reparation, and thereafter place his case, if necessary, upon the informal docket. Lindsay Bros. v. L. S. & M. S. Ry. Co., 15 I. C. C. 284, 285.

(b) In all cases a statement showing the claim for reparation in sufficient detail to enable the carrier to identify the shipments should be filed with the Commission and served upon those carriers from whom a recovery is asked, where such claim is brought forward pursuant to a decision holding rates unreasonable. In re Rates on Live Stock, Packing House Products and Fresh Meats from Southwestern Points, 28 I. C. C. 332, 335.

(c) Where, pursuant to a decision holding the rates unreasonable, a claim for reparation is filed, it is not necessary to make service upon carriers other than those against which reparation is sought.

In re rates on Live Stock, Packing House Products and Fresh Meats from Southwestern Points, 28 I. C. C. 332, 335.

(d) The Commission is not empowered to direct the return by carriers of claim papers filed by shipper. Minnesota & Ontario Power Co. v. B. F. & I. F. Ry., 47 I. C. C. 208, 209.

ALL OTHER CITATIONS

Carr v. Maine Cent. R. R., (N. H. 1917), 102 Atl. 532, 533.

§10. Regulations.

IMPORTANT CASES SINCE 1908

(a) Carriers should adjust all pending claims with respect to lost shipments, upon their merits. Larkin Co. v. E. & W. Transp. Co., 34 I. C. C. 106, 110.

ALL OTHER CITATIONS

Bewsher Co. v. U. P. R. R. Co., 22 I. C. C. 146, 147.

§11. Penalties for non-payment.

IMPORTANT CASES SINCE 1908

(a) The effect of the Carmack Amendment is not such as to prevent a consignee from recovering a penalty providing by a state statute for failure on the part of the carrier to adjust a claim for loss of goods within 40 days after such claim has been filed with the carrier's agent. Stukes v. Southern Expr. Co. (S. C. 1914), 80 S. E. 612.

CLASS RATES

I. TARIFFS AND PUBLICATION
  §1. In general.
II. REASONABLENESS AND DISCRIMINATION.
  §2. In general.

CROSS REFERENCES

See Classification V; Commodity Rates §2; Differentials; Evidence §13 (1½); Reasonableness of Rates §66.

I. TARIFFS AND PUBLICATION.

See Tariffs.

§1. In general.

See Commodity Rates §2.

IMPORTANT CASES SINCE 1908

(a) The Commission is disposed to encourage the making of class rates wherever practicable, because of their tendency to uniformity and stability. It is only in cases where it clearly appears that the inclusion of a given article in a class results in unreasonable charges and a lower classification will not meet the demands of justice that commodity rates are required to be established. Acme Cement Plaster Co. v. L. S. & M. S. Ry. Co., 17 I. C. C. 30, 35.

(b) It is generally recognized that class rates on heavy commodities are made to move the more or less limited shipments from place to place, and commodity rates to move large, steady shipments. James & Abbot Co. v. B. & M. R. R., 17 I. C. C. 273, 275.

(c) While it may be true that the tendency should be to eliminate commodity rates and work more nearly to a class basis, still the rates of this country have been built up upon a different theory, and to apply that theory would be revolutionary and destructive of many legitimate business enterprises. United States Leather Co. v. S. Ry. Co., 21 I. C. C. 323, 325.

(d) In the absence of commodity rates, shipments are made at class rates. Standard Mirror Co. v. P. R. R. Co., 27 I. C. C. 200, 203.

(e) Exception to the classification publishing rates as percentages of certain class rates, does not in and of itself provide a specific rate, but requires reference to the tariff naming class rates. Such rates can in no sense be considered specific commodity rates. Boldt Paper Mills v. Director General, as Agent, 62 I. C. C. 471, 472.

(f) Class rates applying on sporadic shipments can not be condemned merely because commodity rates are maintained in the opposite direction in which there is a regular movement. Pure Oil Co. v. Director General, as Agent, 64 I. C. C. 444, 445.

(g) Reasonable class rates are properly applicable in the absence of a showing which justifies lower commodity rates, but in determining the question of reasonableness all the surrounding circumstances and conditions should be taken into consideration and ton mile earnings is but one of them. Grasselli Chemical Co. v. N. Y. C. R. R., 69 I. C. C. 529, 530.

(h) While it is desirable that class rates generally should bear the same percentage relationship to first class, such uniformity has not yet been attained, and the relationship varies not only between different schedules but at times for different distances in the same schedule. South Dakota Ry. Commrs. v. A. & W. Ry. Co. ,74 I. C. C. 295, 306.

(i) Frequently when a class basis of rates is displaced and commodity rates established between certain points, the higher class basis obtaining at intermediate points must be adjusted to meet the requirements of the fourth section of the act. Certain-Teed Products Corp. v. A., T. & S. F. Ry. Co., 77 I. C. C. 444, 446.

(j) While it is true that the use of the class-rate structure as a basis for commodity rates would remove some of the flexibility which is generally understood to be a peculiar part of every commodity rate, as much may be said of any distance scale of commodity rates whether constructed with or without regard to corresponding class rates. Memphis-Southwestern Investigation, 77 I. C. C. 473, 497.

ALL OTHER CITATIONS

Portland Chamber of Commerce v. O. R. R. & N. Co., 21 I. C. C. 640, 643; Highland Park Mfg. Co. v. S. Ry. Co. 26 I. C. C. 67, 68; Oklahoma Traffic Assn. v. A. & S. Ry. Co., 36 I. C. C. 329, 341; Best-Clymer Mfg. Co. v. Wabash Ry., 43 I. C. C. 81; Woodbury Granite Co. v. St. J. & L. C. R. R., 45 I. C. C. 214; Chicago Portland Cement Co. v. I. C. R. R., 45 I. C. C. 477; Acme Cement Plaster Company v. A. T. & S. F. Ry., 45 I. C. C. 551; Swift & Co. v. Erie R. R., 45 I. C. C. 554; R. R. Comm. of La. v. A. T. Ry., 48 I. C. C. 312, 369; Stein Junk Co. v. S. Ry., 48 I. C. C. 703, 705; International Paper Co. v. B. & M. R R., 49 I. C. C. 31; Du Pont de Nemours & Co. v. M. C. R. R., 49 I. C. C. 268; Harmon & Co. v. N. Y. N. H. & H. R. R., 50 I. C. C. 455; Northwestern Terra Cotta Co. v. A. & St. L. R. R., 50 I. C. C. 522; National Supply Co. v. C. B. & Q. R. R., 51 I. C. C. 429; Getz & Co. v. A. T. & S. F. Ry., 51 I. C. C. 454; Wittenberg-King Co. v. Director General, 55 I. C. C. 260; Rates on grain and grain products, 56 I. C. C. 133, 142; Aberdeen Commercial Club v. Director General, 56 I. C. C. 147, 157; Memphis-Southwestern Investigation, 55 I. C. C. 515, 539; Illinois Classification, 56 I. C. C. 202, 207; Natchez Chamber of Commerce v. A. H. T. Ry. Co., 58 I. C. C. 310; Swift & Co. v. Director General, as Agent, 60 I. C. C. 201; Northwest Steel Company v. C. B. & Q. R. R. Co., 66 I. C. C. 633; Ft. Wayne Corrugated Paper Co. v. Director General, as Agent, 66 I. C. C. 669, 670; Chevrolet Motor Co. v. Director General, as Agent, 66 I. C. C. 677; Lancaster Steel Products Corp. v. Director General, 73 I. C. C. 567; Indiana Reduction Co. v. Director General, as Agent, 73 I. C. C. 134; State Highway Dept. of Tex. v. Director General, as Agent, 73 I. C. C. 629; Pittsburgh Steel Co. v. Director General, as Agent, 73 I. C. C. 715; State Highway Dept. of Texas v. P., C., C. & St. L. Ry. Co., 74 I. C. C. 367; E. W. Arthur v. Director General, 80 I. C. C. 707; Crown Williamette Paper Co. v. Director General, as Agent, 68 I. C. C. 631; Chevrolet Motor Co. v. Director General, as Agent, 69 I. C. C. 226; California Packing Corp. v. Director General, as Agent, 78 I. C. C. 190, 195; Roper v. Director General, as Agent, 80 I. C. C. 125.

II. REASONABLENESS AND DISCRIMINATION.

§2. In general.

See Classification §17; Commodity Rates §2; Discrimination §8 (3); Equalization of Rates.

CASES 1887-1908

(a) Complainant attacked rates on classes from Duluth and Superior to points beyond St. Paul, Minn., as unreasonable and discriminatory in that the rate per ton per mile to those points is higher than to St. Paul, Minn. The rates from Duluth and Superior to St. Paul are competitive rates forced upon defendant and are not to be taken as criteria as to what the basis should be to points beyond. The rates from Buffalo to Twin Cities via Lake Michigan compared with rates via Lake Superior also have a strong effect on the situation. HELD, rates attacked not unreasonable, complaint dismissed. Business Mens Asso. of Minnesota v. C. St. P. M. & O. Ry. 2 I. C. C. 41.

(aa) Complainant attacked class rates charged on vehicles of $1.91 from Cincinnati, O., to Atlanta, Ga., a distance of 474 miles, or to Augusta, Ga., distance 645 miles, and charging 30c more on vehicles to Social Circle, Ga., distance 526 miles as unreasonable. Social Circle is a local point on the Georgia R. R., and is not affected by the water competition that prevails at Atlanta and Augusta. HELD, carriers must cease and desist from making rates to Social Circle higher than to Augusta, and are ordered to make a rate of $1 to Atlanta. James & Mayer Buggy Co. v. C. N. O. & T. P. R. Co., 3 I. C. C. 682.

(b) Complainant attacked as unjust,

unreasonable and unduly discriminatory, rates on classes from Omaha to points in Texas; that rates between Omaha and South Omaha and said stations in Texas are higher than between St. Joseph, Kansas City, Mississippi River points, Chicago, Ill. Commodities involved, sugar from Texas to Omaha, syrup from Omaha to Texas, cotton seed oil from Texas to Omaha, Livestock from Texas to Omaha and packing house products from Omaha to Texas. HELD, the maxima class rates should not be as high from Omaha as from Chicago and they should in no case exceed those fixed from Mississippi River points. The rate on syrup should not exceed that from Davenport, Iowa. Commercial Club of Omaha v. C. R. I. & P. R. Co., 6 I. C. C. 647.

(c) The maxima class rates between Omaha and Texas points should not be as high as those between Chicago and Texas points, and should not exceed those between Davenport, Rock Island and Moline and Texas points, and the rate on syrup from Omaha should not be in excess of that from Davenport. Commercial Club of Omaha v. Chicago R. I. & P. Ry. Co., 6 I. C. C. 647.

(d) Complainant attacked class rates from Cincinnati, O., as compared with the rates from Louisville, Ky., to points in the southeast and southwest as unjust, unreasonable and discriminatory. The location of Cincinnati upon the north bank of the Ohio River, and the fact that railroads leading south must cross that river by expensive bridges for which an arbitrary or toll is charged, or allowed in the division of rates, justify some higher differential from Cincinnati over rates from Louisville, on the south bank of the river, to destination points in Montgomery and Southwestern territory The only evidence presented by the complainant was the distance from Cincinnati to the territory in question as compared with the distance from Louisville. HELD, complaint dismissed. Freight Bureau Cincinnati Chamber of Commerce v. C. N. O. & T. P. R. Co., 7 I. C. C. 180.

(e) The rate on goods of the first class between St. Louis and Eureka Springs proper being $1.25 per 100 lbs. and on the same goods from or to the Harrison district the charge for the same service being $1.00 and on other classes in proportion; between Springfield and Eureka Springs the first class rate being 72 cents, and to or from the Harrison district 45 cents. HELD, Such rates to and from Eureka Springs proper are unreasonable and unlawful. Cary v. Eureka Springs R. Co., 7 I. C. C. 286.

(f) The transportation of grain eastward from Kansas City, Mo., and from Sioux City, Iowa, and other points in the territory adjacent to Sioux City is subject to competition between the carriers; but while reduced rates have resulted from the competition at Kansas City the competition in northwest Iowa has been more effectively restrained by an agreement formerly in effect, and, since such agreement was canceled, by continuance of rates without substantial reduction. The rate on corn to Chicago from most points in western Iowa is 17c per 100 pounds. Examination of the rates and rate changes for a period of years indicates that a rate of 15c on corn from Kansas City to Chicago should be applied at all Missouri river points, but the evidence is not sufficient to enable a definite conclusion. It does appear, however, that the rates on grain from Sioux City and other points in a limited section of northwest Iowa are too high. HELD, that the 19c rate on corn from Sioux City and other points in adjacent territory should be reduced, the 17c rate on corn now in effect from most points in western Iowa should be extended to Sioux City and points in Iowa on and east of the C. St. P. M. & O., and corresponding reduction should be made from other points in southeastern South Dakota. While no opinion is expressed as to what is the proper relation of the rates on wheat and corn from Sioux City and adjacent territory, the difference of 4c which now prevails from most shipping points in that section should not be exceeded. Grain Shippers' Asso. v. I. C. R. Co., 8 I. C. C. 158.

(g) Complainant attacked class rates from Chicago to Kearney, Nebr., as unreasonable and unjustly discriminatory in that the rates from Chicago are based on the Omaha combination. HELD, rates attacked not unreasonable and the evidence was insufficient upon the question whether such rates subject Kearney merchants to unlawful disadvantage. Gustin v. A. T. & S. F. R. Co., 8 I. C. C. 277.

(h) Defendants' class rate of $3.80 per ton on brick, carloads, from Frederick, Md., to Elberon, N. J., 236 miles, applied on shipments made by complainant in January, 1906, was unreasonable and unjust. Complainant awarded reparation based on the difference between

such rate and the rate of $2.75 per ton put in effect by defendants pending the controversy. Frederick Brick Works v. Northern C. R. Co., 12 I. C. C. 14.

(i) It appears in this case that a certain defined territory in the northern part of Texas, commonly known as the Burnt District, takes from Kansas City and other Missouri River points lower rates than are made to the balance of the State, in recognition of greater proximity to these Texas points; the class rates from Kansas City to Fort Worth, representative of the Burnt District, are higher than from Kansas City to Amarillo, though Amarillo is less than the average distance to the Burnt District; and that the Santa Fe System is rebuilding its road to Amarilio, which will soon be situated upon its main line: HELD, That the present class rates from Kansas City to Amarillo are unreasonable and unjust and that the commodity rates between said points should not exceed those from Kansas City to Fort Worth; but that the class rates from St. Louis to Amarillo may properly be higher than from St. Louis to Fort Worth. Nobles Bros. Gro. Co. et al v. F. W. & D. C. Ry Co. et al., 12 I. C. C. 242.

(j) Class rates to Roswell, Artesia, Hagerman and Carlsbad, New Mexico, from Kansas City and St. Louis, Mo., Galveston, Tex., and Denver, Colo.; and commodity rates on grain and grain products from points in Texas and Oklahoma, on lumber from points in Texas and Louisiana; on salt in sacks from Hutchinson, Kan.; and on apples, alfalfa and alfalfa meal from said New Mexico points to Ft. Worth, Tex., unreasonable and excessive. Roswell Commercial Club v. A. T. & S. F. Ry. Co., 12 I. C. C. 339.

(k) Complainant in this case put in issue reasonableness of rates between various points in the United States and Roswell, Artesia, Hagerman, and Carlsbad, in the Territory of New Mexico: HELD, That, under the facts disclosed in the record, the present class rates from Kansas City and St. Louis, Mo.; Galveston, Tex., and Denver, Colo., to said points in New Mexico are unjust and unreasonable; and that commodity rates on grain and grain products from points in Kansas and Oklahoma; on lumber from points in Texas and Louisiana; on salt in sacks from Hutchinson, Kans. ,to said points in New Mexico; and on apples, alfalfa and alfalfa meal from said points in New Mexico to Fort Worth, Tex., are excessive and reductions ordered. Roswell Commercial Club v. A. T. & S. F. Ry. Co., 12 I. C. C. 339.

(l) It appears that class rates from north Atlantic ports were the same to a group of suburban mills as to Augusta, Georgia, for ten or twelve years before the absorption of the South Carolina and Georgia Railroad by the Southern Railway Company; that subsequent to such absorption the long-existing rates to these suburban points were increased by the concerted action of the defendant carriers, though the mill group is still recognized on shipments in the opposite direction, and that this grouping system is still effective to the extent of classing together some of these suburban points which are as far apart as Augusta is from the nearest. It also appears that water lines by way of the Savannah River secure most of the freight of the heavy and bulky classes for these mills, and that a restoration of the Augusta rates to these suburban points would divert much of this traffic to the defendant lines and thus increase their revenues; HELD, That the rates to these suburban mill points in excess of those to Augusta are, under the circumstances, unjust and unreasonable. Guimby et al v. Clyde Steamship Co. et al, 12 I. C. C. 392.

(m) Class rates from North Atlantic ports to suburban mill points reduced to Augusta, Ga., rates. Quimby v. M. K. & T. R. Co., 12 I. C. C. 392.

IMPORTANT CASES SINCE 1908

(n) There is no standard by which class rates can be exactly measured, and in determining what is reasonable or unreasonable a considerable latitude must of necessity be allowed to the carrier. Bluefield Shippers' Ass'n. v. N. & W. Ry. Co., 22 I. C. C. 519, 528.

(o) The Commission can not ignore the fact that rates for the transportation service are divided into class rates and commodity rates and that some articles, which move in large volume and in carload quantities, are usually accorded commodity rates, while articles of general merchandise, moving in less-than-carload quantities, usually take class rates. Harness to Oklahoma, 37 I. C. C 726, 728.

(p) The Commission has not yet seen the way to establishing a standard scale of percentage relation which all classes should bear to the first-class rate because of the great variety in percentages

which now exists, and the many conflicts which would result between existing scales and any percentage scale which might be prescribed. Tulsa Traffic Assn. v. A. T. & S. F. Ry. Co., 40 I. C. C. 9, 11.

(q) The principle that class rates should be considered the maximum standard of reasonableness, is not inflexible and must yield where the higher commodity rates are shown to be reasonable. Dawson Produce Co. v. A. C. L. R. R, 49 I. C. C. 291, 296.

(r) Although class rates, as a rule, better reflect transportation conditions than do commodity rates, it can not be assumed that the present class rates in the east recognize only transportation conditions. It is possible that the class rates also were established with more or less consideration to what the traffic would bear. With six class rates for use in eastern trunk line territory and New England, fixed with the same regard to general traffic and transportation conditions as was exercised in establishing class rates for the adjoining territory, it is believed that their use as bases for rates on paper will not work undue hardship upon any of the defendants railroads or the interveners who use them. Michigan Paper Traffic Asso. v. N. Y. C. Ry., 53 I. C. C. 344, 352.

(s) Because of the number of classes involved and the varying volume of traffic moving on each of the different classes it is difficult to compare two scales of class rates in such a way as to tell precisely and concisely how much higher one is than the other as applied to the traffic actually moving in a given territory. Memphis Southwestern Investigation, 55 I. C. C 515, 525.

(t) The relation between the class and commodity rates is not and need not of necessity be the same in all territories. Penn Seaboard Steel Corp. v. Director General, as Agent, 63 I. C. C. 141, 142.

(u) Class rates applying on sporadic shipments can not be condemned merely because commodity rates are maintained in the opposite direction in which there is a regular movement. Pure Oil Co. v. Director General, as Agent, 64 I. C. C. 444, 445.

(v) The Commission condemns the application of class rates to the transportation of cotton seed between points in southeastern territory Empire Cotton Oil Co. v. M. A. & S. Ry., 69 I. C. C. 729, 732.

(w) Where class rates are charged on unusual movements, if the commodity rate is not improperly classified and the class rate is not unreasonable, reparation will not be awarded. Rosin & Turpentine Export Co. v. A. C. L. R. R. Co., 73 I. C. C. 141, 142.

(x) When class rates are charged on isolated shipments, and it is not shown that the commodity is improperly classified, or that the class rate is unreasonable, reparation will not be awarded. Multibestos Co. v. S. P. Co., 73 I. C. C. 491, 492.

(y) Where class rates are charged on unusual movements, if it is not shown that the commodity is improperly classified or that the class rate is unreasonable, reparation will not be awarded. Bilrowe-Alloys Co. v. N. P. Ry. Co., 73 I. C. C. 625, 626.

(z) Where class rates are charged and it is not shown that the commodity is improperly classified or that the class rates are unreasonable, reparation will not ordinarily be awarded. Bilrowe-Alloys Co. v. N. P. Ry., 73 I. C. C. 625, 626.

(aa) While it is desirable that class rates generally should bear the same percentage relationship to first class, such uniformity has not yet been attained, and the relationship varies not only between different schedules but at times for different distances in the same schedule. South Dakota Ry. Commrs. v. A. & W. Ry. Co., 74 I. C. C. 295, 305, 306.

(bb) While it is true that the use of the class-rate structure as a basis for commodity rates would remove some of the flexibility which is generally understood to be a peculiar part of every commodity rate, as much may be said of any distance-scale of commodity rates, whether constructed with or without regard to corresponding class rates. Memphis-Southwestern Investigation, 77 I. C. C. 473, 497.

(cc) Contention by carriers that where class rates are established by the commission they should be regarded as normally compensatory and that lower commodity rates can not therefore be considered as unreasonable, not sustained. Contention rests upon assumption that class rates are normal rates for all commodities; the commission can not accept this view. Southeastern Sugar cases, 48 I. C. C., 739, 742. Carnation

Milk Products Co. v. Director General, as Agent, 78 I. C. C. 145, 149.

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  - §20. Different classification territories.
  - §21. Follow-lot shipments.

V. REASONABLENESS AND APPLICATION.
- §22. In general.
- §23. Uniform or consolidated classification.
- §24. Exceptions to classification.
- §24a. Relation of Section 4.
- §25. Refusal to transport.
- §26. Jurisdiction of courts.
- §27. Reparation.

VI. TARIFFS AND CONSTRUCTION.
§28. In general.
§29. Reduced Rates.

CROSS REFERENCES
See Advanced Rates §5 (3), §18 (12); Class Rates; Evidence §60½.

I. RIGHT OF CARRIERS TO ESTABLISH.

§1. In General.

CASES 1887-1908

(a) The proper classification of an article for freight rates is to be judged relatively by the classification of other articles similar in character, quality, and conditions of transportation. Myers v. Penn. Co. (Com.) 2 I. C. R. 403. A classification of freight designating different classes for carload quantities and for less than carload quantities, for transportation at a lower rate in carloads than in less than carloads, is not in contravention of the Act to Regulate Commerce. Thurber v. New York & H. R. R. Co. (Com.), 2 I. C. R. 742.

(b) Classification of freight for transportation purposes is in terms recognized by the act and is therefore lawful. It is also a valuable convenience both to shippers and carriers. Thurber v. N. Y. C. R., 2 I. C. C. 742.

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(c) It is well settled that carriers have the right to transport certain commodities under reasonable rules and regulations respecting their receipt, carriage and delivery. National Petroleum Ass'n v. L. & N. R. R. Co., 15 I. C. C. 473, 476.

(d) In fact, the establishment of reasonable classifications, regulations, and practices should precede the determination of the measure of rates. National Society of Record Assos. v. A. & R. R. R. Co., 40 I. C. C. 347, 355.

(e) The reservation by a carrier of the right to refuse a shipment is one which of necessity must be closely scrutinized. The act itself, as the Commission reads it, does not contemplate the refusal of a shipment by a carrier under any circumstances. Such a right, nevertheless, undoubtedly exists; but it grows out of the necessities of each particular case. Classification Specifications of Fiber Box Containers, 77 I. C. C. 713, 718.

ALL OTHER CITATIONS

U. S. v. Oregon R. R. & Navigation Co., 159 Fed. 975, 979; In Re Suspension of Western Classification No. 51, 25 I. C. C. 442, 451, 608; Boston Cahmber of Commerce v. A. T. & S. F. Ry. Co., 28 I. C. C. 230, 234; Minneapolis Brewing Co. v. A. T. & S. F. Ry. Co., 28 I. C. C. 688, 692; A. C. Cheney P. A. Co. v. N. Y. C. & H. R. R. Co., 152 N. Y. Suppl. 285, 290; Stopping of Cars in Transit to Complete Loading, 36 I. C. C. 130, 132; Minimum Charges on Bulky Articles, 38 I. C. C. 257, 260; Helvetia Milk Condensing Co. v. A. & R. Ry., 51 I. C. C. 625, 626; Viscose Co. v. Hines, Director General of Railroads, et al, 263, Fed. 726, 727, 728, 729; affirmed 41 Sup. Ct. 151; Natchez Chamber of Commerce v. L. & A., 58 I. C. C. 610, 620.

§2. Jurisdiction of Commission.

See Interstate Commerce Commission I; Jurisdiction of Commission.

CASES 1887-1908

(a) When classification is used as a device to effect unjust discrimination, or as a means of violating other provisions of the statute, the Interstate Commerce Commission must so revise and correct it as to correct the abuse. Coxe v. Lehigh Valley R. Co. (Com.), 3 I. C. R. 460.

(b) An order of the Commission requiring a carrier to reclassify specified articles does not prescribe a rate for the future, as the classification merely determines the relation between commodities, not the rate itself; and when a commodity is transferred from a higher to a lower class the revenues of the carrier are not necessarily diminished, since it may advance the rates applicable to those classes. Myer v. Cleveland, Cincinnati & St. L. R. Co., 9 I. C. C. 78.

(c) An order of the Commission requiring a carrier to cease and desist from enforcing a classification of specified articles higher than the classification which upon the facts it has found to be lawful is not prescribing a rate for the future. Classification determines the relation of rates as between commodities, not the rate itself, and when a commodity is transferred from a higher to a lower class the revenues of the carrier are not necessarily diminished since it may advance the rates applicable to those class-

es. Myer v. C. C. C. & St. L. Ry., 9 I. C. C. 78, 86.

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(d) Where the classification primarily affects and controls the rates or charges demanded, charged or collected by any common carrier or carriers subject to the provisions of the Act, for the transportation of property as defined in the first section of the Act, or publishes the regulations or practices of such carrier or carriers affecting such rates, the Commission is authorized and empowered to pass upon such rates, or charges, or such regulations or practices. National Hay Ass'n v. M. C. R. R. Co., 19 I. C. C. 34, 38.

(e) The amendment to the Act of June 18, 1910, and section 15, as amended, give the Commission large supervisory powers over the classification of freight. In Re Suspension of Western Classification No. 51, 25 I. C. C. 442, 459.

(f) Before the amendments to sections 1 and 15 of the Act which deal specifically with classification were passed the Commission had power under sections 1 and 3 to determine the rate relationship of different articles so as to effect reasonable rates and avoid undue prejudice 'to any particular description of traffic, in any respect whatsoever." And it matters little whether the means through which the object is to be attained is called a lumber list, a classification, a rate schedule, or a combination of all three. The Commission is empowered, under sections 1, 3 and 15 to effect a rate relationship. In the Matter of Rates on and Classification of Lumber and Lumber Products, 52 I. C. C. 598, 603.

(g) Section 2 of the Act should not be made the basis for an order fixing the relationship of rates upon kindred commodities. Parkersburg Rig & Reel Co. v. Director General, 64 I. C. C. 568, 573.

ALL OTHER CITATIONS

California Commercial Assn. v. Wells, Fargo & Co., 14 I. C. C. 422, 433; Rail & River Coal Co. v. B. & O. R. R. Co., 14 I. C. C. 86, 88; McClung & Co. v. S. Ry. Co., 22 I. C. C. 582, 584; W. E. Caldwell Co. v. C. I. & L. Ry. Co., 20 I. C. C. 412, 415; In Re Advances on Coal to Lake Ports, 22 I. C. C. 604, 623, 624; Board of Trade of Chicago v. C. & A. R. R. Co., 27 I. C. C. 530, 534; Rates in Chicago Switching District, 34 I. C. C. 234, 241; Official Classification Ratings, 37 I. C. C. 166, 177, 186; Railroad Comm. of La. v. A. H. T. Ry., 48 I. C. C. 312, 337, 369; San Antonio Freight Bureau v. Director General, 57 I. C. C. 45, 46; Southern Cotton Oil Co. v. Director General, 61 I. C. C. 454; Pillsbury Flour Mills Co. v. Director General, 64 I. C. C. 81.

II. BASIS OF CLASSIFICATION.

§3. In General.

See Classification.

CASES 1887-1908

(a) The mode of making rate by classification is intended to be for the convenience of the railroad company and also for the accommodation of the shippers, and long experience has shown that it is the best and most practical way yet devised for dealing with the subject. Pyle v. T. F. & G. R. R., 1 I. C. C. 767, 770.

(b) In grouping articles together in a class for the purpose of fixing rates upon these articles several considerations are usually deemed by the carrier of a very controlling nature. Among these may be mentioned bulk and space occupied, value, hazardous and extra hazardous freight, liability to waste or injury in transit, weight or the like. Pyle v. E. T. & V. G. R. R., 1 I. C. C. 767, 771.

(c) As the freight rates of a railroad are laid for the purpose of obtaining revenue from its operation, it is but just and fair that they should be so distributed upon the different articles transported, so far as this can be done, as to bear upon all with relative equality. Pyle v. E. T. V. & G. R. R. Co.,, 1 I. C. C. 767, 771.

(d) A classification is but a means of arriving at a rate. The statute requires the rate to be reasonable, taking fairly into consideration every circumstance, condition and service performed in its transportation and relatively with other rates. The mere method of arriving at what is a reasonable rate is a matter of far less consequence than that the rate itself should be reasonable and relatively just. Pyle v. E. T. V. & G. R. R. Co., 1 I. C. C. 767, 771.

(e) The Act requires that a tariff for the transportation of merchandise be established by interstate common carriers, and that the charges shall be reasonable and just. Every description of

merchandise is included within the protection of this provision of the law. Riddle Dean & Co. v. N. Y. L. E. & W. R. R. Co., 1 I. C. C. 787, 791.

(f) Whether or not a rate is preferential, and in that sense special, depends upon the character of the article, the manner in which it was shipped, and the classification of commodities similar in character and mode of shipment. Myers v. Pennsylvania Co., 2 I. C. C. 403, 405.

(g) Transportation charges should be, and usually are, adjusted with a proper degree of reference to the marketable value of the goods carried, and to the amount of revenue required by the carrier to make its business fairly remunerative. If the charges should be reduced, therefore, to any considerable extent, upon goods of higher value and properly included in the higher classes, it would be necessary to increase the charges upon the lower classes, and enhance the cost to consumers of goods perhaps more necessary and generally important to the public. The community at large, therefore, as well as carriers and the shippers of particular articles, are interested in the proper relative classification of freights and the adjustment of rates. Myers v. Pennsylvania Co., 2 I. C. C. 544, 545.

(h) Of course the Commission would not hold that a classification that was wrong should be adhered to, although its change might work injury to individuals whom the wrong classification had unduly favored. Bates v. Pennsylvania Co., 2 I. C. C. 715, 718.

(i) Classification of freight for transportation purposes is in terms recognized by the Act to Regulate Commerce and is therefore lawful. It is also a valuable convenience both to shippers and carriers. Thurber v. New York Central & Hudson River R. Co., 2 I. C. R. 742.

(j) Classification is not yet an applied science founded on correct principles and governed by just and reasonable rules. Thurber v. N. Y. C. R. Co., 2 I. C. C. 742, 750.

(k) Carriers are not at liberty to classify property as a basis of transportation rates and impose charges for its carriage with exclusive regard to their own interest, but they must respect the interests of those who may have occasion to employ their services, and conform their charges to the rules of relative equality and justice which the act prescribes. Thurber v. N. Y. C., 2 I. C. C. 742, 751.

(l) In arranging the classification of articles of commerce, their market value and the shippers' representations to the public as to their character, may properly be taken into account in ascertaining the analogy they bear to other articles, and determining the class to which they justly belong. This is especially applicable to articles in which there is no free competition among producers and shippers. And carriers are not required to estimate the intrinsic value of freight as distinguished from its commercial value for purposes of classification and rates. Warner v. New York Central & H. R. R. Co., 3 I. C. R. 74.

(m) When a manufacturer describes his article to the public for the purpose of making a market for it, he also describes it for purposes of carriage, and it seems as reasonable that a carrier should have the right to accept the manufacturers' representation concerning his product as that the public should be influenced by it in the purchase of the article. Warner v. N. Y. C. & H. R. Co., 3 I. C. C. 77, 80.

(n) The mere fact that one article is of more general use and therefore shipped in greater quantities than another, when each as a rule is shipped in less than carload quantities, and of no considerable difference in bulk, weight and value, and of no appreciable difference in expense of handling and of haul, constitutes in itself no reason why the first should receive a lower rate than the last. In such a case mere quantity, not measured by any recognized unit of quantity adapted to carriage, and lessening the expense of handling and carriage, cannot be allowed to affect rates in the transportation of property. Harvard Co. v. Pa. Co., 3 I. C. R. 257.

(o) The valuable service performed to the transportation interests of the country by rate and classification committees. Rules recognized by the Commission in making of classifications and rates. Harvard Co. v. Pa. Co., 3 I. C. R. 257.

(p) A rate on wheat less than that on flour is unlawful if it works unjust discrimination, but it is not otherwise. Kaufman Milling Co. v. Missouri P. R. Co. (Com.), 3 I. C. R. 400.

(q) Charges on anthracite coal which are higher than on iron ore, pig iron, and other low-grade freight, or on general freight, the expense of carrying which is much greater than the expense of coal, are unreasonable. Coxe v. Lehigh Valley R. Co. (Com.), 3 I. C. R. 460.

(r) Freight classification is deemed by the railroads convenient and essential to any practical system of rate-making, and is so recognized though not enjoined by the Act to Regulate Commerce. Coxe Brothers & Co. v. Lehigh Valley R. Co., 3 I. C. R. 460, 470.

(s) For convenience, in making transportation rates and charges, freight is arranged and put in different classes according to expense of carriage, bulk, value risk, competition and other considerations affecting the cost and value of transportation service. Coxe Bros. & Co. v. L. V. R. R. Co., 3 I. C. C. 460, 470.

(t) Classification may be used as a device to effect unjust discrimination or as a means of violating the most essential provisions of the statute. When so used it is the duty of the Commission to so revise such arrangement as to correct the abuse. Murphy, Wasey & Co. v. Wabash R. Co., 3 I. C. C. 725, 727.

(u) The object of classification is to furnish a basis for rate charges, but an incorrect classification would neither authorize an unjust rate nor render unlawful a just rate. Independent Refiners' Asso. v. W. N. Y. & P. R. Co., 4 I. C. C. 163, 176.

(v) Classification is recognized as a necessary method of adjusting the burden of transportation equitably upon the various articles of traffic, in view of differing circumstances and conditions, and but for the necessity of such adjustment, considerations based alone on weight and distance of haul would probably determine rates, except as modified by competition. F. Schumacher Milling Co. v. C., R. I. & P. R. Co., 4 I. C. C. 373, 376.

(w) Cost of service is only one of the elements to be considered in determining proper classification and relative rates for different articles. F. Schumacher Milling Co. v. C., R. I. & P. R. Co., 4 I. C. C. 373, 377.

(x) Unless within the authorized exceptions of the general rule of the statute, discriminations in charges upon like shipments of the same commodities based solely upon the purpose or business motive of the shipper are unlawful, whether affected directly or indirectly by methods of classification. Duncan v. A., T. & S. F. R. Co., 4 I. C. C. 385, 392.

(y) Cost of service is only one of the elements to be considered in determining proper classification and relative rates for different articles. F. Schumacher Milling Co. v. Chicago, R. I. & P. R. Co., 6 I. C. C. 61.

(z) The elements of bulk, weight, value, and character of commodities are main considerations in determining approximately what freight articles are so analogous as to entitle them to the same classification. Page v. Delaware, L. & W. R. Co., 6 I. C. C. 548, 565.

(aa) An exact classification is impossible. Unless the number of classes is infinitely increased there must always be articles in respect to which it will be very difficult to determine into which of two classes they should fall. If the elements which fix the class are substantially the same in case of two articles, then those articles should, as a matter of law, be classified alike, and to put one in one class and another in another class would be a discrimination and a violation of the act, no matter what the purpose of doing it might be. Rea v. M. & O. R. Co., 7 I. C. C. 43, 51.

(bb) A classification is unjust and unreasonable where it fails to maintain a fair relation between the various commodities. Myer v. Cleveland, Cincinnati & St. L. R. Co., 9 I. C. C. 78.

(cc) Manifestly, in determining what freight rate shall be borne by different commodities, an attempt should be made to maintain a fair relation between these commodities, and a classification which utterly ignores all considerations of this kind or which utterly fails to give due weight to such considerations is unjust and unreasonable. Nathan Meyer v. C., C., C. & St. L. Ry. Co., 9 I. C. C. 78.

(dd) In the forming of a classification bulk, value, liability to damage, and similar elements affecting the desirability of the traffic should be considered, and that analogous articles should ordinarily be placed in the same class. Myer v. C., C., C. & St. L. Ry., 9 I. C. C. 78, 83.

(ee) The legal duty of common carriers to so classify traffic and fix charges thereon that the burdens of transporta-

tion shall be reasonably and justly distributed among the articles they carry arises under the obligation imposed upon them not to charge unreasonable or unjust rates or to inflict any unjust discrimination or undue prejudice in any respect whatsoever; and even in cases where the need of additional revenue is apparent the carrier cannot arbitrarily select some one or more articles upon which to apply higher rates regardless of the relation which such article or articles bear to other commodities commonly offered for transportation. The National Hay Asso. v. L. S. & M. S. R. Co. et al., 9 I. C. C. 264.

(ff) The legal duty of common carriers to classify traffic, and fix charges thereon in such a manner that the burden of transportation will be reasonably and justly distributed among articles they carry, arises under the obligation imposed upon them to charge reasonable and just rates, and to refrain from discrimination, and hence, where the need of additional revenue is apparent, the carrier cannot arbitrarily apply higher rates to certain articles, regardless of the relation which they bear to other commodities commonly offered for transportation. National Hay Asso. v. Lake Shore & Michigan S. R. Co., 9 I. C. C. 264.

(gg) In a freight classification like the official, which contains but six general classes, it is manifestly impossible to bring together in each class only such articles as resemble each other in character, use, value, volume, bulk, weight, risk, expense of handling and competition; the best that can be done under such a scheme of classification is to place two or more articles possessing general similarity in the same class, and where an article is not analogous to any other to put that article in the class containing commodities which are most nearly related to it in general character and other essential respects. The National Hay Asso. v. L. S. & M. S. R. Co. et al., 9 I. C. C. 264.

(hh) In the carriage of great staples, which supply enormous business, and which in market value and actual cost of transportation are among the cheapest articles of commerce, rates yielding only moderate profit to the carriers are both necessary and justifiable, and, although the defendant carriers may be at some greater expense to handle and transport hay than some other articles in the fifth or sixth class of their freight classification, the character, value, volume and use of that commodity are such as to require relatively low charges for its carriage. The National Hay Asso. v. L. S. & M. S. R. Co. et al., 9 I. C. C. 264.

(ii) Where the chief question involved is the justice of the change in the classification of the commodities shipped by complainant, and the decision will affect all shippers of the same commodity in the classification territory, the profits secured by complainant from the operation of the railway connected with the defendant's line are not material, and the case must be decided in accordance with the principle which properly governs the classification of freight articles. Proctor & Gamble Co. v. Cincinnati, H. & D. R. Co., 9 I. C. C. 440.

(jj) Freight classification is based upon the relations which commodities bear to each other in such respects as character, use, bulk, weight, value, tonnage or volume, risk, cost of carriage, ease of handling and controlling circumstances caused by conditions. Proctor & Gamble Co. v. C., H. & D. Ry., 9 I. C. C. 440, 482.

(kk) To require a separation and grading into different classes with varying rates different grades of the same articles of freight would greatly complicate the work, and go far to defeat the very purpose of classification, and even then it would be impracticable to apportion with mathematical exactness the burdens of transportation; the best result obtainable in this direction is reasonable and substantial approximation. Derr Mfg. Co. v. Pennsylvania R. Co., 9 I. C. C. 646.

(ll) While there are exceptional instances requiring deviation from methods generally employed in constructing freight classification, it is manifest that to require the separation and grading into different classes with varying rates different grades of the same articles of freight would greatly complicate the work and go far to defeat the very purpose of classification, and even then it would be impracticable to apportion with mathematical exactness the burdens of transportation; the best result obtainable in this direction is reasonable and substantial approximation. Derr Manufacturing Co. v. Penn. R. Co. et al., 9 I. C. C. 646.

(mm) No classification can be so mi-

nute as to conform to the differing varieties and conditions of traffic, and to separate different grades or densities of the same article into different classes, with varying rates, even if it could be accomplished, would go far to defeat the real purpose of classification. Planters' Compress Co. v. Cleveland, C. , C. & St. L. R. Co., 11 I. C. C. 382.

(nn) Classification is not scientific, or a difference in rates well based, which is altogether founded upon a distinction that has no transportation significance, such as the intended use of the article transported. Stowe-Fuller Co. v. Pennsylvania Co., 12 I. C. C. 215.

(oo) Differences in rates on fire, building and paving brick which are made of the same material, come out of the same kiln, are nearly alike in color and are of the same size and weight, held based upon no justifiable distinction. Stowe-Fuller Co. v. Pa. Co., 12 I. C. C. 215.

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(pp) Owing to differences in bulk and weight, there must of necessity be marked variations in revenue per car produced by articles in the same and other classes, and a disparity either way is not conclusive of the propriety of an adjustment. Kiser Co. v. C. of G. Ry. Co., 17 I. C. C. 430, 439.

(qq) While the classification unit test may not finally determine the classification of an article, it constitutes a basis for comparison with other articles. When all the modifying conditions and facts are known, a fair classification relation may be established among articles through the aid of this classification unit. In Re Suspension of Western Classification No. 51, 25 I. C. C. 442, 452.

(rr) Whether it will become necessary to subject all of the 10,000 or more objects of transportation to a combination of unifying principles and recast them into an entirely new classification having no relationship, except an accidental one, to the existing classifications, and except in so far as the identity, or similarity, of inherently correct classification principles applying to the given article may bring that about, quaere? In Re Suspension of Western Classification No. 51, 25 I. C. C. 442, 452.

(ss) Whether a rate is too high or too low should be made a separate issue distinct from classification. Nevertheless, as far as possible, the establishment of ratings and the application of rates should follow changes in classification very closely. In Re Suspension of Western Classification No. 51, 25 I. C. C. 442, 453.

(tt) But the question of rates should be kept separate from the question of classification. Western Classification Case, 25 I. C. C. 442, 453.

(uu) In determininig the proper classification of articles, the following elements are considered by the Commission: Bulk, character of article, competition, cost of service, desirability of the traffic, distinction in transporting conditions, ease of handling, expense of carriage, hazardousness, liability to waste or injury, loading, manner of packing, possibility or probability of false billing, risk, space occupied, tonnage, use, utilization of equipment, value of article, value of service, volume of traffic, and weight. Western Classification Case, 25 I. C. C. 442, 472.

(vv) The preservation of classification calls for the exercise of "the flexible limit of judgment which belongs to the power to fix rates." Louisville & Nashville Railroad Coal and Coke Rates, 26 I. C. C. 20, 28.

(ww) The ability of one commodity to bear the greater share of transportation costs than another is in most cases independent of the length of the haul. In the Matter of Rates on and Classification of Lumber and Lumber Products, 52 I. C. C. 598, 617.

(xx) While it is possible to remove many of the present inconsistencies without changes in rate scales, it should also be borne in mind that an absolutely uniform classification could be prepared and proposed only in connection with a universal system of rate scales having a uniform number of classes. It is the Commission's view that a desirable arrangement would be to have in each scale at least ten classes, practically all less than carload traffic to be confined to the first four classes, and redistribution made of the articles in the carload classes. Many articles that now move under commodity rates and under exceptions to the classifications could be assigned ratings in such a scale that would result in the application of rates not substantially higher or lower that now apply. This would be particularly true of the of-

ficial and southern territories. Consolidated Classification Case, 54 I. C. C. 1, 11.

(yy) Classification and rates must be general and an injurious effect in some cases and to some interests is unavoidable, but so long as in the main they are satisfactory the rule applies that the good of the greater number is paramount. Carload Minimum Weight on Garden Tractors, 64 I. C. C. 1, 2.

(zz) Range of prices, depending upon the percentage of purity and method of production of a particular commodity, is inconclusive evidence of impropriety or unreasonableness in the classification or the rates on such commodity. Du Pont de Nemours & Co. v. Director General, as Agent, 73 I. C. C. 129, 131.

(3a) There is no practical distinction between gas oil and fuel oil; they are of approximately the same weight and value, are used for the same purposes, and generally take the same rates. Empire Refineries v. Director General, as Agent, 73 I. C. C. 207, 210.

(3b) From a classification standpoint the establishment of a specific rating on lumber is desirable. Rating on Lumber and Veneer in Western Territory, 74 I. C. C. 247, 248.

(3c) Contention that, since carriers may lawfully refuse shipments of explosives and other dangerous articles in containers not conforming to specifications of the Commission, they may also refuse all articles in containers which do not meet the requirements which they prescribe, not sustained. Congress directed the Commission to formulate regulations governing transportation of dangerous articles for protection of life and property, and fact that shipments of that character may not be transported in containers not complying in every particular with specifications prescribed does not prove that there should be no latitude in that respect in transportation of articles which are not dangerous. Fiber-Box Containers, 77 I. C. C. 715.

ALL OTHER CITATIONS

Goodman Mfg. Co. v. P., B. & W. R. R. Co., Unrep. 362; Wholesale Fruit & Produce Assn. v. A., T. & S. F. Ry. Co., 14 I. C. C. 410; Indianapolis Freight Bureau v. C., C., C. & St. L. Ry. Co., 15 I. C. C. 367, 369; Yawman & Erbe Mfg. Co. v. A., T. & S. F. Ry. Co., 15 I. C. C. 260, 262; Forest City Freight Bureau v. Ann Arbor R. R. Co., 18 I. C. C. 205, 206; Ford Co. v. M. C. R. R. Co., 19 I. C. C. 507, 509; In Re Advances in Rates on Locomotives and Tenders, 21 I. C. C. 103, 107; In Re Advances on Coal to Lake Ports, 22 I. C. C. 604, 623; Rickards v. A. C. L. R. R. Co., 23 I. C. C. 239, 240; Sunderland Bros. Co. v. S. L. & S. F. R. R. Co., 23 I. C. C. 259, 262; In Re Advances on Flaxseed, 25 I. C. C. 337, 341; Virginia Manufacturing Co. v. A. C. L. R. R. Co., 25 I. C. C. 68, 70; McKnight Keaton Grocery Co. v. C., M. & St. P. Ry. Co., 26 I. C. C. 563, 564; Texas Common Point Case, 26 I. C. C. 528, 529; R. R. Commissioners of Montana v. N. P. Ry. Co., 26 I. C. C. 482, 483; Stewart & Clark Mfg. Co. v. A., T. & S. F. Ry. Co., 26 I. C. C. 361, 363; Eastern Wheel Mfrs. Asso. v. A. & V. Ry. Co., 27 I. C. C. 370, 380; Eggerss-O'Flyng Co. v. C., G. W. R. R. Co., 27 I. C. C. 280, 281; Sea Gull Specialty Co. v. Baltimore Steam Packet Co., 27 I. C. C. 267, 271; Milburn Wagon Co. v. T., St. L. & W. R. R. Co., 27 I. C. C. 63; Boston Chamber of Commerce v. A., T. & S. F. Ry. Co., 28 I. C. C. 230, 232; John Taylor Dry Goods Co. v. M. P. Ry. Co., 28 I. C. C. 205, 212; American Sugar Refining Co. v. D., L. & W. Ry. Co., 200 Fed. 652, 656; R. R. Commission of Oregon v. S. P. Co., 24 I. C. C. 273, 277; In Re Suspension of Western Classification No. 51, 25 I. C. C. 442, 450, 451, 462, 473, 474, 478, 486; Klauer Mfg. Co. v. A., T. & S. F. Ry. Co., 28 I. C. C. 508, 510; Globe-Wernicke Co. v. B. & O. S. W. R. R. Co., 31 I. C. C. 274; Rates on Fruit and Vegetables, 30 I. C. C. 56, 61; Portland Chamber of Commerce v. C. M. & St. P. Ry. Co. 32 I. C. C. 188, 189, 190; Stations on Boston & Maine R. R., Unrep. Op. A-767; Western Newspaper Union v. A. & R. R., 34 I. C. C. 326, 328, 329; Lumber Rates from Points in Arkansas, 34 I. C. C. 102, 104; Rates on Stone and Marble from Chicago and Peoria, 34 I. C. C. 390, 391; Western Trunk Line Rules, 34 I. C. C. 554, 562, 579; Minimum Charges on Bulky Articles, 38 I. C. C. 257, 261; Hires Condensed Milk Co. v. P. R. R. Co., 38 I. C. C. 441, 447; Centennial School Supply Co. v. L. V. R. R. Co., Unrep. Op. 2190; Houston Gas Co. v. N. C. Ry. Co., Unrep. Op. 2215; Harness to Oklahoma, 37 I. C. C. 726, 728, 729; Wellington Mines Co. v. C. & S. Ry., 39 I. C. C. 201, 207; Southern Classification Ratings, 39 I. C. C. 173, 176; The Missouri River Nebraska Cases, 40 I. C. C. 201, 241; National Society of Record Asso. v. A. & R. R. R. Co., 40 I. C. C. 347, 355, 356;

Railroad Commn. of Louisiana v. A. H. T. Ry. Co., 41 I. C. C. 83, 92; Associated Railways Classification Exceptions, 41 I. C. C. 561, 562; Fruits and Vegetables, 43 I. C. C. 291, 332; National Poultry, Butter & Egg Asso. v. B. & O. S. W. R. R. Co., 43 I. C. C. 392, 405; Baxter & Co. v. F., A. & G. R. R., 43 I. C. C. 633, 635; Rates on Dairy Products, 43 I. C. C. 700, 704, 713; Obermayer Co. v. Penn. Co., 43 I. C. C. 745, 746; Coca-Cola v. A., T. & S. F. Ry., 45 I. C. C. 461, 463; C. F. A. Territory Milk & Cream Rates, 46 I. C. C. 601, 617; Kanotex Refining Co. v. A., T. & S. F. Ry., 46 I. C. C. 495, 498; Official Classification No. 44, 47 I. C. C. 91, 94; R. R. Comm. of La. v. A. H. T. Ry., 48 I. C. C. 312, 337; Casket Mfrs. Asso. v. B. & O. R. R., 49 I. C. C. 327, 330; Monarch Paint Co. v. Chicago, Burlington & Quincy R. R., 49 I. C. C. 367, 368; Acme Belting Co. v. A. & R. R. R., 52 I. C. C. 15, 17; Building and Roofing Paper Board Rates, 52 I. C. C. 84, 101; Memphis Frt. Bureau v. C. & O. Ry., 51 I. C. C. 731, 733; In the Matter of Rates on and Classification of Lumber and Lumber Products, 52 I. C. C. 598, 602, 605, 606, 607; Goodyear Tire & Rubber Co. v. A., C. & Y. Ry., 53 I. C. C. 389, 394; Consolidated Classification Case, 54 I. C. C. 1, 5; South Port Mill, Ltd., v. Director General, 55 I. C. C. 154, 161; McCrory Stores Corporation v. Director General, 55 I. C. C. 423, 424; Mitsui & Co. v. Director General, 58 I. C. C. 322, 324; California Citrus League v. Director General, 58 I. C. C. 373, 392; Classification Rating on Flavoring Extracts, 64 I. C. C. 53, 54; Classification Rating on Paper Shopping Bags, 64 I. C. C. 423, 425, 426; Slater v. S. P. Co., 64 I. C. C. 647, 652; National Paving Brick Manufacturers' Asso. v. A. & A. V. Ry., 80 I. C. C. 179; National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co., 68 I. C. C. 213, 230; Traffic Bureau of Nashville v. L. & N. R. R. Co., 68 I. C. C. 623, 626; Floyd & Co. v. A. & M. R. R. Co., 83 I. C. C. 485.

§3½. Application of Section 2.

See Infra §17; Differentials §8½

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(a) Complainant attacked the imposition of unreasonable and discriminating rates for the transportation of railroad ties. HELD: The classification of railroad ties in a different class from other lumber, thus imposing a higher rate upon ties than upon other lumber, to be an unjust discrimination. HELD, Further: That it was not just or reasonable that the defendant railroad company should give a low special rate upon coarse lumber in other forms, to the exclusion of ties. Rates established by a common carrier under the influence of a desire to keep upon its line a material for which the road itself has use, or to keep the price thereof low for its own advantage, can not be justified. Reynolds v. Western New York & Pennsylvania R. R., 1 I. C. C. 685.

(b) The difference in classification adopted by the "western classification" (which applies to business from the Pacific Coast to all points west of the Missouri River), between "raisins" and "dried fruits," by which a higher carload rate is imposed on raisins than on other dried fruits, while by the "Pacific coast east-bound classification" (which applies to business over the same roads from the Pacific Coast to points on the Missouri River and east thereof) such distinction is not imposed, is, in connection with the different rules of the two classifications as to mixed carloads, an unreasonable discrimination. Martin v. Southern P. Co. (Com.), 2 I. C. R. 1.

(c) A discrimination between the rate on corn and its direct products, which subjected persons engaged in the business of manufacturing and selling such products to unreasonable prejudice or disadvantage, and which is without necessity or advantage to the carrier, or any reason founded on the character or condition of the traffic, is in violation of the Act to Regulate Commerce, § 3, notwithstanding the rate on corn was open to all persons equally and with equal service. Bates v. Pennsylvania R. Co. (Com.), 2 I. C. R. 715.

(d) Upon the evidence produced at the former hearing it was decided that no reason was shown for a differential rate between corn and the direct products of corn, eastward between Indianapolis and the seaboard. The difference in rate complained of was 4½ cents per hundred pounds between Indianapolis and New York, this being the proportion, according to the distance, of a five-cent differential between Chicago and New York. Since the first hearing the defendants have reduced the differential to 2½ cents per hundred pounds. The complainants claimed there should be no difference. The evidence produced at the rehearing satisfied the Commission, upon

grounds stated in the opinion, that the former order should be vacated, and that no further order should now be made. Bates v. Penn. R. Co., 3 I. C. R. 296.

(e) For reasons peculiar to the territory lying west of the Mississippi River, comprising a large portion of Texas, the State of Missouri and a considerable part of Kansas, the rates on wheat and wheat flour are grouped without reference to distance, and a lower rate has been charged on wheat than on wheat flour for fifteen years or more. Prior to 1886 the difference in the two rates was fifteen cents a hundred pounds or greater. In 1886 a readjustment of rates was made and upon consideration of all the circumstances and conditions and claims of rival localities the differential was reduced to five cents a hundred pounds, which has since been maintained. Upon complaint made by millers of Missouri, supported also by millers of Kansas, against a differential of five cents a hundred pounds, and claiming an equal rate on wheat and flour carried from Missouri and Kansas into Texas, HELD, that under the conditions existing in the territory in question a rate of five cents less a hundred pounds on wheat than on flour does not as matter of fact work unjust discrimination, and is not therefore unlawful. Kauffman Milling Co. v. Missouri Pac. R. Co., 3 I. C. R. 400.

(f) It appearing that the carriers have at times reduced the rate on wheat without a contemporaneous reduction on flour, and so made a larger differential than five cents a hundred pounds, which is sometimes maintained for a considerable period, it is found that a differential exceeding five cents a hundred pounds works unjust discrimination and is unlawful. Kauffman Milling Co. v. Missouri Pac. R. Co., 3 I. C. R. 400.

(g) Two roads by agreement carried bituminous coal from the Snow Shoe region in Pennsylvania to Perth Amboy, N. J., a distance of about 300 miles, at a higher aggregate, but lower proportionate, rate than was charged by one road on anthracite for the distance over its line, the distance over such line being about 150 miles. HELD: That this was no undue preference in favor of the bituminous coal traffic, and subjected anthracite traffic to no unreasonable disadvantage, except as the anthracite charges might be excessive. Coxe Brothers & Company v. Lehigh Valley R. Co., 3 I. C. R. 460.

(h) The charging in any case by railroad companies of a higher rate on wheat than on flour between the same points and on the same line is unjust discrimination and unlawful within the Act to Regulate Commerce. Milwaukee Chamber of Commerce v. Chicago, M. & St. P. R. Co., 7 I. C. C. 481.

(i) Defendant's charges on grain originating at points on its Southern Minnesota division, milled in transit at La Crosse, Wis., and forwarded as product to Milwaukee or Chicago, are not more than 2½ cents per 100 pounds in excess of its wheat rates from the same points of origin to Milwaukee or Chicago, and such milling rates at La Crosse, as related to defendant's wheat rates, or as affecting the competitive relations of complainant with millers at Milwaukee, are not unjust or otherwise unlawful. Listman Mill Co. v. Chicago, M. & St. P. R. Co., 8 I. C. C. 47.

(j) The freight rate upon wheat from Sioux City and other points in the territory adjacent thereto should not exceed that upon corn by more than 4 cents per 100 pounds. Grain Shippers' Asso. v. Illinois C. R. Co., 8 I. C. C. 158.

(k) Carriers of corn and cornmeal from Kansas points to destinations in Texas enforce a differential of 7 cents per 100 pounds more on cornmeal than on corn, and such difference prohibits the shipment of cornmeal ground at Kansas points into Texas territory. The difference in cost of service need not exceed 3 cents per 100 pounds, and the difference in value, greater liability to injury and other conditions surrounding the transportation of such commodities, do not justify the greater difference in the rate. HELD: That the difference in rate of 7 cents against cornmeal and in favor of corn unjustly discriminates against Kansas millers, and that the differential should not exceed 3 cents per 100 pounds. Board of R. R. Comrs. v. Atchison, T. & S. F. R. R. Co., 8 I. C. C. 304.

(l) The changes which have taken place in conditions governing the transportation of wheat and flour from Kansas points to destinations in Texas, although they have been material in some respects, are not sufficient to warrant interference in this case with the differential making the rate 5 cents higher on flour than on wheat, which was approved by the Com-

mission in Kauffman Milling Co. v. Missouri U. R. Co., 4 I. C. C. Rep. 417, 3 Inters. Com. Rep. 400; Board of R. R. Comrs. v. Atchison, T. & S. F. R. Co., 8 I. C. C. 304.

(m) Rates from points in Kansas and Missouri to points in Texas are five cents per hundred pounds higher on flour than on wheat, and such differential is not applied on flour or wheat carried in any other direction. This differential has been the subject of controversy in two previous cases before the Commission, Kaufman Milling Co. v. Missouri P. R. Co. (1890), 4 I. C. C. Rep. 417, 3 Inters. Com. Rep. 400; Railroad Comrs. v. Atchison, T. & S. F. R. Co. (1899), 8 I. C. C. Rep. 304, and in decisions of those cases the five cent higher rate on flour than on wheat, as applied on the traffic to points in Texas, was not declared unlawful. HELD: Upon the record in this case, that since the former decisions were rendered there has been no such change in conditions governing the traffic as to warrant interference by the Commission. The Mayor, Etc., of Wichita, v. M. P. Ry. Co. et al., 10 I. C. C. 35.

(n) There has been no such change in conditions governing the traffic as to warrant the Commission in interfering with its previous holding, whereby it declared that there was nothing unlawful in the fact that the rates from points in Kansas and in Missouri to points in Texas are 5 cents per 100 pounds higher on flour than on wheat, and that such differential is not applied on flour or wheat carried in any other direction. Wichita v. Missouri P. R. Co., 10 I. C. C. 35.

(o) The traffic in cattle and hogs to Chicago and other points is discriminated against by the exaction of higher rates for transporting cattle and hogs than for transporting live stock products to Chicago from points west, northwest and southwest thereof, including Missouri River points and South St. Paul, Minn. Chicago Live Stock Exchange v. Chicago G. W. R. Co., 10 I. C. C. 428.

(p) The desire of a carrier to secure additional business does not justify a change in the relation of rates, resulting in a higher rate upon cattle and hogs, the raw material, than upon live stock product, the manufactured article, where, as in this case, the articles are in sharp competition with each other in markets of purchase and sale, where it appears that upon other lines and in other sections rates are generally no higher, and in many instances much lower, on the traffic prejudiced than on that favored by the change, and where numerous and important industries, which have been built up and maintained under the former adjustment, and those interested in such industries, will be injuriously affected by the action taken. Chicago Live Stock Exchange v. Chicago G. W. R. Co., 10 I. C. C. 428.

(q) The defendants, by charging a higher rate on shingles than on lumber, in carloads, from Duluth, Minn., to Chicago, Ill., unjustly discriminate against shingles in favor of lumber, subject Duluth and complainant and other shingle shippers from that point to undue prejudice and disadvantage, and afford undue preference and advantage to other places from which shingles are carried at rates as low as those applied on lumber therefrom. Duluth Shingle Co. v. Duluth, S. S. & A. R. Co. et al. 10 I. C. C. 489.

(rs) The defendants by charging a higher rate on shingles than on lumber in carloads from Duluth, Minn., to Chicago, Ill., subject Duluth and its shingle shippers to undue prejudice and disadavntage, and afford undue preference and advantage to other places from which shingles are carried at rates as low as those applied on lumber therefrom. Duluth Shingle Co. v. Duluth, S. S. & A. R. Co., 10 I. C. C. 489.

(t) The rate on rye, barley and other coarse grain from Cannon Falls to Louisville or East St. Louis is wrongfully higher than the rate on wheat between the same points. Cannon Falls Farmers' Elevator Co. v. Chicago G. W. R. Co., 10 I. C. C. 650.

(u) The present charges on corn products and corn from Missouri River points to the Pacific Coast terminals constitute undue, unreasonable and unlawful discrimination against corn products and producers thereof at places on the Missouri River to the extent that such rate on corn products is more than 5 cents above the rate on corn. Re Rates on Corn and Corn Products from Missouri River Points to Points in Washington, Oregon and California., 11 I. C. C. 212.

(v) Commission investigated rates on corn and corn products from Kansas City and other Missouri River points to Washington, Oregon and California. The re-

lation of rates on corn and corn products from Missouri River points to California terminals was for about one year after Januaary 1, 1890, a differential of 9c against corn products. Then, for about one and a half years, it was 9c, in favor of corn products. The rates were the same between July, 1892, and March, 1895, when a differential of 5c against corn products was established. In December, 1897, the differential was increased to 10c and in July, 1902, it was made 20c. During March, 1904, the differential was fixed at 17½c, and in October of that year it was reduced to 10c, and has since remained at that figure. Changes in the relation of rates on corn and corn products from Missouri to North Pacific terminals were not greatly different from those mentioned, except that in December, 1897, the rates were made the same on corn and corn products and there is not now any difference, unless the minimum carload for corn is the marked capacity of the car, in which case the rates show a differential of 10c against corn products. HELD: That the present charges on corn products and corn from Missouri River to Pacific Coast terminals, in so far as the rate on corn product is more than 5c above the rate on corn constitutes undue unreasonable and unlawful discrimination against corn products and producers thereof at places on the Missouri River. In the Matter of Rates on Corn and Corn Products from Missouri River Points to Points in Washington, Oregon and California, 11 I. C. C. 212.

(wx) Up to February 19, 1905, the rate on corn meal was 3 cents per 100 pounds higher than the rate on corn for shipments from Missouri River points to points in Texas. On that date, the differential against corn meal was advanced so that it varied from 7 to 9½ cents. On April 15 the differential was made 5 cents for all Texas destinations. The differential for hominy grits and bran remains at 3 cents. Upon consideration of the fact and circumstances. HELD, That the differential on corn meal shipped from Missouri River points to Texas destinations should not be more than 3 cents above the rate on corn in force between the same points. Matter of Rates on Corn and Corn Products, 11 I. C. C. 220.

(y) Commission instituted an investigation as to rates on corn and corn products from Kansas City and other Missouri River points to points in Texas. Up to February, 1905, the rate on corn meal was 3c higher than on corn from Missouri River to Texas. On that date the differential against corn meal was advanced so that it varied from 7 to 9½c. On April 15 the differential was made 5c for all Texas destinations. The differential for hominy grits and bran remains at 3c. HELD, That the differential on corn meal should not be more than 3c above the rate on corn in force between the same points. In the Matter of Rates on Corn and Corn Products from Missouri River Points to Texas, 11 I. C. C. 220.

(zaa) The Commission instituted an investigation as to rates on corn and corn products from Missouri River points to Louisiana. Prior to July 1, 1905, rates from Missouri River to Louisiana were 5c higher on corn meal than on corn, but on that date the differential was removed by respondents and rates on corn and corn meal made the same. HELD: Such action having obviated the complaints herein, no order is necessary. In the Matter of Rates on Corn and Corn Products from Missouri River Points to Louisiana, 11 I. C. C. 227.

(bb) Complainant alleged that the defendants unduly discriminated against Kansas millers, in favor of California millers, by exacting rates for the transportation of flour which were 10 cents greater per 100 pounds than the rates contemporaneously exacted by them for the transportation of wheat from Wichita and other shipping points in Kansas to points in California known as "Pacific Coast terminals," and also by exacting rates for the transportation of flour, which were 35 cents per 100 pounds greater than the rates contemporaneously exacted by them for the transportation of wheat from said shipping points to Phoenix, Ariz. HELD: That under the circumstances and conditions disclosed by the record in this case, and following decisions of this Commission in other similar cases, the flour rates between said shipping and destination points should not exceed the wheat rates between such points by more than 7 cents per 100 pounds. Howard Mills Co. v. Miss. Pacific Ry. Co. et al., 12 I. C. C. 259.

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(cc) Chassis parts of passenger and freight automobiles are a like kind of

traffic within the meaning of section 2 of the act. Anthony v. Director General, as Agent, 61 I. C. C. 336, 367, 368.

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Parkersburg Rig & Steel Co. v. Director General, 64 I. C. C. 568, 573; Interstate Rates on Grain, Grain Products, and Hay, Carloads, Between Points in the Western and Mountain-Pacific Groups, 80 I. C. C. 362.

§3½a. Application of Section 4.

See Long and Short Hauls.

§4. Bulk or Weight of Commodity.

See Evidence §65; Express Companies §18; Loading and Unloading; Passenger Fares and Facilities §10.

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(a) The rate on cabbages shipped in standard barrels or barrel crates should not exceed three-fourths the rate on potatoes shipped in the same manner, where the cabbages do not weigh more than three-fourths as much as potatoes and are not worth more than half as much. Truck Farmers' Asso. v. Northeastern R. Co., 6 I. C. C. 295.

(b) If the accustomed traffic has a less unit than a carload and ordinary shipments are by the ton or bale, or hundredweight, the effect of a new lower carload rate is to give an advantage to the large shipper, a discrimination the Commission has not encouraged, even though its first result is to secure lower rates to the large shipper, less cost to the carrier, and, in its encouragement to trade, to increase the carriers' revenues. Kindel v. B. & A. R. R. Co., 11 I. C. C. 495, 506.

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(c) A change in the size of articles should naturally be followed by a change in the rules which were made because of smaller equipment in use at the time such rules were established. Bennett v. M., St. P. & S. Ste. Marie Ry. Co., 15 I. C. C. 301, 303.

(d) Long and bulky articles should be transported in box cars in every case where it is possible to do so, and when so transported they should be charged regular rates for less-than-carload shipments. When shipment, solely because of its length or bulk, is actually transported on an open car, the rule applying a higher rate and minimum may be enforced. Merchants' & Mfrs.' Assn. of Baltimore v. A. C. L. R. R. Co., 22 I. C. C. 467, 470.

(e) If some scheme were applied by which the rate properly decreased in proportion as the loading increased, justice would be done both between different shippers and between shippers as a class and the carriers. It is possible that some system of this kind will finally be applied to commodities where the weight varies greatly, when the car is filled to its physical capacity. In Re Wool, Hides and Pelts, 25 I. C. C. 185, 189.

(f) The space occupied by an article may properly be considered in determining its appropriate classification rating. Western Classification Case, 25 I. C. C. 442, 472.

(g) If all the parts constituting a completed article are offered as one shipment, under one bill of lading, the freight charge should be calculated upon a rating for the completed article. This does not prevent a shipper from billing separately each constituent part at its respective rating. Western Classification Case, 25 I. C. C. 442, 487.

(h) In establishing a minimum for the transportation of a light and bulky article it is the aim to name a weight which can be loaded under ordinary circumstances. Bernard Co. v. Director General, as Agent, 74 I. C. C. 557, 560.

(i) Weight density is one element entering into classification of commodities, but mere fact that a commodity manufactured from one kind of material weighs a few pounds less per cubic foot than some commodity manufactured from a different kind of material, does not justify a difference in rating of two classes between them. General Gas Light Co. v. A. G. S. R. R. Co., 83 I. C. C. 361, 364.

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Merchants' Traffic Association v. A., T. & S. F. Ry. Co., 13 I. C. C. 283, 284; Metropolitan Paving Brick Co. v. Ann Arbor R. R. Co., 17 I. C. C. 197, 203; Keller v. St. L. S. W. Ry. Co., 21 I. C. C. 488, 489; McLaughlin, Gormley, King Co. v. Maine Steamship Co., 22 I. C. C. 108, 109; In Re Suspension of Western Classification No. 51, 25 I. C. C. 442, 487, 489, 517; Rates on Phosphate Rock from Tennessee Points, 26 I. C. C. 377, 379; Regulations Restricting the Dimensions of Baggage, 26 I. C. C. 292, 301; Rates

on Excelsior and Flax Tow from St. Paul, Minn., 29 I. C. C. 640; Clark & Henery Construction Co. v. H. & D., Unrep. Op. A-183; Michigan Seating Co. v. G. J. W. Ry. Co., 29 I. C. C. 123, 124; American Round Bale Press Co. v. A., T. & S. F. Ry. Co., 32 I. C. C. 458, 462; Leavitt & Co. v. L. S. & M. S. Ry. Co., Unrep. Op. A-708; Brantley Co. v. A. C. L. R. R. Co., 34 I. C. C. 21, 23; Parlin & Orendorff Co. v. I. C. R. R. Co., 34 I. C. C. 90, 92; Trap or Ferry Car Service Charges, 34 I. C. C. 516, 523; Zimmerman v. G. N. Ry. Co., Unrep. Op. 1907; Zimmerman v. G. N. Ry. Co., Unrep Op. 1907; Minimum Charges on Bulky Articles, 38 I. C. C. 257, 259, 261; Fruit and Vegetables, 43 I. C. C. 332; Showers Bros. Co. v. A. A. R. R. Co., 48 I. C. C. 518, 521; Lowe Co. v. M. C. & St. P. Ry., 50 I. C. C. 403; In the Matter of Rates on and Classification of Lumber and Lumber Products, 52 I. C. C. 598, 615, 616, 617, 619; Consolidated Classification Case, 54 I. C. C. 1, 31; L. H. Miller v. Director General, 60 I. C. C. 162, 164.

§4½. Knocked-down Shipments.

See Knocked-down Shipments.

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(a) Complainant attacked classification applicable on surgical chairs from Canton, O., to Boston, Mass., as unreasonable and unjustly discriminatory. Present classification double first class, less carloads. According to its condition, size and weight, it cannot be said to be light and bulky when crated for shipment. They are greatly more heavy and compact according to space occupied than reclining chairs, and it is difficult to conceive how reclining chairs could have the backs folded over the chairs and crated in such manner as to occupy so little space, and at the same time furnish so much weight according to space as these surgical chairs. HELD: First class rate would be reasonable on these surgical chairs when partly knocked down and shipped at owner's risk, crated in less carloads; one and one-half times first class when at carriers' risk, crated. The Harvard Company v. Pennsylvania Company, 3 I. C. C. 257.

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(b) The term "knocked down" has a definite and well-understood meaning in railroad terminology; it involves taking apart the article shipped in such a manner as to reduce materially the space occupied. Merely separating the article into parts and crating them without reducing the bulk would not constitute knocking down in such a manner as to justify a reduction in the rate. Fond du Lac Church Furnishing Co. v. C., M. & St. P. Ry. Co., 21 I. C. C. 481, 482.

(c) But the term "knocked down" in pieces does not mean that a machine must be served into all its component parts and these parts shipped as separate pieces. United Refrigerator & Ice Machine Co. v. C. & N. W. Ry. Co., 28 I. C. C. 439, 441.

(d) Complainant attacked rates charged on carload shipments of pipeless furnaces from Cincinnati, O., to San Francisco, Portland and Seattle, Tacoma and Spokane, Wash., during October 23, 1918, to October 8, 1919, as unreasonable and unjustly discriminatory. The furnaces comprising the shipments were made of cast iron, except the casings and caps, which were of sheet iron. They were shipped knocked down and the parts were crated. The tariffs in effect during the period of movement provided commodity rates of $2.25, minimum 24,000 pounds, from Cincinnati to all points except Spokane, the latter being $1.90, minimum 24,000 pounds. The same tariff provided a rate of $1.625, minimum 40,000 pounds to all points on cast iron furnaces, k. d. On December 31, 1919, tariffs were amended making this rate applicable on cast iron furnaces with sheet iron or steel castings. HELD: rate of $2.25 was applicable and not unreasonable or unjustly discriminatory, complaint dismissed. The Monitor Stove Co. v. Director General, 68 I. C. C. 305.

ALL OTHER CITATIONS

Zang Brewing Co. v. C., B. & Q. R. R. Co., 18 I. C. C. 337, 339; Pacific Coast Biscuit Co. v. S. P. & S. R. R. Co., 20 I. C. C. 546; Keller v. St. L. S. W. Ry. Co., 21 I. C. C. 488; Texas Seed & Floral Co. v. N. Y. C. & St. L. R. R. Co., 23 I. C. C. 504; United Refrigerator & Ice Machine Co. v. C. & N. W. Ry. Co., 28 I. C. C. 439; Metropolis Bedding Co. v. B. & O. R. R., Unrep. Op. A-368; Sloane v. S. P. Co., 33 I. C. C. 509; Meyer Co. v. A. T. & S. F. Ry. Co., 41 I. C. C. 380, 382; Mitchell Lewis & Staver Co. v. C. & N. W. Ry. 47 I. C. C. 71; Showers Bros. Co. v. A. A. R. R., 48 I. C. C. 518, 520, following Fond Du Lac Church Furnishing Co. v. C., M. & St. P. Ry., 21 I. C. C. 481; Harmon & Co. v. N. Y., O. & W. Ry., 50 I. C. C. 451;

Consolidated Classification Case, 54 I. C. C. 43; Dahlstrom Metallic Doore Co. v. E. R. R., 55 I. C. C. 402, 409; Express Classification, 1920, 59 I. C. C. 265, 268; Chevrolet Motor Co. v. Director General, as Agent, 59 I. C. C. 685; Parkersburg Rig & Reel Co. v. Director General, as Agent, 59 I. C. C. 751; Ratings on Paint or Varnish Spraying Booths, 63 I. C. C. 282; General Iron Works v. Director General, as Agent, 64 I. C. C. 532, 533; American Manganese Steel Co. v. Director General, 68 I. C. C. 149; Burlap and Gunny Bags from St. Louis and Other Points to C. F. A. Destinations, 68 I. C. C. 587; Frankn G. Day & Co. v. Director General, 68 I. C. C. 656; Gulf Refining Co. v. Director General, 73 I. C. C. 729; Bradford Rig & Reel Co. v. Director General, as Agent, 73 I. C. C. 696, 700; Lee Coit Andreesen Hardware Co. v. Director General, 74 I. C. C. 738; Cooper Co. v. Director General, as Agent, 74 I. C. C. 539; State Highway Department of Texas v. C. B. & Q. R. R. Co., 81 I. C. C. 433; Power Specialty Company v. D. & Mt. M. R. R., 89 I. C. C. 251; Anderson Lumber Co. v. N. P. R. Co., 87 I. C. C. 425; Chevrolet Motor Co. v. Director General 87 I. C. C. 517.

§5. C. L. and L. C. L. Shipments.

See Infra §13; Cars and Car Supply §11⅞; Evidence §63; Minimums.

CASES 1887-1908

(a) Under a classification which puts lumber in carloads in the sixth class, and unfinished wagon materials in the fifth class, hub blocks prepared to be sold to the manufacturers of hubs and of wheeled vehicles, but upon which only so much labor has been expended as is needful to put them in a condition for seasoning, are regarded as raw material, and belong, when not otherwise specified in the classification sheet, with lumber, instead of unfinished wagon materials. Hurlburt v. Lake Shore & M. S. R. Co. (Com.), 2 I. C. R. 81.

(b) A carrier in defining a carload and fixing the rate should furnish a car adapted to carry properly the quantity designated and not put the shipper to any expense to fit up the car. Rice, Robinson & Witherop v. W. N. Y. & P. R. R. Co., 2 I. C. C. 298, 302.

(c) Complaints attacked as unreasonable classification on carloads and less carloads. Under the official classification, the articles known in trade as grocery articles are so classified as to discriminate unjustly in rates between carloads and less than carloads upon many articles, and a revision of the classification and rates to correct unjust differences and give these respective modes of shipment more relatively reasonable rates is necessary and is so ordered. Thurber v. N. Y. C., 2 I. C. C. 742.

(d) A difference in rates upon carloads and less than carloads of the same merchandise between the same points of carriage so wide as to be destructive to competition between large and small dealers, especially upon articles of general and necessary use, and which, under existing conditions of trade, furnish a large volume of business to carriers, is unjust and violates the provisions and principles of the act. Thurber v. New York Central & Hudson River R. Co., 2 I. C. R. 742.

(e) Under the official classification, the articles known in trade as grocery articles are so classified as to discriminate unjustly in rates between carloads and less than carloads upon many articles, and a revision of the classification and rates to correct unjust differences and give these respective modes of shipment more relatively reasonable rates is necessary, and is so ordered. Thurber v. New York Central & Hudson River R. Co., 21 I. C. R. 742.

(f) A classification of freight designating different classes for carload quantities and for less than carload quantities for transportation at a lower rate in carloads than in less than carloads is not in contravention of the Act to Regu late Commerce. The circumstances and conditions of the transportation in respect to the work done by the carrier and the revenue earned are dissimilar, and may justify a reasonable difference in rate. The public interests are subserved by carload classifications of property that, on account of the volume transported to reach markets or supply the demands of trade throughout the country, legitimately or usually moves in such quantities. Thurber v. New York Central & Hudson River R. Co., 2 I. C. R. 742.

(g) The mere fact that one article is of more general use and therefore shipped in greater quantity than another, when each, as a rule, is shipped in less

than carload quantities, and is of no considerable difference in weight, bulk, and value, and of no appreciable difference in expense of handling and of haul, constitutes in itself no reason why the first should receive a lower rate than the last. Harvard Co. v. Pennsylvania Co. (Com.), 3 I. C. R. 257.

(hi) When an article moves in sufficient volume and the demands of commerce will be better served, it is reasonable to give a lower classification for carloads than that which is applied to less than carload quantities, but the difference in such classification should not be so wide as to be destructive to competition between large and small dealers. Thurber v. New York Cent. & H. R. R. Co., 2 Inters. Com. Rep. 742, 3 I. C. C. Rep. 473, cited and reaffirmed. The justice of the claim for a lower rating on carload lots can only be determined upon the facts in each case. Charles H. Brownell, Columbus, v. Cincinnati Midland R. Co., 4 I. C. R. 285.

(j) Upon complaint alleging unjust discrimination against carload shippers of eggs in favor of shippers in less than carloads, it appeared that under the 'official classification" eggs take second class rates for carload or less quantities; that the commodity is carried in refrigerator cars; that for carload shipments ice to the amount of 6,000 pounds is furnished by the carrier without extra charge; that less than carload shipments are taken from local stations in "pickup" cars to distributing points and forwarded in carloads to New York and other large markets; that notwithstanding the special facilities afforded to small shipments by the carriers, the large dealers control 83 per cent of the traffic. HELD: Upon all the facts in the case, that no unjust discrimination results to the carload shipper from the equal rating of carload and less than carload lots and the special service rendered in gathering and forwarding small shipments, and the complaint should therefore be dismissed. Charles H. Brownell, Columbus, v. Cincinnati Midland R. Co., 4 I. C. R. 285.

(k) When, on complaint of a carload shipper, unjust discrimination is alleged to result from equal rates on carloads and less than carload quantities of the same commodity, the burden of proof is upon the complainant. Brownell v. Columbus & C. M. R. Co. (Com.), 4 I. C. R. 285.

(l) No unjust discrimination results to the carload shipper of eggs from the equal rating of carload and less than carload service rendered in gathering and forwarding small shipments in "pickup" cars, where for carload shipments ice to the amount of 6,000 pounds is furnished by the carrier without extra charge. Brownell v. Columbus & C. M. R. Co. (Com.), 4 I. C. R. 285.

(m) A difference in rates upon carloads and less than carloads of the same merchandise between the same points of carriage so wide as to be destructive to competition between large and small dealers, especially upon articles of general and necessary use, is unjust and violates the act. Brownell v. C. & C. M. R. Co., 4 I. C. C. 285, 291.

(n) The difference between the rate on carloads and that on less than carloads must be reasonable. Duncan v. Atchison, T. & S. F. R. Co. (Com.), 4 I. C. R. 385.

(o) While the circumstances and conditions in respect to the work done by the carrier and the revenue earned are dissimilar in the transportation of freights in carloads and less carloads, and a lower rate on carloads than on less than carloads is, therefore, not in contravention of the statute, yet the difference between the two rates must be reasonable. Duncan v. A., T. & S. F. R. Co., 4 I. C. C. 385, 395.

(p) The importance of maintaining a reasonable relation between carload and less carload rates on the same commodity is seen from the fact that any material difference between them in favor of the larger shipments must result in altogether debarring small dealers from participation in the trade. Duncan v. A., T. & S. F. R. Co., 4 I. C. C. 385, 395.

(q) The difference between carload and less than carload rates from St. Louis, Chicago and other points in the Middle West to the Pacific Coast territory, and which average about 50 cents per 100 pounds, are not unjust, taking the rate adjustment as a whole, and giving due consideration to the controlling force of water competition between the eastern seaboard and the Pacific Coast, the difference in the cost of service by rail, the interests of the parties, and the preservation of reasonable competition between the Middle West and the Pacific

Coast jobbers. Business Men's League of St. Louis v. Atchison, T. & S. F. R. Co., 9 I. C. C. 318.

(r) Where but a small amount of less than carload traffic moves by water, the water competition applies only to carload traffic, and while reducing the rate on carload business, need not necessarily affect the rate on less than carload traffic. Business Men's League of St. Louis v. Atchison, T. & S. F. Ry. Co., 9 I. C. C. 318.

(s) In determining the propriety of a differential between carloads and less than carloads, not only the difference in the expense of handling traffic at terminals should be considered, but also the increased cost of hauling less than carload traffic; and therefore the differentials need not be approximately a fixed quantity, but may increase with the distance, and justify a difference in rates between carloads and less than carload shipments. Business Men's League of St. Louis v. Atchison, T. & S. F. R. Co., 9 I. C. C. 318.

(tu) A differential as between carloads and less than carloads, on the traffic from the Middle West to Pacific Coast territory, which is at once more than 50 cents per 100 pounds, and more than 50 per cent of the carload rate, is prima facie excessive; and while it does not follow that every differential may equal this, or that every one which exceeds this is unlawful, any differential in excess of this requires special justification. Business Men's League of St. Louis v. Atchison, T. & S. F. R. Co., 9 I. C. C. 318.

(v) The difference between carload and less than carload rates from St. Louis, Chicago and other points in the Middle West to Pacific Coast territory, which are the subject of complaint herein, and which average about 50 cents per 100 pounds, are not, taking the rate adjustment as a whole, and giving due consideration to the controlling force of water competition between the eastern seaboard and the Pacific Coast, difference in the cost of service by rail, the interests of the parties, perservation of reasonable competition between the Middle West and the Pacific Coast jobbers, and other material circumstances, shown to be unjust; but while the tariff cannot be condemned as a whole upon grounds urged by complainants, many of the details in such tariff are in violation of law. Business Men's League v. A., T. & S. F. Ry. Co. et al., 9 I. C. C. 318.

(w) While on traffic from the Middle West to the Pacific Coast many differentials in the rates named for carloads and less than carloads are too great, while varied commodity rates in the hardware schedule and perhaps in some others should be readjusted, and while in some instances greater latitude should be given in the shipment of practically the same articles in mixed carloads, the present record, which pertains almost wholly to the general aspects of the controversy, furnishes no facts from which it can be intelligently determined what ought to be done in specific instances, and further hearing is accordingly ordered. Business Men's League v. A., T. & S. F. Ry. Co. et al., 9 I. C. C. 318.

(x) While it was shown that many differentials in the rates named for carloads on traffic from the Middle West to the Pacific Coast were too great, and the varied commodity rates in the hardware schedule should be readjusted, and in some instances greater latitude should be given in the shipment practically of the same articles in mixed carloads, the Commission ordered a further hearing, where the record furnished no facts from which it could be intelligently determined what ought to be done in specific instances. Business Men's League of St. Louis v. Atchison, T. & S. F. R. Co., 9 I. C. C. 318.

(y) In the adjustment of carload and less than carload rates circumstances often render the application of a greater differential more proper in one case than in another, but taking the traffic generally from the Middle West to Pacific Coast territory, it is held that a differential as between carloads and less than carloads which is at once more than 50 cents per 100 pounds and more than 50 per cent of the carload rate is prima facie excessive. It does not follow that every differential may equal this or that every differential which exceeds this is unlawful, but any differential in excess of this requires special justification. Business Men's League v. A., T. & S. F. Ry. Co. et al., 9 I. C. C. 318.

(z) Carriers may properly make a difference in their rates between carload and less than carload shipments, but such difference must be reasonable. Business Men's League of St. Louis v. A., T. & S. F. R. Co., 9 I. C. C. 319, 357.

(aa) The act of defendants in increasing the classification of soap in less than carloads from fourth to third class was unreasonable and unjust, and under the Act to Regulate Commerce their subsequent practice of applying 20 per cent less than third class rates on such traffic is also unlawful. Proctor & Gamble Co. v. Cincinnati, H. & D. R. Co., 9 I. C. C. 440.

(bb) Before allowing a carload rating to a carload shipment a carrier is entitled to require that the goods shall be loaded at one time and place, that but a single bill of lading shall be issued, and that the shipment shall be from one consignor to one consignee, but when the goods are so loaded and by the terms of sale become the property of the consignee upon delivery to the carrier, the carrier has no right to inquire whether the consignee obtained his title from one or several owners; and if it accords the carload rate in case the consignor is the owner, failure on its part to extend the same privilege when the consignee is the owner, violates sections one, two and three of the act. Buckeye Buggy Company v. C. C. C. & St. L. Ry., 9 I. C. C. 620, 627.

(cc) A carload rate lower than the less carload rate, where the difference is not too great, would ordinarily be lawful; but a still lower rate for shipments of a hundred or a thousand carloads, though duly published and impartially applied, would be wholly indefensible. If a low rate is granted on conditions with which only a few can comply that rate is presumable unfair and may be extremely prejudicial to all other shippers of like traffic because they are practically unable to meet the terms upon which it is offered. Glade Coal Co. v. B. & O. R. Co., 10 I. C. C. 226, 251.

(dd) While the carriers may lawfully establish carload and less than carload rates on cotton, with a reasonable difference between the two rates, and a reasonable carload minimum securing to shippers generally the lower carload rates, it does not follow that they are bound to do so, much less that they can be required to establish a differential based upon an unusual carload minimum. Planters' Compress Co. v. Cleveland, C. C. & St. L. R. Co., 11 I. C. C. 382.

(ee) Defendant's refusal to grant lower rates on cotton in carloads of 45,000 pounds or more is not a violation of the regulating statute. Planters Compress Co. v. Cleveland, C. C. & St. L. R. Co., 11 I. C. C. 382.

(ff) Defendants have classified leather scraps in less than carloads as third class since 1887, but in January, 1894, they limited such classification to scrap refuse from the manufacture of leather goods, and excluded strips or pieces cut from hide leather, and in January, 1905, such limitation was superseded in defendants' freight classification by the words 'this rating will apply only upon scraps not available in the manufacture of leather goods." All leather scrap purchased by complainant contains leather pieces which can be used in the manufacture of leather goods, and the sole purpose of complainant in purchasing such leather scrap is to separate such pieces and sell them to persons having use for the various sizes and kinds. The effect of the new rule was to advance complainant's commodity from third to second class, which is the rating prescribed by defendants for leather. HELD, that a third class rating for leather scraps in less than carloads is sufficiently high, and that defendants' present classification and rating of that traffic is unjust and unreasonable. Newman v. N. Y. Central & H. R. Co. et al., 11 I. C. C. 517.

(gg) A third-class rate for leather scraps in less than carloads is sufficiently high, and defendant's present classification and rating for that traffic is unjust and unreasonable. Newman v. New York C. & H. R. R. Co., 11 I. C. C. 517.

(hh) Complainant attacked as unreasonable rate charged on wool in the grease, less carload, from Philadelphia, Pa., to Fort Wayne, Ind., of 62 cents as compared with rate in reverse direction of 43 cents. Distance 674 miles, the commodity being classed the same in both directions, first class, less carloads, second class carloads. In the commodity under consideration the whole great western fields and ranges furnish the supplies, and these for the most part move in a steady stream toward the storing and manufacturing centers of the northeast, naturally resulting in competition more intense than can be expected to result in an effort among the carriers to secure occasional shipments in the other direction. HELD, rate attacked not unreasonable or unduly discriminatory, complaint dismissed. Weil v. Pennsylvania R. R. Co., 11 I. C. C. 627.

(ii) Defendants classify cement burial vaults with iron burial vaults as second-class freight, in less than carloads, and apply second-class rates thereon, although the cement vault is about four times heavier and occupies but little more space in the car; in carload shipments the defendants classify cement vaults as fifth-class and iron vaults as third-class freight. The risk of breakage in the carriage of the cement vaults is insignificant; their value and the value of the materials used in their construction is much less than in the case of iron vaults; cement vaults are also made with unskilled labor, while iron vaults require skilled mechanics and a plant with machinery and tools. HELD, that under such circumstances defendants should charge not to exceed third-class rates on shipments from Indianapolis, Ind., the point from which complainant's shipments of cement vaults are consigned. Van Camp Burial Vault Co. v. C. I. & L. Ry. Co., 12 I. C. C. 79.

(jj) Complainant ships bags from Newark, N. J., to Stanley, Luray, and Greenville, Va., over the Pennsylvania, Cumberland Valley and Norfolk & Western roads in less than carloads, which are used in carload shipments of ground bark from such Virginia points to Newark and other points in that vicinity, and upon the bag shipments from Newark a rate of 38 cents per 100 pounds is charged, while on complainant's competitors' shipments of bags from Newark to Barboursville and Charlottesville, Va., via the Pennsylvania and Southern roads, a rate of 22 cents is in force, such difference in rates resulting from the use of different freight classifications. Upon consideration of all the facts and circumstances: HELD, that the rate on bags, less than carloads, from Newark to Stanley, Luray and Greenville should not exceed 22 cents per 100 pounds. Henry M. Rau v. Penn. Railroad Co., et al., 12 I. C. C. 200.

(kk) That defendants' refusal to apply their carload rates to shipments of wrapping paper and paper bags in mixed carloads is not unlawful. Paper Mills Co. v. Pennsylvania Railroad Co. et al., 12 I. C. C. 438.

IMPORTANT CASES SINCE 1908

(ll) Water competition may justify a difference in the right of combining different commodities at the carload rate. City of Spokane v. N. P. Ry. Co., 15 I. C. C. 376, 389.

(mm) Shipments offered in carload quantities entitled to carload rate. Voorhees v. A. C. L. R. R. Co., 16 I. C. C. 42, 43.

(nn) Carriers, within proper limitations, may take competition into consideration in classifying freight. Competition that may be considered in proper cases not only includes that between carriers, but also that of the commodity produced in one section of the country with the same commodity produced in another section, and sometimes competition of one kind of traffic with another kind. Metropolitan Paving Brick Co. v. Ann Arbor R. R. Co., 17 I. C. C. 197, 203.

(oo) A carload rating should be established for a commodity when that commodity can be offered for shipment in carload quantities, unless public interests or other valid considerations require the contrary. Assuming a proper relation between C. L. and L. C. L. rates, the establishment of carload ratings whenever carload quantities are offered will meet the needs of new and growing lines of industry without discrimination, and it should not be a prerequisite to the establishment of C. L. rates that there should be a reasonable prospect of a minimum number of carloads within a certain period of time. In Re Suspension of Western Classification No. 51, 25 I. C. C. 442, 465.

(pp) The difference in the cost to the carriers should be ascertained as accurately as possible, and due weight given to it in determining the classification and rates for L. C. L. quantities as compared with C. L. quantities. In Re Suspension of Western Classification No. 51, 25 I. C. C. 442, 467.

(qq) All the different factors which enter into the establishment of a rate should be considered in the establishment of the proper relationship between C. L. and L. C. L. rates in making a uniform classification. In Re Suspension of Western Classification No. 51, 25 I. C. C. 442, 467.

(rr) One of the great purposes in the construction of a uniform classification should be the establishment of just relations between C. L. and L. C. L. quantities in accordance with some consistent principle throughout the classification and the rate schedules which may be constructed upon it. In Re Suspension of

Western Classification No. 51, 25 I. C. C. 442, 467.

(ss) In establishing a proper relation between carload and less-than-carload ratings, among the factors to which consideration should be given are the relative cost of handling, the demands made upon terminal properties of the carriers, and the utilization of equipment. In Re Suspension of Western Classification No. 51, 25 I. C. C. 442, 608.

(tt) Commercial and economic conditions must be considered in determining whether a carload rating should be accorded. Taylor Dry Goods Co. v. M. P. Ry. Co., 28 I. C. C. 205, 207.

(uu) And in determining whether a carload rating should be accorded, not merely the physical but the commercial and economic aspects must be considered. Taylor Dry Goods Co. v. M. P. Ry. Co., 28 I. C. C. 205, 207.

(vv) Each case must be considered upon its own merits, and in determining whether a carload rating should be accorded, not merely the physical, but the commercial and economic aspect must be considered. John Taylor Dry Goods Co. v. M. P. Ry. Co., 28 I. C. C. 205, 207.

(ww) Whether a carload rating should be accorded in a particular instance depends not only upon whether that commodity is offered for shipment in carload quantities, but also upon other considerations. John Taylor Dry Goods Co. v. M. P. Ry. Co., 28 I. C. C. 205, 209.

(xx) In arriving at the relation which should be observed between straight and mixed carload rates, it is proper to give due regard to the nature and cost of the special service furnished. Under the prevailing practice, it is the rule in the absence of a specific rate upon the mixed shipment, to apply the highest rate and highest minimum weight applicable on any of the commodities contained in the shipment. Where there is a substantial difference between the rates on the several commodities, the application of the highest rate and highest minimum weight certainly permits the carrier to secure the additional compensation which the conditions attending the transportation of mixed shipments appear to warrant. Mixed Carload Shipments of Lime, Cement and Plaster, 34 I. C. C., 124, 126.

(yy) In a typical case the Commission considered proposed changes in the loading and unloading charges on less-than-carload shipments transported at carload rates. The existing rule of the western classification provided a charge of 1¼c per 100 pounds, for loading and a like charge for unloading, but did not state whether such charges would be based on actual weights or on carload minimum. The carrier's proposed to amend the rule so that the charges should be definitely based on the carload minimum. HELD, that the proposed change in the rule had not been justified, since there was no apparent reason for basing loading or unloading on the carload minimum weight. Cancellation of proposed rule directed. L. C. L. Minimum Handling Charges, 43 I. C. C. 266.

(zz) A narrow spread between the carload and less-than-carload rates, tends to waste of transportation facilities without adequate compensating advantages to the general public and is not to be encouraged. The Southeastern Sugar Cases, 48 I. C. C. 739, 747.

(3a) The volume of movement is not determinative of the right to a carload rating, and the Commission does not accept the view that to entitle a commodity to a carload rating it should be shown that increased movement in carload quantities would result. Brunswick-Balke Collender Co. v. C. G. W. R. R., 56 I. C. C. 340, 342.

(3b) Volume of movement is not determinative of the right to a carload rating. Interstate Cottonseed Crushers Association v. Director General, 61 I. C. C. 1, 6.

(3c) Three separate l. c. l. shipments loaded in one car were billed to three consignees at two destinations, and three separate bills of lading and three separate freight bills were issued. Failure of carriers, after shipment left point of origin, to divert to one of the consignees as a c. l. shipment or to provide by rule for such diversion, found not unreasonable or otherwise unlawful. Consolidated Rendering Co. v. B. & M. R. R., 77 I. C. C. 101.

(3d) In distributing commodities in competitive territory, the point that can avail itself of a long carload haul and a short less-than-carload haul is ordinarily entitled to a lower total transportation charge than the point using a short carload haul and a long less-than-carload haul. Certain-Teed Products

Corp. v. A., T. & S. F. Ry. Co., 77 I. C. C. 444, 445, 446.

(3e) Carload ratings should be established as need for them arises. Sonora v. D., L. & W. R. R. Co., 83 I. C. C. 399, 401.

(3f) Commodities when shipped in less than carloads should take, and ordinarily are accorded, higher ratings and rates than when shipped in carloads. Carnie-Goudie Mfg. Co. v. Director General, as Agent, 83 I. C. C. 573, 574.

(3g) Generally speaking, the cost of handling less carload traffic, due to increased terminal expense, frequent transfers enroute, and higher percentage of loss and damage claims, greater than the cost of handling carload traffic, that ordinarily a differential between the carload and less carload rates on traffic moving heavily in carload quantities is justified by the difference in the cost of transportation, but the Commission will not require carriers against their will to establish a differential or widen an existing differential between carload and less carload rates unless it clearly appears that the carload rates are unreasonable or that to do so would remove prejudice or preference, which, is found to be undue and unlawful. St. Louis Merchants Exchange v. A. & R. R. R., 87 I. C. C. 548, 556.

ALL OTHER CITATIONS

Wholesale Fruit & Produce Ass'n. v. A. T. & S. F. Ry. Co., 14 I. C. C. 410, 418; California Commercial Ass'n. v. Wells-Fargo & Co., 14 I. C. C. 422, 431; National Wholesale Lumber Dealers' Ass'n. v. A. C. L. R. R. Co., 14 I. C. C. 154, 162; Duncan & Co. v. N. C. & St. L. Ry. Co., 15 I. C. C. 590, 593; Florida Fruit & Vegetable Ass'n. v. A. C. L. R. R. Co., 17 I. C. C. 552, 564; Carstens Packing Co. v. O. S. L. R. R. Co., 17 I. C. C. 324, 328; Merle Co. v. N. Y. N. H. & H. R. R. Co., 17 I. C. C. 585, 586; Colorado Bedding Co. v. C. B. & Q. R. R. Co., 18 I. C. C. 401, 402; Roase v. Boston & Albany R. R. Co., 18 I. C. C. 427, 429; Mead Auto Cycle Co. v. W. R. R. Co., Unrep. Op. 435; Whiting v. C. B. & Q. R. R. Co. Unrep. Op. 436; Auto Vehicle Co. v. C. M. & St. Ry. Co., 21 I. C. C. 286; Redpath-Vawter Chautauqua System v. A. T. & S. F. Ry. Co., 22 I. C. C. 135, 137; Albree v. B. & M. R. R. Co., 22 I. C. C. 303, 319, 327; In Re Advances on Milk, 23 I. C. C. 500, 503; Bagley & Co. v. P. M. R. R. Co., 25 I. C. C. 698; Western Classification Case, 25 I. C. C. 442, 443, 478, 479, 488, 490, 491, 572, 586; Wright & Co. v. Vandalia R. R. Co., 25 I. C. C. 215; Dubuque Shippers' Ass'n. v. C. & N. W. Ry. Co., 26 I. C. C. 565, 566; Coke Producers' Assn. of Connellsville v. B. & O. R. R. Co., 27 I. C. C. 125, 129; Taylor Dry Goods Co. v. M. P. Ry. Co., 28 I. C. C. 205, 207, 208, 210; American Brake Shoe & Foundry Co. v. B. Ry. of C., 28 I. C. C. 350, 351; Clinton Sugar Refining Co. v. C. & N. W. Ry. Co. 28 I. C. C. 364, 370; Schmidt & Peters, Inc. v. A. T. & S. F. Ry. Co., 28 I. C. C. 376, 378; Keats Auto Co. v. O.-W. R. R. & N. Co., 28 I. C. C. 412, 413; Rates on Packing-house Products, 28 I. C. C. 599, 600; Northwest Auto Supply Co. v. S. I. Ry. Co., Unrep. Op. A158; American Tobacco Co. v. P. R. R. Co., Unrep. Op. A160; Woodward-Bennett Co. v. S. P. L. A. & S. L. P. R. R. Co., 29 I. C. C. 664, 665; Hammond Bros. v. C. B. & Q. R. R. Co., Unrep. Op. A502; Stuart's Draft Milling Co. v. S. Ry. Co., 31 I. C. C. 623, 632; Atkinson-Williams Hdwe. Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-652; Merchants' & Manufacturers' Asso. of Birmingham v. L. & N. R. R. Co., Unrep. Op. —; Am. Round Bale Press Co., 32 I. C. C. 458, 469; Joints With Birmingham Southern R. R. Company, 32 I. C. C. 110, 119, 123; American Round Bale Press Co. v. A. T. & S. F. Ry. Co., 32 I. C. C. 458, 464; Wallis v. T. & N. O. R. R. Co., Unrep. Op. A-852; Western Newspaper Union v. A. & R. R. R., 34 I. C. C. 326; Mixed Car Dealers Asso. v. D., L. & W. R. R. Co., 33 I. C. C. 133, 139; Classification of Address Plates, 33 I. C. C. 281, 285, 287; Michigan Bean Jobbers' Asso. v. C. R. & I. Ry. Co., 33 I. C. C., 318, 319; Lindsay & Co. v. Northern Exp. Co., 33 I. C. C. 394, 396, 397, 398; St. Louis Terminal Case, 34 I. C. C. 453, 463; Western Trunk Line Rules, 34 I. C. C. 554, 576; 1915 Western Rate Advance Case, 35 I. C. C. 497, 575; Straw Rates from St. Louis to Anderson, Ind., 36 I. C. C. 30, 32; Stopping of Cars in Transit to Complete Loading, 36 I. C. C. 130, 134; Passow & Sons v. C. M. & St. P. Ry., 37 I. C. C. 711; 1915 Western Rate Advance Case, 37 I. C. C. 114, 148, 150, 151; Providence Fruit & Produce Exchange v. M. St. P. & S. S. M. Ry. Co., 40 I. C. C. 45, 47; Chicago Wool Co. v. C., M. & St. P. Ry. Co., 40 I. C. C. 101, 104; United States of America v. S. P. Co., 42 I. C. C. 287,

289; Wheland Co. v. A. G. S. R. R., 43 I. C. C. 53; Classification of Cylinders and Grate Bars, 43 I. C. C. 443; Southeastern Cotton Goods, 43 I. C. C. 530, 536; Hill v. N. C. & St. L. Ry., 44 I. C. C. 582, 589, 590; Wilcox v. Erie R. R., 45 I. C. C. 149, 150; Champion Shoe Machinery Co. v. C. & A. R. R., 45 I. C. C. 163; Boshell v. Receivers of St. L. & S. F. R. R., (Ala. 1917), 76 So. 282; Sharpless Co. v. P. B. & W. R. R., 48 I. C. C. 425, 426; The Southeastern Sugar Cases, 48 I. C. C. 739, 746; Nat'l. Confectioners' Asso. v. A. & A. R. R. R., 49 I. C. C. 566; Merchants Basket & B. Co. v. St. L. S. W. Ry., 49 I. C. C. 615; Hubbinger Bros. Co. v. C. B. & Q. R. R., 49 I. C. C. 23; Proposed Increases in New England, 49 I C. C. 421, 454; Classification of Automobile Bodies, 50 I. C. C. 309; Private Wire Contracts, 50 I. C. C. 731, 758; Delaware Punch Co. of Texas v. I. & G. N. Ry., 51 I. C. C. 143; Swift & Co. v. C. B. & Q. R. R., 50 I. C. C. 233; Seller & Co. v. S. P. & S. Ry., 50 I. C. C. 419; Sherer-Gillett Co. v. B. & O. R. R., 52 I. C. C. 3; Acme Belting Co. v. A. & R. R. R., 52 I. C. C. 15; International Purchasing Co. v. A. C. & Y. Ry., 51 I. C. C. 163, 166; Barber & Co. v. C. C. C. & St. L. Ry., 51 I. C. C. 194, 196; Bissell Carpet Sweeper Co. v. B. & O. R. R., 51 I. C. C. 479; Goodyear Tire & Rubber Co. v. A. C. & Y. Ry. Co., 53 I. C. C. 389; Kansas Car Lot Egg Shippers Asso. v. B. & O. R. R., 53 I. C. C. 59, 63; Consolidated Classification Case, 54 I. C. C. 8, 19, 28, 29; C. F. Sauer Co. v. A. & V. Ry., 55 I. C. C. 11, 13; Tobacco Products Corporation v. Director General, 55 I. C. C. 69; Roberts & Schaefer Co. v. Director General, 55 I. C. C. 277, 279; Memphis Southwestern Investigation, 55 I. C. C. 515, 537; Keet & Round-tree Dry Goods Co. v. Director General, 55 I. C. C. 400; The Palmolive Company v. Director General, 56 I. C. C. 253; Goodyear Tire & Rubber Co. v. A. C. & Y. R. R., 57 I. C. C. 206, 210; Rope Paper Sack Bureau v. Director General, 55 I. C. C. 209, 213; Roberts & Schaefer Co. v. Director General, 55 I. C. C. 277; Montgomery Chamber of Commerce v. Director General, 55 I. C. C. 688; Goodyear Tire & Rubber Co. v. A., C. & Y. Ry. Co., 57 I. C. C. 206, 210; Natchez Chamber of Commerce v. L. & A., 58 I. C. C. 610, 636; Lookout Planing Mills v. Director General, 58 I. C. C. 751; Express Rates, 1920, 58 I. C. C. 281, 295, 296; Dodge Brothers v. Director General, 62 I. C. C. 689, 691; Proctor & Gamble Co. v. Director General, as Agent, 62 I. C. C. 713; Carload Minimum Weight on Garden Tractors, 64 I. C. C. 1; Parkersburg Rig & Reel Co. v. Director General, as Agent, 64 I. C. C. 154, 155; Selz Schwab & Co. v. C. & N. W. Ry. Co., 69 I. C. C. 455; Western Newspaper Union v. Director General, 69 I. C. C. 523; Less-Than-Carload Commodity Rates from St. Louis, 73 I. C. C. 396; Cancellation of Commodity Rates on Plumbers Supplies from Chattanooga, Tenn., and Group Points to South Atlantic Ports and Florida Junction Points, 80 I. C. C. 251; Marcus & Co. v. Director General, as Agent, 77 I. C. C. 244; Burlap and Gunny bags from St. Louis and other points to C. F. A. destinations, 68 I. C. C. 587; Swift & Co. v. Director General, as Agent, 68 I. C. C. 287; Traffic Bureau of Nashville v. L. & N. R. R. Co., 68 I. C. C. 623; Tice v. Director General, as Agent, 69 I. C. C. 140; American Cigar Co. v. Director General, as Agent, 69 I. C. C. 159; Grain from Memphis, 80 I. C. C. 138; Homestead Valve Mfg. Co. v. Director General, as Agent, 80 I. C. C. 248; American Cone & Pretzel Co. v. C. B. & Q. R. R. Co., 83 I. C. C. 575.

§6. Competition.

See Competition.

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(a) Complainant attacked rates on pearline as compared with common soap from New York to Atlanta as unreasonable. By the classification of the Southern Ry. & Steamship Association, on shipments of pearline and common soap from New York to Atlanta, Ga., pearline is in the fourth class freight with a rate of 73 cents per 100 pounds, while common soap is in sixth class freight with a class rate of 49 cents per 100 pounds, but a special rate is given common soap of 33 cents per 100 pounds. HELD: That pearline being competitive with common soap, the relative difference between the class rate of pearline and this special rate on common soap is too great, and that pearline must be placed in fifth class freight from New York to Atlanta with a rate of 60 cents, and also fifth class in the Southern Ry. & Steamship Association; and further, that the relative difference in the rates on pearline and common soap in such shipments must not exceed the difference of 60 cents on pearline and 33 cents on common soap.

HELD, further, that on shipments of pearline and common soap, all rail, in this territory to which the classification of the Southern Ry. & Steamship Company applies, the following rates of this Association must be maintained: soap powder 32 cents for 100 miles, common soap 20 cents; 49 cents on soap powder and 38 cents on common soap for 500 miles. HELD, that the discrimination made by the special rate between pearline and common soap, to the extent now existing on the shipments to which it refers, is unjust and must be discontinued; and while pearline is fifth class, common soap should be sixth class. James Pyle & Sons v. East Tennessee, Virginia & Georgia R., 1 I. C. C. 767.

(b) By the classification of the Southern Railway & Steamship Association, adopted by the East Tennessee, Virginia & Georgia Railway Company, on shipments of pearline and common soap from New York to Atlanta, Ga., pearline is in fourth class freight with a rate of 73 cents per hundred pounds, while common soap is in sixth class freight with a class rate of 49 cents per hundred pounds, but a "special rate" is given common soap of 33 cents per hundred pounds. HELD: (a) That pearline being competitive with common soap, the relative difference between the class rate of pearline and this "special rate" on common soap is too great, and that pearline must be placed in fifth class freight on shipments from New York to Atlanta by the defendant company, with a rate of 60 cents per hundred pounds, and also in the fifth class in the classification of the Southern Railway & Steamship Association; and further, that the relative difference in the rates on pearline and common soap in such shipments must not exceed the difference of 60 cents per 100 pounds on pearline and 33 cents on common soap. (b) HELD FURTHER, that on shipments of pearline and common soap, all rail, in the territory to which the classification of the Southern Railway & Steamship Association applies, the following rates of this Association must be maintained by the defendant company, namely: Per 100 pounds, 100 miles, soap powder, 32 cents, common soap 20 cents; 500 miles, soap powder 49 cents, common soap 38 cents. (c) HELD, that the discrimination made by the "special rate" of the Southern Railway & Steamship Association between pearline and common soap, to the extent now existing on the shipments to which it refers, is unjust and must be discontinued; and while common soap is in its sixth class, pearline must be placed in its fifth class. Pyle v. E. Tenn., Va. & Ga. R. Co., 1 I. C. R. 767.

(c) Where questions of classification and rates are involved as to one particular article of freight, it is often necessary to examine and consider the classification and rates upon other articles in which the same calculations in respect of value, bulk and expense of handling, and of carriage, would to a considerable extent enter; and for the purposes of such comparison it is not indispensably necessary that the articles should be competitive with each other, though if they are competitive then this feature must more strongly bring to view the fact of discrimination in rates, if there be such. Harvard Co. v. Pa. Co., 3 I. C. R. 257.

(d) The rates involved in this case are those on live hogs, live cattle and the dressed products of each. These are found to be competitive commodities and therefore entitled to relatively reasonable rates for transportation proportioned to each other according to the respective costs of service. Squire & Co. v. Mich. Central R. Co., 3 I. C. R. 515.

(e) Competitive commodities are entitled to relatively reasonable rates for transportation proportioned to each other according to the respective costs of service. Squire v. Michigan C. R. Co. (Com.), 3 I. C. R. 515.

(f) Two kinds of soap used for the same purposes, and so advertised and held out to the world, and substantially equal in value, should, for purposes of transportation and rating, be placed in the same classification. Beaver v. Pittsburgh, C. & St. L. R. Co. (Com.), 3 I. C. R. 564.

(g) When carriers have uniformly placed in the same class all grades of a particular commodity, for example, window shades, regardless of the difference in value between different grades or the size of cases used for shipment, such carriers will not incur greater risks than they have thus voluntarily assumed, if the same practice is continued under a decision and order requiring a lower classification and rating for the great bulk of shipments of that commodity which are actually transported. Page v. Delaware, L. & W. R. Co., 6 I. C. C. 548.

(h) Hatters' furs and fur scraps and cuttings are offered for transportation in packages not bulky, but of convenient size, their value is not great, they are not liable to be lost or damaged in transit, and the first class of the "Official Classification" enforced by defendants contains hardly any article so desirable for traffic as they are, yet these commodities are classified double first class by the defendant carriers. For manufacturing purposes these raw materials are competitive with hats, the finished product. Complainant, located at Wabash, Ind., is the only manufacturer of hats west of Atlantic Seaboard territory, most of his competitors being located in the vicinity of New York, from whence supplies of hatters' furs and fur scraps and cuttings are almost entirely drawn. The difference in freight rates operates to damage complainant in his competition in western territory with the eastern manufacturers to the extent of about one thousand dollars per year. HELD: That hatters' furs and fur scraps and cuttings as compared with articles taking first class rates in defendants' classification, including hats, the finished product for which these commodities constitute raw material, are unlawfully made double first class and cannot lawfully be classed higher than first class in such classification. Nathan Meyer v. C. C. C. & St. L. Ry. Co., 9 I. C. C. 78.

(i) Manifestly, in determining what freight rate shall be borne by different commodities an attempt should be made to maintain a fair relation between those commodities, and a classification which utterly ignores all considerations of this kind or which utterly fails to give due weight to such considerations is unjust and unreasonable. Myer v. C. C. C. & St. L. Ry., 9 I. C. C. 78, 83.

(j) When water competition permits the establishment of classification and rates below the rates to non-competitive points, such lower rates, while possessing value as standards of comparison, are not always conclusive in fixing rates to shorter distance points not affected by such competition. Shippers' Union of Phoenix v. Atchison, T. & S. F. R. Co., 9 I. C. C. 250.

(k) The legal duty of common carriers to so classify traffic and fix charges thereon that the burdens of transportation shall be reasonably and justly distributed among the articles they carry arises under the obligation imposed upon them not to charge unreasonable or unjust rates or to inflict any unjust discrimination or undue prejudice in any respect whatsoever; and even in cases where the need of additional revenue is apparent the carrier can not arbitrarily select some one or more articles upon which to apply higher rates regardless of the relation which such article or articles bear to other commodities commonly offered for transportation. National Hay Association v. L. S. & M. S. Ry., 9 I. C. C. 264, 304.

(l) Where but a small amount of less than carload traffic moves by water, the water competition applying only to carload traffic, reducing the rate on carload business need not necessarily affect the rate on less than carload traffic. Business Men's League of St. Louis v. Atchison, T. & S. F. R. Co., 9 I. C. C. 318.

(m) There is no such competitive relation between fresh meat and, for example, fresh fruit that it is of necessity undue discrimination to accord a privilege to the one commodity which is refused to the other. Miner v. New York, N. H. & H. R. Co., 11 I. C. C. 422.

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(n) Carriers, within proper limitations, may take competition into consideration in classifying freight. Competition that may be considered in proper cases not only includes that between carriers, but also that of the commodity produced in one section of the country with the same commodity produced in another section, and sometimes competition of one kind of traffic with another kind. Metropolitan Paving Brick Co. v. Ann Arbor R. R. Co., 17 I. C. C. 197, 203.

(o) Complainant attacked western and southern classification ratings of third class on sudan seed, less carloads, as unjust, unreasonable, unjustly discriminatory and unduly prejudicial. Sudan grass is a species of sorghum cane, is grown for rough forage and fodder and the seeds are not used to any extent for other than planting purposes. As a forage crop it is substantially the same as sorghum and competes with the various varieties thereof. Prior to May 25, 1921, there was no specific rating on sudan seed in either classification, but sorghum seed rating was applied. On that date it was rated at third class. The

rating on sorghum seed was fourth in western and sixth in southern, the latter being advanced to third. In physical appearance sudan seeds resemble seeds of the different varieties of sorghum more closely than they resemble the several grass seeds. Loss and damage claims are negligible. The transportation characteristics of sudan seeds are substantially similar to those of sorghum seeds. HELD, western and southern classification ratings of third class on sudan seeds unreasonable to extent they exceeded fourth class. Mangelsdorf Seed Co. v. C. B. & Q. R. R., 74 I. C. C. 665.

(p) Competition, value, and risk of transportation are the factors to be considered in classifying an article. Centennial School Supply Co. v. L. V. R. R. Co., Unrep. Op. 2190.

(q) Clay hollow building tile is the only important competitor of gypsum hollow building (partition) tile. Both are ordinarily used in partition work in large buildings, and the clay tile may be used in all instances where the gypsum tile can be used. Acme Cement Plaster Co. v. A., C. & Y. Ry. Co., 77 I. C. C. 691, 694.

ALL OTHER CITATIONS

Union Pacific Tea Co. v. Penn. R. R. Co., 14 I. C. C. 545, 547; City of Spokane v. N. P. Ry. Co., 15 I. C. C. 376, 389; In Re Advances in Rates on Locomotives and Tenders, 21 I. C. C. 103, 109; Western Classification Case, 25 I. C. C. 442, 473; Underwood Veneer Co. v. A. A. R. R. Co., 32 I. C. C. 265, 268; Classification of Chairs, 36 I. C. C. 243; McCracken & Son v. B. & O. R. R. Co., Unrep. Op. 2199; Chicago Wool Co. v. C. M. & St. P. Ry. Co., 40 I. C. C. 101, 104; Lawlor Cycle Co. v. C. M. & St. P. Ry. Co., 40 I. C. C. 171; The Missouri River-Nebraska Cases, 40 I. C. C. 201, 256; Bancroft & Sons Co. v. N. Y. N. H. & H. R. R. Co., 40 I. C. C. 411, 416; New England Milk Case, 40 I. C. C. 699, 736; New England Milk Case, 40 I. C. C. 699, 736; Beaver Val. Milling Co. v. A. T. & S. F. Ry., 41 I. C. C. 533, 536; Atlas Portland Cement Co. v. B. & M. R. R., 44 I. C. C. 416, 419; Laundrymen's National Association v. Adams Express Co., 45 I. C. C. 361, 362; Dallas Cooperage & W. Co. v. G. C. & S. F. Ry., 45 I. C. C. 468, 469; Gas & Elec. Appliance Co. v. A. T. & S. F. Ry., 46 I. C. C. 440; Northwestern Terra Cotta Co. v. A. & St. L. R. R., 50 I. C. C. 522, 525; Building and Roofing Paper and Paper Board Rates, 52 I. C. C. 84, 100; Kansas Car-lot Egg Shippers' Asso. v. B. & O. R. R. Co., 53 I. C. C. 59, 65; Goodyear Tire & Rubber Co. v. A. C. & Y. Ry. Co., 53 I. C. C. 389, 394; Carnation Milk Products Co. v. Director General, 55 I. C. C. 665; Dothan Chamber of Commerce v. Director General, 58 I. C. C. 537, 544; Homestead Valve Mfg. Co. v. Director General, as Agent, 80 I. C. C. 248.

§6½. Crated Shipments.

CASES 1887-1908

(a) Complainant attacked classification on iron pipe fittings as unduly discriminatory and unreasonable. Iron pipe fittings shipped in cases from northern points to southern territory, take second class rates, but if shipped in casks, barrels, or kegs a special iron rate, lower than the sixth class rate, is applied on any quantity. The barrel package is cheaper than the case, except when the quantity is insufficient to fill a barrel; but when that happens a keg can be used for packing, with but little inconvenience or additional expense, and the lower special iron rate is thereby secured. The choice is wholly with the shipper to pay the higher rate on fittings in cases or the lower rate on fittings in kegs or barrels. Such a classification does not operate of itself to aid dishonest shippers in underbilling goods of greater value and the opportunity of false billing would not be lessened by giving the special iron rate to pipe fittings packed in cases. No ground of distinction appears in this respect between pipe fittings and numerous articles included in the special iron list, and taking higher rates when packed in boxes, and reclassification of all these other commodities is not warranted by the facts in this case. HELD, the defendant carriers have not exceeded the limits of their discretion in placing iron pipe fittings packed in cases in a higher class than iron pipe fittings packed in kegs or barrels, and that such action is not unreasonable or otherwise in violation of the act. Trades League of Philadelphia v. P. W. & B. R. Co., 8 I. C. C. 368.

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(b) Term "crated" or "in crates" held to mean inclosed on sides, including bottom, with framework. Volverton v. U. P. R. R. Co., 31 I. C. C. 23.

(c) Rates on crated animals in excess

of rates on animals shipped uncrated are unreasonable; but a tariff requirement that small animals must be crated for shipment is not unreasonable, but such requirement should be made uniform. National Society of Record Assos. v. A. & R. R. R. Co., 40 I. C. C. 347, 357.

(d) On shipment of a soda fountain from Cleveland, Ohio, to Arkansas City, Kans., packed in box with aperatures between the boards varying from 1 inch to 2½ inches, held such covering could not properly be termed a box and a higher rating applicable to crated shipments not found unreasonable. Bishop-Babcock-Becker Co. v. N. Y. C. R. R., 45 I. C. C. 141, 142.

(e) Failure of carriers in western classification territory to provide for shipment of stoneware water filters, loose, in excelsior, hay, straw, or similar packing material, at same rating and minimum weight as apply on same commodity when shipped in barrels, boxes, or crates, found unreasonable, and c. l. rating and minimum weight ordered established accordingly. Schlieper v. S. P. Co., 80 I. C. C. 630.

ALL OTHER CITATIONS

Produce Distributors Co. v. L. V. R. R. Co., 40 I. C. C. 17, 19.

§7. Mixed Carloads.

See Classification §16½; Express Companies §16; Minimums §6; Mixed Carloads.

CASES 1887-1908

(a) Complainant attacked rates on mixed carloads of chair stuff, bed and mattress material, unfinished, from Detroit, Mich., to Omaha, Neb., as unjust and unreasonable. HELD, rate prescribed, minimum 25,000 pounds, 20 cents from Chicago to Omaha and 15 cents from Mississippi River to Omaha resulting in through rate from Detroit to Omaha via Chicago of 30 cents per 100 pounds and via Mississippi River points, not through Chicago, of 31½ cents. Murphy Wasey & Co. v. Wabash R. Co., 3 I. C. C. 725.

(b) A rate prescribed for complainants' shipments in mixed carloads of chair-stuff, spring bed and mattress material all wooden, minimum weight 25,000 pounds, of not exceeding 20 cents per hundred pounds from Chicago to Omaha and not exceeding 15 cents per hundred pounds from Mississippi River points to Omaha, resulting in a through rate from Detroit to Omaha via Chicago of 30 cents per hundred pounds and via Mississippi River points, not through Chicago, of 31½ cents per hundred pounds. Murphy, Wasey & Co. v. Wabash R. Co., 3 I. C. R. 725.

(c) Mixed carloads of celery and cauliflower or other vegetables in the same class should be transported at no higher rate per carload than for a carload quantity of either. Tecumseh Celery Co. v. Cincinnati, J. & M. R. Co. (Com.), 4 I. C. R. 318.

(d) Complainant attacked classification and rate on cereal products westward from Chicago, Ill. Cereal products are classified and rated with flour. On mixed carloads the shipper pays the ordinary, less carload rate for the quantity of each product placed in the car. The entire tonnage of cereal products is only about one-fourth that of flour. At present the rates westbound on cereals are not as high as the average westbound rates principally because of the large empty car movement westbound. HELD, rating and classification attacked not unreasonable, the record being left open so far as the mixing privilege is concerned. F. Schumacher Milling Co. v. C. R. I. & P. Ry., 4 I. C. C. 373.

(e) A mixed carload rate for cereal products or for cereal products and flour that would have the effect of throwing out of the trade many competitors of complainant who manufacture only certain kinds of cereal products, and of centralizing the business in the hands of one or more dealers, should not be granted when, without it, no wrong is done to any one and the market is open to all competitors. To obtain the abrogation of a rule in a classification denying a mixed carload rate upon specified articles the rule should be shown unreasonable, unfair or unjustly discriminative. The F. Schumacher Milling Co. v. The Chicago R. I. & P. R. Co., 4 I. C. R. 373.

(f) A mixed carload rate for cereal products or for cereal products and flour that would have the effect of throwing out of the trade many competitors of complainant who manufacture only certain kinds of cereal products, and of centralizing the business in the hands of one or more dealers, should not be granted when, without it, no wrong is done to

any one and the market is open to all competitors. To obtain the abrogation of a rule in a classification denying a mixed carload rate upon specified articles the rule should be shown unreasonable, unfair or unjustly discriminative. F. Schumacher Milling Co. v. C., R. I. & P. R. Co., 6 I. C. C. 61.

(g) The effect of a rule permitting the shipment of small quantities of articles in the same class as a mixed carload is properly to be considered in determining the reasonableness and justice of an increase of a long standing less than carload rate, thereby subjecting the shipper of less than a carload to an additional disadvantage in conjunction with the mixed carload rule. Proctor & Gamble Co. v. Cincinnati, H. & D. R. Co., 9 I. C. C. 440.

(h) The privilege of shipping small quantities of articles in the same class as a mixed carload is valuable to a great many shippers and is not to be condemned because it may result in some degree to the advantage of particular manufacturers or to jobbers; but when it appears, as in this case, that shippers like complainant are subjected to additional disadvantage under the operation of a mixed carload rule through the increase in a long-standing less than carload rate, the effect of that rule is properly to be considered in determining the reasonableness and justice of such increased rate. Proctor & Gamble Co. v. C., H. & D. Ry. Co., 9 I. C. C. 440.

(i) Complainant attacked rate charged on a mixed carload of lemons and pineapples from New Orleans, La., to Dallas, Tex., as unreasonable. The tariff provided for mixed carloads of lemons and bananas and of pineapples and bananas and that pineapples might be mixed with a carload of almost any other kind of green fruit except lemons and oranges. Complainant was charged the minimum carload weight and carload rate on the lemons and less carload rate on the pineapples. HELD, rate attacked unreasonable to extent the tariff did not provide for a mixed carload rating on lemons and pineapples, reparation awarded to basis of class A rate of 72 cents minimum 24,000 pounds, the basis applicable to mixed carloads of lemons and bananas. Charles Roth v. T. & P. Ry., 9 I. C. C. 602.

(j) A tariff should be amended so as to provide for a mixed carload of lemons and pineapples, where it appears that the tariff provides for a mixed carload of lemons and bananas, and of pineapples and bananas, and that pineapples might be mixed in carloads with almost any other kinds of fruit except lemons and oranges. Roth v. Texas & P. R. Co., 9 I. C. C. 602.

(k) Upon the amendment of a tariff so as to provide for the shipment of mixed carloads of lemons and pineapples, the complainant was allowed reparation for the excess charged above the carload rate upon the shipment in question. Roth v. Texas & P. R. Co., 9 I. C. C. 602.

(l) On submission by a railway company of shipper's claim for carload rating on a mixed carload of lemons and pineapples, it appeared that the tariff provided for mixed carloads of lemons and bananas and of pineapples and bananas, and that pineapples might be mixed in a carload of almost any other kind of green fruit except lemons or oranges. HELD: That a matter submitted in this way should be treated as a case upon complaint and answer; that the railway company should amend its tariff so as to provide for mixed carloads of lemons and pineapples, and that it should make reparation to complainant for the excess charge above the carload rate upon the shipment in question. Roth v. Texas & P. Ry. Co., 9 I. C. C. 602.

(m) Complainant attacked as unduly discriminatory and unreasonable refusal of defendants to apply carload rates on paper bags and wrapping paper in mixed carloads, that is, carloads containing less carload shipments of each of said articles, between points in southern classification territory and from shipping points on the Pennsylvania to destinations points in that territory. The Commission has in several cases disapproved of the imposition by carriers of conditions with which only a comparatively few shippers could comply, and the circumstances and conditions disclosed by the record in this case convince it that such a condition would be created by sustaining complainants contention concerning mixed carloads where the transportation is controlled by the southern classification. If the carload rates were applied on mixed carloads complainants and one other concern would be benefited, but many others, who deal only in one of these articles, would be correspondingly injured. HELD, complaint dismissed.

Paper Mills Co. v. Pennsylvania R. R., 12 I. C. C. 438.

(n) Refusal to apply carload rates to shipments of wrapping paper and paper bags in mixed carloads not unlawful. Paper Mills Co. v. Pa. R. R. Co., 12 I. C. C. 438.

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(o) Mixing carloads or whatever privilege of this sort is accorded to one locality should be accorded to another served under the same circumstances. Water competition, however, may justify differences. City of Spokane v. N. P. Ry. Co., 15 I. C. 376, 389.

(p) The liberalization of mixtures is in the interest of the whole public. Artificial restrictions upon mixtures are restrictions upon the freedom of trade and commerce, with a tendency to militate against the small man. From the point of view of railway operation, mixtures result in a better utilization of car space, they lessen the demands upon terimnal properties, they decrease the expense of operation and facilitate the movement of freight. In Re Suspension of Western Classification No. 51, 25 I. C. C. 442, 607.

(q) A schedule which fails to provide a rate for a mixture which can be properly handled and transported without damage to destination, is unreasonable. Lee v. L. S. Ry. Co., 29 I. C. C. 101, 102.

(r) So it has been said that just what mixture of implements may be included in a car in order to take a certain rate is of as much importance to the jobbers as the rate itself. Wichita Business Assn. v. A. T. & S. F. Ry. Co., 30 I. C. C. 374, 375.

(s) It is the prevailing rule that the rate applicable on mixed carloads of live stock is the rate prescribed for the highest class of stock in the car, subject to the highest minimum weight for any class of stock in the car. Hoyt & Bergen v. C. & N. W. Ry. Co., 32 I. C. C. 319, 324.

(t) The Commission has previously pointed out the desirability of liberal provisions for mixtures. The benefits to shipper and consignee are obvious. Orders may be made for smaller quantities of each commodity and the service contributed by them in loading and unloading obviates the expense of handling by the carrier which is involved in less-than-carload shipments, as well as the greater inconvenience of warehouse delivery as compared with track delivery. Mixed Carload Shipment of Lime, Cement and Plaster, 34 I. C. C. 124, 125.

(u) The rules governing mixtures of shipments and follow lots now in effect in different sections of the country are not uniform. These mixing and follow lot rules should not be different when the traffic is transported in privately owned than in railroad owned cars. In the Matter of Private Cars, 50 I. C. C. 652, 707.

(v) Uniformity as to mixing arrangements could have been accomplished in the consolidated classification either by using one rule for the entire country or by having no rule with respect to that matter. All things considered, the first alternative was deemed to be reasonable and desirable. To have adopted the latter would have been impracticable. No uniform set of specific mixtures could have been devised that would have suited or would have been suitable to all shippers and classes of shippers and to all sections of the country, and there would not in that event have been uniformity as to descriptions, because on many groups of related articles different specific mixtures in the description column of the classification would have been necessary for each individual territory. A consolidated classification would be impracticable without a general mixing rule. Consolidated Classification Case, 54 I. C. C. 1, 18.

(w) Specific mixtures in large numbers are extended to the western shippers at present in commodity tariffs. The policy of leaving mixtures to be provided for in each instance by a specific provision opens the door to discrimination. It is productive of continual requests for broadening the mixtures to meet the desires of individual shippers, and thus leaves the situation in an unsettled state. A definite fundamental principle rather than uncertain and varying practices and policies should govern. Consolidated Classification Case, 54 I. C. C. 1, 18.

(x) It seems desirable to provide rules or specific mixtures in the classification that fit the traffic and make unnecessary the publication of exceptions and special arrangements in commodity tariffs. Consolidated Classification Case, 54 I. C. C. 1, 42.

(y) Original report 62 I. C. C. 375,

complainant petitioned for rehearing. Rehearing was had solely on the question of the elimination of lard compounds and lard substitutes from the mixing rules covering fresh meats and packing house products. Lard compound is composed of lard and other oil ingredients. No lard compound has been manufactured or moved in interstate commerce for years. Lard substitute is the cheapest form of shortening fat manufactured and sold. It is a combination of animal and vegetable fats, or an exclusive vegetable fat. Lard substitute, both from the commercial and the consumers standpoint, is closely related to lard, which is exclusively a packing house product. It is included in every list of packing house products published in a railroad tariff to which the attention of the Commission has been directed. It is used for the same purpose as lard and is a product manufactured by the packers. The Commission can not see how the wholesale grocers or the manufacturers of lard substitutes will be injured by inclusion of lard substitutes in the proposed mixing rules. If lard substitutes were excluded from the mixing rules the large packers and large manufacturers of lard substitutes would continue to ship in carload quantities at the carload rate, while the smaller packer would have to pay the less carload rate on the amount shipped in its mixed carload. HELD, the former finding should be modified. HELD, the inclusion of lard compounds and lard substitutes in the mixing rules heretofore prescribed will not result in undue prejudice to the wholesale grocer or to the manufacturer of lard substitutes. National Wholesale Grocers Asso. v. Director General, 69 I. C. C. 669.

(z) And carload rates should not be denied on mixed merchandise shipped by forwarding agent because shipper is not owner of property. Sheldon & Co. v. N. Y. C. & St. L. R. R. Co., Unrep. Op. A-276.

(aa) Class rate on a mixed carload of flaked cereals and pancake flour from Spokane, Wash., to Baker, Ore., found unreasonable as compared with lower commodity rate from Portland, Ore., which lower rate was subsequently established from Spokane. Shipments from both points move over the same rails for practically half the distance; operating conditions are much the same, and earnings under subsequently established rate compare favorably with earnings under rates between other points in the same general territory. Centennial Mill Co. v. Director General, as Agent, 77 I. C. C. 91.

ALL OTHER CITATIONS

Milwaukee-Waukesha Brewing Co. v. C., M. & St. P. Ry. Co., 13 I. C. C. 28, 30; National Petroleum Assn. v. L. & N. R. R. Co., 15 I. C. C. 473, 476; Iowa Soap Co. v. C., B. & Q. Ry. Co., 16 I. C. C. 444, 445, 446; Ouerbacker Coffee Co. v. Southern Ry. Co., 18 I. C. C. 566, 571; Rotsed Co. v. C. & N. W. R. R. Co., 18 I. C. C. 257, 258; Chatfield Mfg. Co. v. L. & N. R. R. Co., 18 I. C. C. 385, 387; McCaull-Dinsmore v. C. M. & St. Paul Ry. Company, 20 I. C. C. 15; Oak Grove Farm Creamery v. Adams Express Co., 19 I. C. C. 454, 455; Barrett Mfg. Co. v. C., M. & St. P. R. R. Co., 20 I. C. C. 79; Iowa Paint Mfg. Co. v. M. & St. L. R. R. Co., 21 I. C. C. 477; McClung & Co. v. S. Ry. Co., 22 I. C. C. 582; Marion Iron & Brass Bed Co. v. T., St. L. & W. R. R. Co., 22 I. C. C. 272; Rena Wholesale Liquor Store v. S. P. Co., 23 I. C. C. 516; Brass Works v. G. R. I. Ry. Co., Unrep. Op. A-36; In Re Suspension of Western Classification No. 51, 25 I. C. C. 442, 445, 471, 504, 574, Cahill Iron Works v. N. Y. C. & St. L. Ry., 25 I. C. C. 252; Marshall Oil Co. v. C. & N. W. Ry. Co., 26 I. C. C. 575, 576, 577; West Point Mfg. Co. v. Chattahoochee Valley Ry. Co., 26 I. C. C. 79; New England Electric Co. v. C., R. I. & P. Ry. Co., 28 I. C. C. 418; Minneapolis Cereal Co. v. C. & N. W. Ry. Co., 28 I. C. C. 415, 417; Rates on Gasoline Engines and Windmills, 29 I. C. C. 643; German Kall Works, Inc., v. A., T. & S. F. Ry. Co., 28 I. C. C. 223, 229; Minneapolis Cereal Co. v. C. & N. W. Ry. Co., 28 I. C. C. 415; New England Electric Co. v. C., R. I. & P. Ry. Co., 28 I. C. C. 418; Geo. H. Lee Co. v. I. C. Ry. Co., 28 I. C. C. 515; Bryant Co. v. Ft. W. & D. C. Ry. Co., 28 I. C. 594, 598; Jelks v. C. L. R. R. Co., Unrep. Op. A-240; Huron Milling Co. v. P. M. R. R. Co., Unrep. Op. A-396; Pacific Coast Gypsum Co. v. O.-W. R. & N. Co., 30 I. C. C. 135; Rock Springs Distilling Co. v. I. C. R. R. Co., 29 I. C. C. 18, 27; Lumber Rates, S. Ry. to Eastern Points, 31 I. C. C. 244, 252; Card Lumber Co. v. C., N. O. & T. P. Ry. Co., Unrep Op. A-591; Adleta v. M., K. & T. Ry. Co., Unrep. Op. A-734; Rates on Cement, Lime, Salt,

Etc., 32 I. C. C. 532, 535; Lee Co. v. C., B. & Q. R. R. Co., Unrep. Op. A-775; Wallis v. T. & N. O. R. R. Co., Unrep. Op. A-852; Mixed Car Dealers Asso. v. D., L. & W. R. R. Co., 33 I. C. C. 133, 139; Lindsay & Co. v. N. P. Ry. Co., 33 I. C. C. 150, 156; Ochsenreiter v. A., T. & S. F. Ry. Co., 33 I. C. C. 518, 520; Mixed Carloads of Lime, Cement and Plaster, 34 I. C. C. 124, 127; Furniture Mfrs. Asso. of Grand Rapids v. A. A. R. R. Co., 34 I. C. C. 262, 265; Louden Machinery Co. v. A., T. & S. F. Ry. Co., 34 I. C. C. 383; Western Trunk Line Rules, 34 I. C. C. 554, 561, 567, 569, 570, 578, 579; Pugh Mfg. Co. v. C., R. I. & P. Ry. Co., Unrep. Op. 1940; Rosenbaum & Son v. C. B. & Q. R. R. Co., Unrep. Op. 1946; Sodeman Heat & Power Co. v. I. C. R. R. Co., Unrep. Op. 1971; Lee Co. v. C., R. I. & P. Ry. Co., Unrep. Op. 1988; National Lock Co. v. C., M. & G. Ry. Co., Unrep. Op. 2007; Western Clock Co. v. C., B. & Q. R. R. Co., Unrep. Op. 2068; Stopping of Cars in Transit to Complete Loading, 36 I. C. C. 130, 134; Lindsay & Company v. N. P. Ry., 38 I. C. C. 187; Osceola Mill & Elevator Co. v. M., St. P. & S. Ste. M. Ry., 38 I. C. C. 335; 1915 Western Rate Advance Case, 37 I. C. C. 114, 125; Drake Marble & Tile Co. v. N. P. Ry. Co., 37 I. C. C. 512, 515, 517, 520; Pioneer Lumber Co. v. N. P. Ry. Co., 38 I. C. C. 399, 400; Millar v. E. K. Ry. Co., 38 I. C. C. 573, 575; Heinz Co. v. P. M. R. R., 39 I. C. C. 622; Drake Marble & Tile Co. v. C. G. W. R. R., 39 I. C. C. 422, 424; Cruden-Martin Mfg. Co. v. M. P. Ry., 39 I. C. C. 631; New England Milk Case, 40 I. C. C. 699, 737; Centennial School Supply Co. v. U. P. R. R., 41 I. C. C. 467; Railroad Commission of Louisiana v. A. H. T. Ry. Co., 41 I. C. C. 83, 116; Transcontinental Freight Co. v. C., B. & Q. R. R., 41 I. C. C. 442; Goodin, Reid & Co. v. C., N. O. & T. P. Ry. Co., 41 I. C. C. 679; Sanger Bros. v. H. & T. C. R. R., 41 I. C. C. 732; Crowe & Co. v. G. N. Ry., 41 I. C. C. 742; Rundle Mfg. Co. v. C. & N. W. Ry., 41 I. C. C. 749; Rundle Mfg. Co. v. M. & St. P. Ry., 42 I. C. C. 726; Randolph Fruit Co. v. S. P. Co., 45 I. C. C. 65; Molasses from Texas and Louisiana, 43 I. C. C. No. 2, 85, 89; Fruit and Vegetables, 43 I. C. C. 291, 316; Western Trunk Line Rate Increases, 43 I. C. C. 481, 499; Rates on Dairy Products, 43 I. C. C. 700, 715; Hamilton v. Pennsylvania R. R. 45 I. C. C. 191; Portland Traffic & T. Asso. v. C., R. I. & P. Ry., 46 I. C. C. 333; Daugherty McKey & Co. v. A. C. L. R. R., 45 I. C. C. 635; McKay & Morgan v. L. & N. R. R., 45 I. C. C. 146, 148; Milk and Cream Rates to Philadelphia, Pa., 45 I. C. C. 371, 389; State of Iowa v. Wabash Ry., 46 I. C. C. 703, 711; Fischer Lime & Cement Co. v. S. Ry., 46 I. C. C. 473, 474; State of Iowa v. Wabash Ry., 46 I. C. C. 703, 710, 711; Dewey v. C., M. & St. Paul Ry., 47 I. C. C. 32; Swift & Co. v. U. P. R. R., 47 I. C. C. 49; Blatchford Calf Meal Factory v. E., J. & E. Ry., 47 I. C. C. 10; Swift & Co. v. U. P. R. R., 47 I. C. C. 49, 51; Western Trunk Lines Iron and Steel, 47 I. C. C. 109, 128, 129; El Paso Iron & Metal Co. v. G., H. & S. A. Ry., 48 I. C. C. 427; Otis Elevator Co. v. N Y. C. R. R., 48 I. C. C. 487; Hubinger Bros. Co. v. C., B. & Q. R. R., 49 I. C. C. 23; Morava Construction Co. v. A., T. & S. F. Ry., 49 I. C. C. 534; National Confectioners' Asso. v. A. & R. R. R., 49 I. C. C. 566, 578; Zelnicker Supply Co. v. Missouri Pacific Ry. Co., 49 I. C. C. 365, 366; National Assn. of Waste M. D. v. N. Y. C. R. R., 49 I. C. C. 383; Parkersburg Rig & Reel Company v. A., T. & S. F. Ry., 50 I. C. C. 416; Seller & Co. v. S. P. & S. Ry., 50 I. C. C. 419; Murphy Chair Co. v. W. Ry., 50 I. C. C. 728; Moreno-Burkham Construction Co. v. I. C. R. R., 51 I. C. C. 138; Independent Cooperative Lumber Co. v. L. W. R. R., 51 I. C. C. 557; Philip Carey Co. v. Ala. Great Sou. E. R. R., 52 I. C. C. 484; Fort Worth Freight Bureau v. C., R. I. & G. Ry. Co., 53 I. C. C. 545, 547; Hagenburg v. Belt Ry. Co. of Chicago, 53 I. C. C. 717, 725; Fort Worth Freight Bureau v. C., R. I. & P. Ry., 53 I. C. C. 545; Consolidated Classification Case, 54 I. C. C. 1, 16, 19, 28, 29, 38, 39, 40, 55, 56; A. D. Radzinsky v. C., B. & Q. Ry., 55 I. C. C. 199, 203; Sulzberger & Sons Co. v. C., R. I. & P. Ry., 55 I. C. C. 691; Gamble-Robinson Co. v. N. P., 55 I. C. C. 749; General Fire Extinguisher Co. v. D. G. Ry., 56 I. C. C. 727; Buick Motor Company v. Director General, 57 I. C. C. 131; Rath Packing Company v. Director General, 57 I. C. C. 170; Galveston Commercial Association v. Director General, 57 I. C. C. 390; W. S. Dickey Clay Mfg. Co. v. Director General, 57 I. C. C. 459, 460; Atlas Leather Manufacturing Co. v. P., C., C. & St. L. R. R., 55 I. C. C. 394; Dahlstrom Metallic Door Co. v. E. R. R., 55 I. C. C. 402, 410, 411, 415; Portland Traffic & Transportation

Asso. v. B. & M. R. R., 55 I. C. C. 733, 740; Gamble Robinson Co. v. N. P. Ry., 55 I. C. C. 749; Rath Packing Co. v. I. C. R. R., 56 I. C. C. 303; Crown Willamette Paper Co. v. W. T. & T. Co., 56 I. C. C. 415; Perishable Freight Investigation, 56 I. C. C. 449, 569, 570; De Laval Separator Co. v. A. & R. R. R. Co., 57 I. C. C. 668, 676; Transcontinental Freight Co. v. Director General, 58 I. C. C. 187, 424; Parkersburg Rig & Reel Co. v. Director General, 59 I. C. C. 563; Ginger Ale from Shreveport, Etc., 59 I. C. C. 566; Georgia Show Case Co. v. Director General, as Agent, 59 I. C. C. 543; Rudy-Patrick Seed Co. v. St. L., S. F., 60 I. C. C. 411; Lithopone and Zinc Oxide Between Western Points, 61 I. C. C. 208; Anthony v. Director General, as Agent, 61 I. C. C. 366; Phoenix Chamber of Commerce v. Director General, as Agent, 62 I. C. C. 368; National Wholesale Grocers' Asso. v. Director General, 62 I. C. C. 375, 403; Monroe Shingle Co. v. Director General, as Agent, 62 I. C. C. 714, 719; Farley & Loetscher Mfg. Co. v. Director General, as Agent, 62 I. C. C. 721, 724; Minimum Weight on Live Stock in Mixed Carloads, 64 I. C. C. 456; Parkersburg Rig & Reel Co. v. Director General, 64 I. C. C. 568; Swift & Co. v. C., B. & Q. R. R., 66 I. C. C. 33; Loewenthal Co. v. C. & N. W. Ry., 68 I. C. C. 113, 115; Automatic Sprinkler Co. v. Director General, 69 I. C. C. 247; Chevrolet Motor Co. of Texas v. Director General, as Agent, 68 I. C. C. 325; North Packing & Provision Co. v. C. M. & St. P. Ry. Co., 69 I. C. C. 235, 240; Friend & Co. v. Director General, as Agent, 69 I. C. C. 256; Oklahoma Nat'l L. S. Exchange v. Director General, as Agent, 69 I. C. C. 660; Rockwood Sprinkler Co. v. Director General, 73 I. C. C. 277; Certain-Teed Products Corp. v. A., T. & S. F. Ry. Co., 73 I. C. C. 98; Chevrolet Motor Co. of California v. Director General, 78 I. C. C. 270; General Fire Extinguisher Co. v. A. D. S. R. R., 78 I. C. C. 718; Bradford Rig & Reel Co. v. Director General, 80 I. C. C. 335; Parkersburg Rig & Reel Co. v. P. & R. Ry. Co., 77 I. C. C. 311; Channel Chemical Co. v. A., T. & S. F. R. Co., 81 I. C. C. 407; Wolverine Brass Works v. G. R. & I. Ry. Co. Unrep. Op. A. 36; Mixed Shipments of Lumber, Sash and Doors, 78 I. C. C. 103; Anson, Gilkey & Hurd Co. v. S. P. Co., 78 I. C. C. 495, 513, 522; Armour & Co. v. C., B. & Q. R. R. Co., 80 I. C. C. 49; Wilson & Co. v. Director General, as Agent, 81 I. C. C. 79; National Live Stock Exchange v. A., T. & S. F. Ry. Co., 81 I. C. C. 305; Furniture to Colorado Common Points, 83 I. C. C., 293; Cohen v. A. T. & S. F. Ry., 88 I. C. C. 143.

§7½. New Cars.

See Cars and Car Supply §32.

IMPORTANT CASES SINCE 1908

(a) Cars moving on own wheels under load were delivered to carriers as articles rather than as instruments of commerce and were received subject to restrictions unlike those governing the use of privately owned or foreign-line equipment. Defendants were not lessees but common carriers of the cars, and relations of the parties were those of shipper and carrier. Pacific Engineering & Construction Co. v. C., R. I. & P. Ry., 56 I. C. C. 247, 249.

(b) Carriers within their rights in declining as provided by their tariffs, to treat new cars moving on own wheels under load as instruments of commerce and at the same time assume common-carrier duties and liabilities with respect to them. Pacific Engineering & Construction Co. v. C., R. I. & P. Ry. Co., 56 I. C. C. 247, 249.

(c) A common carrier service was performed when cars moving on own wheels under load were offered for transportation, and compensation derived from their contents had no tariff relation to the transportation of the cars. Pacific Engineering & Construction Co. v. C., R. I. & P. Ry., 56 I. C. C. 247, 249.

ALL OTHER CITATIONS

McCloud River Ry. Co. v. S. P. Co., 56 I. C. C. 287, 290, 291; Acme Cement Plaster Co. v. Director General, 59 I. C. C. 508.

§8. Possibility of Misbilling.

See Crimes IV.

IMPORTANT CASES SINCE 1908

(a) The possibility or probability of misrepresentation of article is one of the numerous considerations of primary importance in classification. Forest City Freight Bureau v. A. A. R. R. Co., 18 I. C. C. 205, 206.

ALL OTHER CITATIONS

In Re Suspension of Western Classification No. 51, 25 I. C. C. 442, 476.

§8a. Investment Relying on Classification.

CASES 1887-1908

(a) An assurance made by a carrier that if one will locate in business on the line of its road his property shall be taken for transportation as belonging to a specified class can not bind the carrier so as to compel a classification accordingly. A right to special rates can not be made out in this way; the classification must have the same construction in favor of all persons; the law requires uniformity and impartiality in the dealings of a carrier with all persons. Hurlburt v. L. S. & M. S. R. R., 2 I. C. C. 81, 83.

(b) Where an existing classification and rate are not shown to operate injuriously to the carriers from a given point or to give undue advantage to shippers, a change is not justifiable that materially injures an important industry and a class of shippers at that point who have there built up the industry in reliance upon a continuation of the previous classification and rate first established and long maintained by the carriers themselves without complaint from any quarter. Such change in classification and rate would subject the persons engaged in the industry and the locality and the particular traffic to unreasonable disadvantage within the prohibition of section 3 of the Act to Regulate Commerce. Bates v. Pennsylvania R. Co., 2 I. C. R. 715, 718.

(c) Carriers are not at liberty to classify property as a basis of transportation rates and impose charges for its carriage with exclusive regard to their own interests, but they must respect the interests of those who may have occasion to employ their services, and conform their charges to the rules of relative equality and justice which the act prescribes. Thurber v. New York Central & Hudson River R. Co., 2 I. C. R. 742.

§9. Risk.

See Evidence §52.

CASES 1887-1908

(a) Cotton waste entitled to transportation at less rates than cotton goods, being less in value and involving less risk and expense in transportation. Riverside Mills v. Southern Railway Co., 12 I. C. C. 388.

IMPORTANT CASES SINCE 1908

(b) Liability to waste or injury in transit must be considered in framing classifications and rates. Ford Co. v. M. C. R. R. Co., 19 I. C. C. 507, 509.

(c) It is the duty of carriers to protect other freight from commodities which are likely to damage it. Western Classification Case, 25 I. C. C. 442, 444.

(d) It is unsound to say that, except for increased risk, rates upon cheap and valuable commodities should be the same. Union Tanning Co. v. S. Ry. Co., 26 I. C. C. 159, 163.

(e) Risk is one of the elements entering into the present day rate fabric, and innumerable classifications and tariffs contain packing and shipping requirements which can have no other justification than the right of the carrier to require the use of substantial and suitable containers and the elimination of hazard by the secure staying of unpacked articles. Carriers must furnish suitable cars and receive and transport goods tendered to them in safe shipping condition, but are not required to prepare shipments for transportation. Standard box, stock, ventilated, and refrigerator cars will accommodate all of the ordinary and usual needs of shippers, and if more than this is demanded because of the form, nature, or peculiar characteristics of goods tendered for conveyance, some obligation must attach to the shipper in connection with the additional demand. Dunnage Allowances, 30 I. C. C. 538, 542.

(f) The susceptibility of an article to damage in transit is an important factor which enters into its classification rating. Indian Packing Corp. v. Director General, as Agent, 64 I. C. C. 205, 208.

ALL OTHER CITATIONS

Blumenstein v. P. & R. Ry. Co., 21 I. C. C. 90, 92; Green Bay Soap Co. v. C. M. & St. P. Ry. Co., 14 I. C. C. 609, 610; In Re Suspension of Western Classification No. 51, 25 I. C. C. 442, 605; Silk Assn. of America v. Penn. R. R., 44 I. C. C. 578, 580; Closset & Devers v. N. P. Ry., 45 I. C. C. 99, 100; In the Matter of Rates on and Classification of Lumber and Lumber Products, 52 I. C. C. 598, 616; National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co., 68 I. C. C. 213, 220; Nat'l Asso. Waste Material Dealers v. A. A. R. R. Co., 68 I. C. C. 748, 751; Magnesite Stucco in Western Trunk Line Territory, 74 I. C. C. 567, 569.

§9¼. Double Lading.

IMPORTANT CASES SINCE 1908

(a) Two shipments were loaded in the

same car and consigned to different destinations under separate bills of lading. Combination rate in effect lower than that collected. It was held that, since its tariff contained no prohibition against double-loading or that where cars are so loaded one of the destinations must be directly intermediate to the other, shipments found overcharged. Reparation awarded. Acme Cement Plaster Co. v. Director General, as Agent, 59 I. C. C. 508; Riprap between Texas and Louisiana, 68 I. C. C. 475.

§9½. Split Classes.

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(a) The continued use of the intermediate or split class of Rule 25 and Rule 26 in the official classification constitutes one of the principal difficulties in reaching uniform ratings on the higher classes of freight. Rule 25 is 15 per cent less than second class, subject to third class as a minimum. Rule 26 is 20 per cent less than third class, subject to fourth class as a minimum. These classes were formerly used to a rather limited extent, but additional articles have been assigned to them from time to time, until in the consolidated classification they are numbered by hundreds. Consolidated Classification Case, 54 I. C. C. 1, 11.

§10. Use, Ownership, or Special feature of Commodity.

See Reasonableness of Rates §22; §23; Restricted Rates.

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(a) Complainant alleged unjust discrimination in favor of the Standard Oil Company and against complainant, in the transportation of petroleum oil. HELD: When, for a special traffic, the transportation of petroleum oils, a carrier provides rolling stock for one method, but does not provide it for another for which it publishes rates, but the shippers are expected to provide the same, the terms on which such rolling stock is to be provided should be uniform and be published with the rate sheets and cannot lawfully be left to be the subject of bargain and of different terms in the case of different shippers. It is properly the business of a carrier by railroad to supply the rolling stock for the freights he offers or proposes to carry, and if the diversities and peculiarities of traffic are such that this is not always practicable, and consignors are allowed to supply it for themselves, the carrier must not allow its deficiencies in this particular to be made the means of putting at unreasonable disadvantage those who make use in the same traffic of the facilities it supplies. When two methods for the transportation of an article of merchandise are nominally offered by the carrier, for only one of which it offers rolling stock, and for the other of which the shipper must supply his own rolling stock at considerable expense, it can not be said that the resort to the latter by the shipper is so far a matter of choice that he has no concern with the charges for transportation in the other mode. The man of small means being compelled to make this choice, by reason of the carrier's failure to supply rolling stock for the other mode, has a right to insist that the charges for transportation in the two modes shall be relatively just and equal. When oil is transported in tanks permanently affixed to car bodies, the tank is to be considered as part of the car, and for oil transported therein the charge for transportation should be the same by the hundred pounds that the carrier charges for transportation between the same points, of barrels filled with like oil and taken in carload lots. The carrier is guilty of unjust discrimination if the shipper in barrels is charged a higher rate. Neither the fact that the shipper in the one case supplies the rolling stock, nor the alleged fact—which is not found sustained—that for the tanks there is a greater probability of return loads, nor the further alleged fact that with barrel shipments there are greater risks to the carrier's property and that which it carries, can justify imposing upon the barrel shipments the greater burden. Under this rule the carrier will be at liberty, and will be expected to make to the owner of tank cars a reasonable allowance for their use. Rice v. L. & N. R. R. Co., 1 I. C. C. 723.

(b) When oil is transported in tanks permanently affixed to car bodies, the tank is to be considered as part of the car, and for oil transported therein the charge for transportation should be the same by the hundred pounds that the carrier charges for transportation between the same points, of barrels filled with like oil and taken in carload lots. Rice v. L. & N. R. R. Co., 1 I. C. C. 723, 742.

(c) Common carriers have no right, by issuing a prohibitory tariff or otherwise, to withdraw from the transporta-

tion of any articles not dangerous to handle and which are ordinarily the subject of transportation by them; less desirable traffic must be accepted upon reasonable terms, as well as that which is more desirable. Riddle Dean & Co. v. N. Y., L. E. & W. R. R., 1 I. C. C. 787, 791.

(d) A manufacturer's description of an article to induce its purchase by the public also describes it for transportation, and carriers may accept his description for purposes of classification and rates. Carriers are not required to analyze freight to ascertain whether it is in fact inferior to the description or public representations under which it is sold, in order to give it a lower rate corresponding to its actual value. Andrews Soap Co. v. Pittsburgh, Cinn. & St. L. R. Co., 3 I. C. R. 77.

(e) Upon complaint by a manufacturer of soap, advertised and sold as toilet soap, charging unjust discrimination by classifying his product in the second class with other toilet soaps and not in the fourth class with laundry soaps, as he claims it should be classed for the reason that his toilet soap is not substantially superior to soap put on the market by certain other manufacturers as laundry soap, which, under that description, is transported at a lower rate. HELD: That the manufacturer's description of his product for commercial purposes as an article of superior grade and value warrants its classification accordingly, and carriers are not required to classify and transport it as a laundry soap. Andrews Soap Co. v. Pittsburgh, Cinn. & St. L. R. Co., 3 I. C. R. 77.

(f) The mere fact that one article is of more general use and therefore shipped in greater quantities than another, when each as a rule is shipped in less carload quantities, and of no considerable difference in bulk, weight and value, and of no appreciable difference in expense of handling and of haul, constitutes in itself no reason why the first should receive a lower rate than the last. In such a case mere quantity, not measured by any recognized unit of quantity adapted to carriage, and lessening the expense of handling and carriage, cannot be allowed to affect rates in the transportation of property. Harvard Company v. Pennsylvania Company, 3 I. C. C. 257, 262.

(g) Where two kinds of soap are made use of for the same purposes, and are advertised and held out to the world as suited for like purposes, and are substantially equal in value, they should both for purposes of transportation and rating be placed in the same classification. The soaps known as the Ivory Soap and Grand Pa's Wonder Soap fall within this rule. Both are represented as suitable for laundry and also for toilet purposes, and both are used for those purposes. HELD: It would be unjust discrimination to place one of them in a classification as toilet soap and the other in a much lower classification as laundry soap. Beaver & Company v. P., C. & St. L. R. Co., 3 I. C. C. 564.

(h) Unless within the authorized exceptions to the general rule of the statute, discriminations in charges upon like shipments of the same commodities, based solely upon the purpose or "business motive" of the shipper, are unlawful, whether effected directly or indirectly by methods of classification. Duncan v. Atchison, T. & S. F. R. Co. (Com.), 4 I. C. R. 385.

(i) Two westbound carload rates from Mississippi River points to Pacific Coast terminals on goods termed "Emigrants" Movables" (including "household goods")—one a general class rate, and the other designated a "commodity rate" and less than the general rate, being published as open to "intending settlers only," but in practice given to shippers indiscriminately, and not apparently unreasonable in itself—are improper, as their retention can only serve to mislead the public and afford opportunity for the practice of favoritism and unjust discrimination as between shippers, and the rate should not be in excess of the amount of said commodity rate. Duncan v. Atchison, T. & S. F. R. Co. (Com.), 4 I. C. R. 385.

(jk) Under the Western Classification and tariff there are two westbound carload rates from Mississippi River points to Pacific Coast terminals on goods termed "Emigrant's Movables" (including "household goods"), one a general class rate and the other designated a "commodity" rate and less than the general rate; the latter rate is published as being open to "intending settlers only," but in practice it is given to shippers indiscriminately, and does not appear to be unreasonable in itself. HELD: (1) That there is neither propriety in, nor

necessity for, retaining in the classification and tariff either the two rates, or the statement in connection with the commodity rate that it is open to "intending settlers only," as their retention can only serve to mislead the public and afford opportunity for the practice of favoritism and unjust discrimination as between shippers; (2) That the westbound rate on "Emigrants' Movables" (including "household goods") from Louisville to Los Angeles should not be in excess of the amount of said commodity rate thereon. Duncan v. Atchison, T. & S. F. R. Co., 4 I. C. R 385.

(l) Under the Western Classification and tariff there are two westbound carload rates from Mississippi River points to Pacific Coast terminals on goods termed "Emigrants' Movables" (including "household goods"), one a general class rate and the other designated a "commodity rate and less than the general rate; the latter rate is published as being open to "intending settlers only," but in practice it is given to shippers indiscriminately, and does not appear to be unreasonable in itself. HELD: (1) That there is neither propriety in, nor necessity for, retaining in the classification and tariff either the two rates, or the statement in connection with the commodity rate that it is open to "intending settlers only," as their intention can only serve to mislead the public and afford opportunity for the practice of favoritism and unjust discrimination as between shippers; (2) That the westbound rate on Emigrants' Movables" (including "household goods") from Louisville to Los Angeles should not be in excess of the amount of said commodity rate thereon. Blanton Duncan v. A., T. & S. F. R. R. Co. et al., 6 I. C. C. 85.

(m) Two westbound carload rates from Mississippi River points to Pacific Coast terminals on goods termed "Emigrants' Movables" (including "household goods")—one a general class rate, and the other designated a "commodity rate and less than the general rate, being published as open to "intending settlers only," but in practice given to shippers indiscriminately, and not apparently unreasonable in itself—are improper, as their retention can only serve to mislead the public and afford opportunity for the practice of favoritism and unjust discrimination as between shippers, and the rate should not be in excess of the amount of said commodity rate. Duncan v. Atchison, T. & S. F. R. Co., 6 I. C. C. 85.

(n) Unless within the authorized exceptions to the general rule of the statute, discriminations in charges upon like shipments of the same commodities based solely upon the purpose or business motive" of the shipper are unlawful, whether effected directly or indirectly by methods of classification. Blanton Duncan v. A., T. & S. F. R. R. Co. et al., 6 I. C. C. 85.

(o) The rule of equality as to rates is violated by lower rates for cargo or trainload quantities than for carload shipments, whether for export or for domestic use, although all cargo shippers pay the same rate and all carload shippers are charged alike. Paine v. Lehigh Valley R. Co., 7 I. C. C. 218.

(p) Defendant classifies its Rich Hill coal as soft or lump coal and "mine run, nut, mill and slack," the former being used for domestic consumption and the latter for steam purposes. The two kinds of coal are entirely distinct in their use, and the latter does not compete with the product of complainant's mine, which is all lump coal. HELD: That defendant may properly make this distinction in classification and apply a lower rate to steam coal, and that complainant is not damaged by defendant's failure to publish a rate upon mine run, nut, mill and slack from Myrick, since the Myrick mine produces nothing which could be shipped under that name. McGrew v. Missouri Pac. Ry. Co., 8 I. C. C. 630.

(q) A carrier may properly classify coal according to use for domestic consumption or steam purposes, and apply a lower rate to steam coal. McGrew v. Missouri P. R. Co., 8 I. C. C. 630.

(r) The rule in defendant's classification covering the application of carload lots should be so modified as to accord the same rating to consignor and consignee when the condition of ownership after the property is delivered to the carrier is the same; though no opinion is expressed as to whether a carrier may distinguish between a forwarding agent and an actual owner of the goods. Buckeye Buggy Co. v. Cleveland, C., C. & St. L. R. Co., 9 I. C. C. 620.

(s) Where the goods are loaded at one time and place with but a single bill of lading, and the shipment is by one

consignor to one consignee, and by the terms of sale become the property of the consignee upon delivery to the carrier, the latter has no right to inquire whether the consignee obtained his title from one or several owners, and if it accords the carload rate in case the consignor is the owner, failure on its part to extend the same privilege when the consignee is the owner violates sections 1, 2 and 3 of the Act to Regulate Commerce. Buckeye Buggy Co. v. Cleveland, C., C. & St. L. R. Co., 9 I. C. C. 620.

(t) In fixing carload rates, the same rating should be given to consignor and consignee when the condition of ownership after the property is delivered to the carrier is the same; though no opinion is expressed as to whether a carrier may distinguish between a forwarding agent and the actual owner of the goods. Buckeye Buggy Co. v. Cleveland, C., C. & St. L. R. Co., 9 I. C. C. 620; C. S. Bell Co. v. Baltimore & O. S. R. Co., 9 I. C. C. 632.

(u) Before allowing a carload rating for a carload shipment, a carrier is allowed to require that goods be loaded at one time and place, that but a single bill of lading shall be allowed, and that the shipment shall be by one consignor to one consignee. Buckeye Buggy Co. v. Cleveland, C., C. & St. L. R. Co., 9 I. C. C. 620; C. S. Bell Co. v. Baltimore & O. S. R. Co., 9 I. C. C. 932.

(v) Making certain charges for the transportation of coal shipped in carloads when the coal is loaded by tipple, and exacting a higher charge when it is loaded in some other way, and, for that reason, is not justified by difference in cost to the carrier between different methods of loading, or by other facts appearing in this case, and renders the higher rates thus made unreasonable and unduly discriminatory, first, as against complainants, and, second, as against all other shippers of coal except those who load by tipple, and constitutes a violation of sections 1 and 3 of the Act to Regulate Commerce. Glade Coal Co. v. Baltimore & O. R. Co., 10 I. C. C. 226.

(wx) Cowpeas, like clover and other grasses, are sown and then turned over by the plow for the purpose of soil improvement, but this is not a reason why cowpeas should, in the adjustment of freight rates, be classed as a fertilizer, which is applied directly to the soil, and cowpeas are further distinguished from fertilizer in that fertilizer furnishes the carrier much greater tonnage, cowpeas have much greater value, and the vine, as well as the pea itself, is used as a food product. Swaffield v. Atlantic Coast Line R. Co., 10 I. C. C. 281.

(y) The right of complainant to ship coal was not barred by the fact that he is a druggist by occupation, or that he loaded coal cars from wagons, for a large part of the commerce of the country is handled in that way; and when he tendered freight for transportation he was entitled to the same facilities furnished to other shippers under like conditions. Thompson v. Pennsylvania R. Co., 10 I. C. C. 640.

(z) Defendants' joint rate of 90 cents per ton on bituminous coal from Norwood, N. Y., to Montpelier, Vt., when intended for "railway supply" and their combination rate of $1.85 per ton, applied on such coal carried between the same points and used for manufacturing or any other industrial or domestic use, constitutes unlawful discrimination. Capital City Gas Co. v. Central V. R. Co. et al., 11 I. C. C. 104.

(aa) Complainant attacked classification rating on a second hand dynamo as unreasonable from Marietta, Ga., to Cleveland, O. Shipment was billed as scrap iron, but rated at destination as an electric dynamo. Rate on dynamos, $1.33; on scrap iron, 65c. The shipment in question was in fact a dynamo which had burnt out and was in fact worthless as a dynamo and it was the intention of the complainant upon receiving it at Cleveland to separate the brass and copper from the iron and sell the same for junk. Whether the rate on a second hand dynamo shipped from the electric light station to the repair shop should be lower than is charged upon either a new or second hand dynamo sent to the station for use, is a queston of policy for the railways, and this Commission can not say that it is unjust or unreasonable to exact the same charge for the new and the second hand dynamo. Old dynamos, which have become merely combinations of copper, brass and iron scrap and valuable only as junk should, under suitable regulations fixed by the carrier, be given the rating for junk, basing the same on the highest class metal used in the construction, complaint dismissed. National Machinery & Wrecking Co. v. P., C., C. & St. L. Ry., 11 I. C. C. 581.

(bb) Complainant attacked the present difference in defendant's rates on fire, building and paving brick from Empire, Strasburg and other points in Ohio, to New York City and other eastern destinations, but no attack was made upon the reasonableness of the rates on either kind of brick, except as involved in the claim that any difference in the rates for the different kinds is unlawful. HELD: No such distinction between these three classes of brick, which are made of the same material, come out of the same kiln, are nearly alike in color, and are of the same size and weight, exists as justifies a difference in rates. To hold otherwise would be to promote false billing by the shippers and to require carriers to make a practically impossible examination into the use to which each shipment of these brick was put, complaint dismissed. Stowe Fuller Co. v. Pennsylvania Company, 12 I. C. C. 216.

(cc) Classification must be based upon a real distinction from a transportation standpoint. Aside from the difficulty in learning what use the brick were to be put to upon reaching their destination, the Commission cannot regard a classification as scientific, or a difference in rates as well based, which is altogether founded upon a distinction that has no transportation significance. Such a differentiation, if permitted and extended throughout the various classes of freight, would lead to an almost endless multiplication of rates, which could find no excuse save the use which might be made of the article transported. Stowe-Fuller Company v. Pennsylvania Co. et al., 12 I. C. C. 216, 226.

(dd) Complaint in this case was directed solely against present difference in defendants' rates on fire, building and paving brick from Empire, Strasburg and other points in Ohio to New York City and other easternr destinations, but no attack was made upon the reasonableness of the rates on either kind of brick except as involved in the claim that any difference in the rates for the different kinds is unlawful. HELD: Upon the facts and circumstances of the case, that no such distinction between these three classes of brick, which are made of the same material come out of the same kiln, are nearly alike in color, and are of the same size and weight, exists as justifies a difference in rates. To hold otherwise would be to promote false billing by the shippers and to require carriers to make a practically impossible examination into the use to which each shipment of these brick was put. Stowe-Fuller Company v. Penn. Co. et al., 12 I. C. C. 216.

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(ee) A carrier has no right to attempt to dictate the uses to which commodities transported by it shall be put. Its duty is to transport them at its tariff rates and on equal conditions for all. Tariffs naming different rates on nitrate of soda when destined for the manufacture of fertilizer and of powder are unlawful. Fort Smith Traffic Bureau v. St. L. & S. F. R. R. Co., 13 I. C. C. 651, 655.

(ff) The Commission will refuse to sanction a classification resting upon the use to which a commodity is put. Metropolitan Paving Brick Co. v. A. A. R. R. Co., 17 I. C. C. 197, 204.

(gg) A carrier has no right to dictate the use to which a commodity shall be put. American Creosote Works v. I. C. R. R. Co., 18 I. C. C. 212, 215.

(hh) A classification rests upon an improper basis, which makes the rate dependent upon the use to which the article shipped is to be devoted. Jones Bros. Co. v. M. & W. R. R. R. Co., 21 I. C. C. 577, 579.

(ii) The Commission has condemned the maintenance of dual rates on a commodity dependent upon the use to which the article is put. Arkansas Fertilizer Co. v. St. L., I. M. & S. Ry. Co., 25 I. C. C. 645, 647.

(jj) Where the value of an article, such as advertising matter, depends upon the results of its use, a cheap product often producing as effective pecuniary results as the more costly, rates should not be based upon the quality or kind of paper used. Proprietary Asso. of America v. N. Y. C. & H. R. R. R., 26 I. C. C. 318.

(kk) A difference in the rate according to the use to which a commodity is put has been condemned by this Commission, and the Supreme Court of the United States. Paper Rates from Manitowoc and Milwaukee to Kaukauna, Wis., 28 I. C. C. 305, 307.

(ll) Under section 2, carriers may not maintain a rate differential based upon the use to which the commodity is to be

put. Douglas & Co. v. I. C. C. R. R. Co., 31 I. C. C. 587, 593.

(mm) Carriers may not make rates dependent upon the use to which the commodity is to be put. There is no more justification for a lower rate on coal used for fuel on boats than there would be on coal for use on railroads. Coal and Coke Rates in the Southeast, 35 I. C. C. 187, 190.

(nn) Of course the final use to which the article is put may determine whether it should be considered finished or unfinished. The Iron and Steel Cases, 36 I. C. C. 86, 107.

(oo) It is unlawful to attempt by tariff description to make rates dependent upon the use to which the commodity is put. Northwest Steel Co. v. Director General, 68 I. C. C. 195, 198.

(pp) Complainant attacked fifth class rating on scrap rubber, carloads, as unreasonable to extent it exceeded sixth class. Scrap rubber is consumed by industries in reclaiming its rubber content. The product, known commercially as reclaimed rubber or rubber shoddy, is sold in competition with crude rubber, both being adapted to the same uses. Reclaimed rubber is rated fifth class, the same as scrap rubber. Keeping in mind the fact that there is at present an overproduction and a consequent surplus of crude rubber, it may be presumed that there is little likelihood of an appreciable upward trend in the near future, although somewhat higher prices are probable as the present are said to be below the cost of production. The foregoing is important, due to its bearing upon scrap rubber, the sale of which is largely contingent upon the market of its product, reclaimed rubber. Of the scrap rubber shipper, about 72 per cent consists of pneumatic automobile tires, 10 per cent boots and shoes and 2.5 per cent inner tubes. Used tires under the classification take the fifth class rating, as well as those which are worn out. There is no limitation such as is imposed in connection with other scrap material ratings, that the commodity has value only for reclamation, remanufacture, or remelting. The record indicates, that not over 2 per cent of the old tires shipped are used for other than reclamation purposes. It is conceded by both parties that adjustment or other tires not worn out are not entitled to the same rate as old worn out tires having value for reclamation purposes only. Scrap rubber is desirable traffic from a transportation standpoint. No special equipment or expedited service is required, loss and damage claims are negligible, and the movement is appreciable and fairly constant. Reclaimed rubber, a more valuable commodity than scrap rubber, of which it is a product, is rated fifth class. Other scrap materials with which scrap rubber does not compare unfavorably, either in value or from a transportation standpoint, are rated sixth class. HELD, fifth class rating and rates governed by official classification rating on scrap rubber, including tires, carloads, having value only for reclamation of raw materials, unreasonable to extent they exceed sixth class rating and rates. National Association Waste Materials Dealers v. A. A. R. R. Co., 68 I. C. C. 748.

(qq) Carriers may not make rates dependent upon the use to which the commodity is to be put. Rates on bunker coal, 73 I. C. C. 62, 74.

(rr) As a practical matter bunker coal is so closely associated with cargo coal, and by reason of this association is so impressed with the character of the latter that a distinction in rates between the two is impracticable. Rates on Bunker Coal, 73 I. C. C. 62, 76.

(ss) Maintenance of rates on coal delivered at ports to vessels, whether as cargo or for bunker purposes, which are lower than the local rates from the same points of origin to intermediate points, found not to contravence the fourth section of the act. Rates on Bunker Coal, 73 I. C. C. 62, 77.

(tt) Neither the intention of tariff compilers nor the use to which an article is put is controlling in determining the rate applicable on a particular commodity. The commission has consistently condemned such methods of determining applicable rates. Morris & Co. v. Director General, as Agent, 73 I. C. C. 137.

(uu) It is the character of an article from a transportation standpoint, and not the use to which parties may contract that it shall be put, that determines the rate or rating applicable. Chase Companies v. Director General, 81 I. C. C. 207, 208.

(vv) But different rates may be assessed on different classes of lumber in exceptional instances based on differ-

ences of condition and value. S. P. Co. v. U. S., 197 Fed. 167, 171.

(ww) Proposed increased rates which would create undue prejudice and preference by providing for the application of rates upon commodities depending upon the process used in obtaining them rather than upon their nature, found not justified. Cottonseed-Hull Fiber or Shavings, 77 I. C. C. 727.

(xx) Where certain grades of a commodity made and sold for common grades are not mere by-products of the production of higher grades and otherwise fully conform to description and loading requirements of common grades, incidental final use by purchaser of a selected few thereof for better purposes should not be regarded as affecting their essential character for rate-making purposes, although exclusive or predominant use of grades for a given purpose is a circumstance to be considered, along with other facts, in determining proper description to be applied. National Paving Brick Mfrs. Asso. v. A. & Y. Ry. Co., 80 I. C. C. 179, 183.

(yy) The Commission refuses to sanction different rates on the same commodity based on the use to which the article is put. Mid-Continent Equipment & Machinery Co. v. M. & O. R. Co., 81 I. C. C. 510, 511.

(zz) Rails intended for use in mining operations moved at rate lower than that on "railway track." HELD: Rails were of weight often used on short-line railroads, and higher "Railway track" rate was applicable. The commission has repeatedly refused to sanction different rates on same commodity based on use to which article is put. Mid-Continent Equip. & Mach. Co. v. M. & O. R. R. Co. 81 I. C. C. 510.

(3a) It is the character of an article from a transportation standpoint, and not the use to which parties may contract that it shall be put, that determines the rate or rating applicable. Van Dyke Smelting & Refining Works v. Pennsylvania R. R., 88 I. C. C. 743, 744.

ALL OTHER CITATIONS

Merle Co. v. A. T. & S. F. Ry. Co., 17 I. C. C. 471, 472; Sligo Iron Store Co. v. A. T. & S. F. Ry. Co., 17 I. C. C. 139, 142; Chappelle v. L. & N. R. R. Co., 19 I. C. C. 56, 58; Memphis Freight Bureau v. St. L. & S. F. R. R. Co., 24 I. C. C. 602, 603; Hardie Mfg. Co. v. O. R. R. & N. Co., 24 I. C. C. 545, 546; St. Louis Blast Furnace Co. v. Ry. Co., 24 I. C. C. 360; In Re Suspension of Western Classification No. 51, 25 I. C. C. 442, 445, 499; Pacific Creamery Co. v. Southern Pacific Co., 26 I. C. C. 578, 580; Wisconsin Steel Co. v. P. & L. E. R. R. Co., 27 I. C. C. 152; Paper Rates, Manitowoc and Milwaukee to Kaukauna, Wis., 28 I. C. C. 305, 307; Minneapolis Cereal Co. v. C. & C. & N. W. Ry. Co., 28 I. C. C. 415; Sligo Iron Store Co. v. St. L. & S. F. R. R. Co., 28 I. C. C. 616, 617; Olson Rug Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A521; Nebraska State Ry., Commission v. C. V. Ry. Co., 32 I. C. C. 41; Dupuis v. F. E. C. Ry. Co., Unrep. Op. A739; Middletown Car Co. v. P. R. R. Co., 32 I. C. C. 185, 187; Standard Mirror Co. v. S. Ry. Co., Unrep. Op. A-788; Doran & Co. v. N., C. & St. L. Ry., 33 I. C. C. 523, 531; Rates on Railroad Fuel and Other Coal, 36 I. C. C. 1, 4; Official Classification Rates on Paper, 38 I. C. C. 120, 140; National Petroleum Assn. v. A. T. & S. F. Ry. Co., 37 I. C. C. 287, 293; Rickards v. S. A. L. Ry., 38 I. C. C. 218, 219, 220; Catoosa Limestone Products Co. v. W. & A. R. R. Co., 38 I. C. C. 614, 615; Bainbridge Oil Co. v. M. & B. R. R., 44 I. C. C. 660, 661; Chicago Bridge & Iron Co. v. E. R. R., 46 I. C. C. 641, 644; Schwartz v. St. L. & S. F. Ry., 51 I. C. C. 145; Natchez Chamber of Commerce v. L. & A. Ry. Co., 58 I. C. C. 610, 643; Moreland Motor Truck Co. v. Director General, 60 I. C. C. 179; Earl C. Anthony v. Director General, 61 I. C. C. 346, 366, 368; D. Nagase & Co. v. Director General, 62 I. C. C. 422, 424; Cottonseed-Hull Fiber or Shavings, 77 I. C. C. 727; McCrory Stores Corporation v. Director General, 55 I. C. C. 423, 424; Pure Oil Co. v. Director General, 56 I. C. C. 218, 222; Atlas Leather Mfg. Co. v. P. C. C. & St. L. R. R., 55 I. C. C. 394; Carnie Goudie Mfg. Co. v. A. T. & S. F. Ry. Co., 68 I. C. C. 40; National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co., 68 I. C. C. 213, 220, 221; Southern Cotton Oil Co. v. Director General, as Agent, 80 I. C. C. 627; Daisy Mfg. Co. v. A. & V. Ry. Co., 81 I. C. C. 44, 46; Chase Companies v. Director General, as Agent, 81 I. C. C. 207; Express Rates, 1922, 83 I. C. C. 606, 666.

§11. Value.

See Advanced Rates §18 (5); Evi-

dence §61; Reasonableness of Rates §38.

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(a) The Element of value in the commodity transported forms a proper consideration to be taken into account in the establishment of a rate, since the greater the value the greater the carriers liability as an insurer of freight. Howell v. N. Y. L. E. & W. R., 2 I. C. C. 162, 172.

(b) A discrimination between the rate on corn and its direct products from a given locality resulting from a reduction of the rate on corn below the rate on its direct products, which subjected persons in that locality engaged in the business of manufacturing corn into its direct products and of selling the same to unreasonable prejudice or disadvantage; and was without necessity or advantage to the carrier, or any reason founded on the character or condition of the traffic. HELD, to be in violation of section three of the Act ot Regulate Commerce, notwithstanding the new rate on corn was open to all persons equally and with equal service. Bates v. Pennsylvania R. Co., 2 I. C. R. 715.

(c) Patent medicines manufactured and shipped by the complainant are rated in the Official Classification as first class for less than carloads and third class for carloads. Ale, beer and mineral water are rated as third class in less than carloads and fifth class in carloads. The market value of the medicines is three times or more higher than that of the other articles named and the quantity transported much less. Upon complaint made that the patent medicines should be classified the same as ale, beer and mineral water. HELD, that in view of the much higher market value of the medicines and the smaller volume of traffic they supply a higher classification than for the other articles named, in which there is much greater competition among shippers, is not unreasonable, and the classification at present in force is not shown to be unjust. Warner v. New York Central & H. R. R. Co., 3 I. C. R. 74.

(d) Classing patent medicines higher than ale, beer, and mineral water for the purpose of fixing rates, is not unjust, where the market value of the medicines is at least three times as high as the other articles and the quantity transported is much less. Warner v. New York C. & H. R. R. Co. (Com.), 3 I. C. R. 74.

(e) The value of an article to a manufacturer is the price it commands, and it seems only reasonable that carriers should take into account the market value, a thing generally known and easily ascertained, as one of the considerations in arranging their classifications and fixing the rates that a commodity should bear. It is not seen how the relations that any specific commodity should bear to other commodities for classification purposes can be arrived at in any other practicable way. Warner v. N. Y. C. & H. R. Co., 3 I. C. C. 74, 77.

(f) The classification of petroleum oil and its products in carloads, adopted and generally applied by carriers, is the same, and the rates upon oil and its products should correspond with their classification and be alike. Rice v. Western N. Y. & P. R. Co. (Com.), 3 I. C. R. 162.

(g) The general rule in classifying articles for freight rates by carriers is that the manufactured article, when of considerably more value, takes a higher rate than the raw material of which it is made. Board of Trade of Chicago v. C. & A. R. R. Co., 3 I. C. C. 233, 243.

(h) The rate on unfinished cheap bedroom sets shipped knocked down from Lansing, Michigan, to Oakland, California, should not exceed 85 per cent of whatever rate may be adopted for such sets in a finished condition. Potter Mfg. Co. v. Chicago & G. T. R. Co. (Com.), 4 I. C. R. 223.

(i) Complainant attacked rates on unfinished and finished cheap bedroom sets from Lansing, Mich., to Oakland, Calif., as unreasonable. HELD, taking into consideration the greater tonnage per carload which can be hauled of the former and the difference in value in favor of the former, the rate on unfinished cheap bedroom sets should not exceed 85 per cent of whatever rate may be adopted for such sets in a finished condition. Potter Manufacturing Co. v. C. & G. T. R. Co., 4 I. C. C. 223.

(j) While the difference in cost to the carrier in transporting cereal products and flour is not in itself sufficient to warrant a higher classification upon cereal products, the facts that these products range higher in value than flour, while in the matter of volume of traffic afforded there is a very wide difference

in favor of flour, are some of the conditions compelling a low rate upon flour which do not apply in the transportation of cereal products. F. Schumacher Milling Co. v. Chicago, R. I. & P. R. Co. (Conn.), 4 I. C. R. 373.

(k) It is a conceded rule of classification that value, on account of enhanced risk and ability to pay a greater proportion of the aggregate return upon investment, may justify a higher classification. F. Schumacher Milling Co. v. C. R. I. & P. R. Co., 4 I. C. C. 373, 377.

(l) Defendant's regulation whereby the freight rate on peaches and other fruit from Georgia points is increased in proportion to the carload valuation fixed by the shipper is unreasonable and unjust, and the carrier can be required to respond in damages, if the fruit is damaged through its negligence, to the full amount of the injury sustained, without regard to the valuation placed upon it. Georgia Peach Growers' Asso. v. Atlantic Coast Line R. Co., 10 I. C. C. 255.

(m) Cowpeas, like clover and other grasses, are sown and then turned over by the plow for purpose of soil improvement, but this is not a reason why cowpeas should, in the adjustment of freight rates, be classed as a fertilizer, which is applied directly to the soil; and cowpeas are further distinguished from fertilizer in that fertilizer furnishes the carrier much greater tonnage, cowpeas have much greater value, and the vine, as well as the pea itself, is used as a food product. Swaffield v. Atlantic Coast Line R. Co., 10 I. C. C. 281.

(n) The differential on corn meal shipped from Missouri River points to points in Texas should not be more than 3 cents above the rate on corn in force between the same points. Re Rates on Corn and Corn Products from Missouri River Points to Points in Texas, 11 I. C. C. 220.

(o) Old dynamos which have become merely combinations of copper, brass, and iron scrap, and are valuable only as junk, should, under suitable regulations fixed by the carrier, be given the rating for junk, basing the same on the highest class metal used in the construction. National Machinery & W. Co. v. Pittsburgh, C. C. & St. L. R. Co., 11 I. C. C. 581.

(p) There is no inflexible requirement that rates upon grain and the products of the grain should be, under all circumstances, the same, but rather that carriers may, in just regard for their own interest or to meet special conditions, vary those rates within narrow limits. When once the relation has been established, business developed, and money expended upon the strength of it, then the carrier can not, in the absence of some sufficient reason, change that relation; nor would this Commission direct a change. Howard Mills Co. v. Mo. Pac. Ry. Co., 12 I. C. C. 258.

(q) Complainant alleged that the defendants unduly discriminated against Kansas millers, in favor of California millers, by exacting rates on flour which were 10 cents greater than the rates exacted by them for wheat from Wichita and other shipping points in Kansas to points in California and also by exacting rates on flour which were 35 cents greater than the rates exacted by them on wheat from said shipping points to Phoenix, Ariz. HELD, flour rates between said shipping and destination points should not exceed the wheat rates between such points by more than 7 cents. Howard Mills Co. v. M. P. Ry., 12 I. C. C. 259.

(r) There is no inflexible requirement that rates upon grain and the products of the grain should be, under all circumstances, the same, but rather that carriers may, with just regard for their own interest or to meet special conditions, vary those rates within narrow limits. When once the relation has been established, business developed, and money expended upon the strength of it, then the carrier cannot, in the absence of some sufficient reason, change that relation; nor would the Commission direct a change. Howard Mills Co. v. M. P. Ry., 12 I. C. C. 259, 264.

(s) Complainant attacked as unreasonable rates on cotton waste in bales from Augusta, Ga., to New York, of 41 cents, the same as cotton goods, though cotton waste is a by-product, considerably less in value and involves much less risk and expense in transportation than cotton goods. HELD, rates attacked unreasonable to extent they exceeded 35 cents. Riverside Mills v. Southern Ry., 12 I. C. C. 388.

IMPORTANT CASES SINCE 1908

(t) The Commission said that at the present time it would decline to establish a rating upon the basis of value, but commended the idea to the considera-

tion of the carriers. Union Pacific Tea Co. v. Pa. R. R. Co., 14 I. C. C. 545, 546.

(u) Value must be taken into consideration in framing clasification and rates. Ford Co. v. M. C. R. R. Co., 19 I. C. C. 507, 509.

(v) But a manufactured product may properly take a higher rating than the material from which it is made. In Re Suspension of Western Classification No. 51, 25 I. C. C. 442, 590.

(w) The right of the carrier to initiate its rates and to consider value of the property as an element in determining the classification there of or the rate applicable thereto has not been denied by the Act or withdrawn by this amendment. The Cummins Amendment, 33 I. C. C. 682, 694.

(x) But though important it is not the controlling element in classification. Louden Machinery Co. v. A. T. & S. F. Ry. Co., 34 I. C. C. 383, 384.

(y) Value is a factor in classification, for two reasons: Because carriers incur a greater risk in transporting more valuable articles and because value is generally indicative of the ability of a commodity to pay transportation charges. In the Matter of Rates on and Classification of Lumber and Lumber Products, 52 I. C. C. 598, 615.

(z) If based on value alone the number of classes would be too large and the refinement too subtle for practical operation. McCroy Stores Corp. v. Director General, 55 I. C. C. 423, 424.

(aa) But value is only one of the many elements that enter into the classification of an article. Link-Belt Co. v. P., C. C. & St. L. R. R. Co., 64 I. C. C. 195, 196.

(bb) Under similar transportation conditions, finished or semifinised products ordinarily take a higher rate than the material from which they are produced, if any rate distinction is made. Lancaster Steel Products Corp. v. Director General, as Agent, 73 I. C. C. 567, 568.

(cc) Ordinarily a manufactured product is rated higher than its components. Wilckes, Martin & Wilckes Co. v. Director General, as Agent, 74 I. C. C. 13, 15.

(dd) Value is an important element in determining classification and rates, but it is not controlling. Chevrolet Motor Co. v. Director General, 74 I. C. C. 373, 374.

(ee) It is elementary that refined oil rates are higher than crude rates. Crude Oil from Louisiana Points, 74 I. C. C. 623, 629.

(ff) Maintenance of lower rates on finished articles than are applicable on commodity from which manufactured, must be justified, if at all, by clear, positive, and convincing evidence. Oklahoma Iron Works v. Director General, as Agent, 80 I. C. C. 327, 331.

(gg) While value is always a factor in classification and is properly given consideration in fixing basic rates on given commodities, it is not a necessary element in determining the rate relationship between intimately related commodities. National Veneer & Panel Asso. v. A. & R. R. R. Co., 81 I. C. C. 227, 233.

(hh) It is a well established principle of transportation that the rates on manufactured products ought generally to be higher than the rates on the raw materials from which they are made. Agricultural Implement, Sleigh and Vehicle Wood, 83 I. C. C. 25, 26.

(ii) Value of an article is one determining factor in classification. Western Classification case, 25 I. C. C., 442; American Stockmen's Supplies Asso. v. C., R. I. & P. Ry. Co., 83 I. C. C. 334, 336.

ALL OTHER CITATIONS

Overly v. Adams Express Co., Unrep. Op. 360; Forest City Freight Bureau v. Ann Arbor R. R. Co., 13 I. C. C. 109, 114; Anthony v. P. & R. Ry. Co., 14 I. C. C. 581, 583; Oregon & Washington Lumber Co. v. U. P. R. R. Co., 14 I. C. C. 1; Channon Co. v. L. S. & M. S. Ry. Co., 15 I. C. C. 551, 552; Whitcomb v. C. & N. W. Ry. Co., 15 I. C. C. 27; Winters Metallic Paint Co. v. C. M. & St. P. Ry. Co. et al., 16 I. C. C. 587, 588; Beekman Lumber Co. v. C. R. I. & P. Ry. Co., 16 I. C. C. 528, 529; Kiser Co. v. C. of G. Ry. Co., 17 I. C. C. 430, 441; Metropolitan Paving Brick Co. v. A. A. R. R. Co., 17 I. C. C. 197, 205, 207; Zang Brewing Co. v. C. B. & Q. Ry. Co., et al., 18 I. C. C. 337, 338; Forest City Freight Bureau v. Ann Arbor R. R. Co., 18 I. C. C. 205, 206; Hydraulic-Press Brick Co. v. M. & O. R. R. Co., 19 I. C. C. 530; Barr Chemical Works v. P. & R. R. R. Co., 20 I. C. C. 77, 78;

Oregon and Washington Lumber Mfrs. v. S. P. Co., 21 I. C. C. 389, 395, 396; United States Leather Co. v. Southern Ry. Co., 21 I. C. C. 323, 325; In Re Suspension of Western Classification No. 51, 25 I. C. C. 442, 499, 591, 593; Michigan Copper & Brass Co. v. D., S. S. & A. Ry. Co., 25 I. C. C. 357, 363; Central Commercial Club v. A. T. & S. F. Ry. Co., 26 I. C. C. 373, 375; Proprietary Asso. of America v. N. Y. C. & H. R. R. R., 26 I. C. C. 318; Tone Brothers v. I. C. R. R., 26 I. C. C. 279; Casey-Hedges Mfg. Co. v. C. of Ga. Ry. Co., 26 I. C. C. 63, 64; Dixie Dairymen's Asso. v. Y. & M. V. R. R. Co., 27 I. C. C. 618, 621; Holland Blow Stave Co. v. A. C. L. R. R. Co., 27 I. C. C. 488, 490; Vulcan Iron Works v. A. T. & S. F. Ry. Co., 27 I. C. C. 468, 469; Eastern Wheel Mfrs. Asso. v. A. & V. Ry. Co., 27 I. C. C. 370, 379; Seal Gull Specialty Co. v. Baltimore Steam Packet Co., 27 I. C. C. 267, 273; Motorcycle Mfrs. Asso. v. B. & O. R. R. Co., 26 I. C. C. 127, 128; Rates on Sash, Doors and Blinds into Texas, 26 I. C. C. 116, 118; Coke Producers' Asso. of Connellsville v. B. & O. R. R. Co., 27 I. C. C. 125, 149; Broom Rates to Colorado Points, 28 I. C. C. 310, 312; German Kali Works v. A. T. & S. F. Ry. Co., 28 I. C. C. 223, 226; Anson, Gilkey & Hurd Co. v. S. P. Co., 33 I. C. C. 332, 339; Nebraska State Railway Comm. v. C. V. Ry. Co., 32 I. C. C. 41, 43; Texas Refining Co. v. A. & V. Ry. Co., 32 I. C. C. 192, 193; Underwood Veneer Co. v. A. A. R. R. Co., 32 I. C. C. 265, 267; Northbound Rates on Hardwood, 32 I. C. C. 521, 528; Gate City Malt Co. v. C. St. P. M. & O. Ry. Co., Unrep. Op. A-890; Louden Machinery Co. v. A. T. & S. F. Ry., 34 I. C. C. 383, 384; Oklahoma Traffic Assn. v. A. & S. Ry. Co., 36 I. C. C. 329, 342; Western Felt Works v. Wabash R. R. Co., 40 I. C. C. 7, 8; Milk and Cream Rates to New York City, 45 I. C. C. 412, 428; Official Classification No. 44, 47 I. C. C. 91, 94, 98; Knopke Bros v. C. & A. R. R. Co., 50 I. C. C. 465, 467; Building and Roofing Paper Board Rates, 52 I. C. C. 84, 89; In the Matter of Rates on and Classification of Lumber and Lumber Products, 52 I. C. C. 598, 605; Pure Oil Co. v. Director General, 56 I. C. C. 218-222; Atlas Leather Mfg. Co. v. P. C. C. & St. L. R. R., 55 I. C. C. 394; Dahlstrom Metallic Door Co. v. E. R. R., 55 I. C. C. 402, 406, 407; Goodyear Tire & Rubber Co., 57 I. C. C. 206, 209; Sinclair Refining Co. v. Director General, as Agent, 61 I. C. C. 18, 31; Spier & McKay v. Director General, as Agent, 61 I. C. C. 736; Maltby v. S. V. Ry. Co., 63 I. C. C. 103; Minnesota & Ontario Paper Co. v. N. P. Ry. Co., 66 I. C. C. 571, 573; Indiana Quartered Oak Co. v. A. C. R. R. Co., 81 I. C. C. 59; National Floyd & Co. v. A. & M. R. R. Co., 83 I. C. C. 485, 487.

§11½. Weight or Volume.

See Evidence § 65.

CASES 1887-1908

(a) The volume of traffic supplied by an article for transportation is also an element that may be considered in its classification, as a basis for rates that are reasonable both for carriers and shippers. Warner v. New York Central & H. R. R. Co., 3 I. C. R. 74.

(b) The volume of traffic supplied by an article for transportation is an element that may be considered on the question of its classification as a basis for rates. Warner v. New York C. & H. R. R. Co. (Com.), 3 I. C. R. 74.

(c) Complainants are manufacturers of common soap at Cincinnati, O. In the official clasification common soap stands in the fifth class in carload lots. The defendant has always given it the rate of fifth class articles, but for many years prior to May, 1889, they charged the complainants for only net weight, the gross weight being one-sixth more than net weight, but since that date they have charged for gross weight without diminishing the rate per hundred pounds. The effect of this was to charge one-sixth more for the same service than had before been charged. The charge for transportation under the net weight practice was reasonable and just, and without complaint on the part of shippers or carriers. HELD, that the increased charge by the device of charging for the gross weight, being one-sixth advance for the same service, was unwarranted, as it operated to make the rate unreasonable. Procter & Gamble v. C. H. & D. Co., 3 I. C. C. 131.

(d) Charging the same rate per quart on milk in 40-quart cans and in bottles, usually of one quart capacity, and packed in cases, found to constitute discrimination in favor of the bottle method of shipment, but for reasons stated—HELD that the proper relation of rates as between can and bottle milk from all points

of shipment need not now be determined. Milk Producers Protective Asso. v. Delaware, L. & W. R. Co., 7 I. C. C. 92.

IMPORTANT CASES SINCE 1908

(e) The weight of an article is to be considered in determining the proper classification thereof. Western Classification Case, 25 I. C. C. 442, 472.

(f) Value and density are important considerations in determining ratings of commodities, but they must be used in conjunction with the other elements of classification. Goodyear Tire & Rubber Co., v. A., C. & Y. Ry. Co., 57 I. C. C. 206, 209.

ALL OTHER CITATIONS

Southern Classification Ratings, 39 I. C. C. 173, 175.

III. CLASSIFICATION REGULATIONS

§11¾. In General.

IMPORTANT CASES SINCE 1908

(a) Both the Commission and the courts have held that carriers have the right to make reasonable and appropriate rules respecting the acceptance and transportation of traffic. Longo Fruit Co. v. Illinois Traction Co., 38 I. C. C. 487, 489.

(b) The mere fact that rules and regulations may result in some inconvenience to shippers does not warrant a finding that they are unreasonable or otherwise unlawful. Millsaps Cotton Co. v. Director General, 62 I. C. C. 26, 27.

(c) Reasonable and pertinent rules are as essentially a part of the tariff as the rates which are governed or limited by their application. Viscoe Co. v. Amer Ry. Ex., 62 I. C. C. 32, 34.

ALL OTHER CITATIONS

Jewelers' Protective Union v. Penn. R. R., 36 I. C. C. 71; New York Mercantile Exchange v. B. & O. R. R. Co., 36 I. C. C. 156, 161; Baltimore Chamber of Commerce v. B. & O. R. R., 45 I. C. C. 40, 52; Redmond v. Adams Exp. Co., 53 I. C. C. 39, 42; Kansas Car-Lot Egg Shippers' Asso. v. B. & O. R. R. Co., 53 I. C. C. 59, 65; Consolidated Classification Case, 54 I. C. C. 21.

§12. Bulk Shipments and Ownership.

See Bulk Shipments; Forwarders II.

CASES 1887-1908

(a) A difference in rate for a solid carload of one kind of freight from one consignor to one consignee, and a carload quantity from the same point of shipment to the same destination consisting of like freight or freight of like character from more than one consignor to one consignee or from one consignor to more than one consignee, is not justified by the difference in the cost of handling. Thurber v. N. Y. C. R., 2 I. C. C. 742, 755.

(b) Where the goods are loaded at one time and place with but a single bill of lading, and the shipment is by one consignor to one consignee, and by the terms of sale become the property of the consignee upon delivery to the carrier, the latter has no right to inquire whether the consignee obtained his title from one or several owners, and if it accords the carload rate in case a consignor is the owner, failure or its part to extend the same privilege when the consignee is the owner violates §§ 1, 2, and 3 of the Act to Regulate Commerce. Buckeye Buggy Co. v. Cleveland, C. C. & St. L. R. Co., 9 I. C. C. 620.

IMPORTANT CASES SINCE 1908

(c) In a typical case a number of packages of merchandise, aggregating 16,000 pounds in weight, were assembled in New York by the complainant's agent and offered to defendant at one time and one place, consigned under one bill of lading to the complainant, a voluntary association of San Francisco merchants. Defendant's tariff provided a rate of $8 per 100 pounds for shipments of 10,000 pounds and less than 20,000 pounds. Applying its rules as to "bulked shipments intended to be distributed by the consignee," defendant charged its parcel rate against each separate package. HELD, that the rule against "bulked" shipments is illegal. Reparation awarded. California Commercial Ass'n v. Wells, Fargo & Co., 14 I. C. C. 422.

(d) In gathering several packages of goods together and shipping them under the carrier's rates on large shipments, a shipper is not by a device evading the law, but is legally availing himself of the rates which the carrier offers. California Commercial Ass'n v. Wells, Fargo & Co., 14 I. C. C. 422.

(e) The law does not justify the classification of shippers with regard to their interest in property shipped. California Commercial Ass'n v. Wells, Fargo & Co., 14 I. C. C. 422, 426.

(f) The provisions of the Act prohibit

a classification of traffic upon the basis of the nature or character of consignees or consignors, and while a different rate may be given to the larger shipment, it must be justified upon transportation conditions, and such rate is made as applying to the shipment, not to the shipper. California Commercial Ass'n v. Wells, Fargo & Co., 14 I. C. C. 422, 428.

(g) The only shipper whom the carrier knows is the one offering the shipment, and the rate which this shipper pays is the lawful rate. The law condemns the use of a device to evade the payment of a lawful rate; it does not forbid the use of the rate. And so long as the carrier offers to transport a certain weight of goods at a fixed rate, the shipper of these goods is certainly not evading the law by paying this rate. California Commercial Ass'n v. Wells, Fargo & Co., 14 I. C. C. 422, 428.

(h) The cost of carrying a "bulked shipment" is not greater than the cost of carrying the same amount of freight at the instance of an individual owner. The charge must therefore be the same in each case. California Commercial Ass'n v. Wells, Fargo & Co., 14 I. C. C. 422, 432.

(i) And the personality of the consignee affords no basis for a difference in rates. Sligo Iron Store Co. v. A. T. & S. F. Ry. Co., 17 I. C. C. 139, 142.

(j) So less-than-carload lots may be consolidated at a transit point. Michigan Bean Jobbers' Asso. v. G. R. & I. Ry. Co., 33 I. C. C. 318, 319.

(k) If shipments of empties were aggregated as provided in rule, charges would be materially reduced. National Asso. of Ice Cream Mfrs. v. Adams Exp. Co., 33 I. C. C. 411, 414.

ALL OTHER CITATIONS

Export Shipping Co. v. Wabash R. R. Co., 14 I. C. C. 437, 440; Davies v. I. C. R. R. Co., 19 I. C. C. 3; In Re Suspension of Western Classification No. 51, 25 I. C. C. 442, 478, 479.

§12¼. Description.

IMPORTANT CASES SINCE 1908

(a) Proposed specifications as to protection of shipments of clay products should be given fair trial. Consolidated Classification Case, 54 I. C. C. 38.

(b) Essential parts, such as ventilators and valves, are entitled to ratings applying on the outfits, and should be specifically provided for. Consolidated Classification Case, 54 I. C. C. 44.

(c) Provision under the head of agricultural implements for agricultural-implement wheels, other than master wheels (bull wheels) with an added provision to the effect that the ratings do not apply on machine finished gear or sprocket wheels, which are separately provided for under the heading of wheels, recommended. Consolidated Classification Case, 54 I. C. C. 46.

(d) Symbols, meaning of, as used with descriptions of articles or in territorial columns in consolidated classification. Consolidated Classification Case, 54 I. C. C. 90.

ALL OTHER CITATIONS

Consolidated Classification Case, 54 I. C. C. 38, 45, 50; Acme Cement Plaster Co. v. Director General, as Agent, 59 I. C. C. 508.

§12½. Duplicate Shipments.

See Duplicate Shipments.

IMPORTANT CASES SINCE 1908

(a) Where charges on a lost article as a part of a shipment are less than minimum charge on article if shipped alone, carriers should collect charges on full shipment and should transport a like article free of charge. Larkin Co. v. E. & W. Transp. Co., 34 I. C. C. 106, 108.

(b) The Commission considered the proposed cancellation of a western trunk line rule providing that where a portion of a shipment was lost or damaged by the carrier, on which shipment all charges were paid, the carrier, in claim settlements, would cancel the freight charges on a duplicate of the lost or damaged portion shipped to replace the original, provided the duplicate portion were shipped by same consignor to same consignee from same point of origin to same destination over same route as original shipment. Cancellation of the rule was sought because many shippers desired a rule which would permit the duplicate shipment to move from the place most convenient and by express or freight as might best meet the particular situation. To promptly replace lost or damaged parts, shipment must be made from the most convenient point and by the most expeditious route. HELD, that the carriers had justified the tariffs under suspension. Uniform rules to meet the situation recommended. Lost or

Damaged Freight Replacement, 43 I. C. C. 257.

ALL OTHER CITATIONS

Larkin Co. v. E. & W. Transp. Co., 34 I. C. C. 106, 110, 111; Lost or Damaged Freight Replacement, 43 I. C. C. 257, 258.

§12¾. Inspection.

See Inspection.

IMPORTANT CASES SINCE 1908

(a) Complainants attacked defendant's tariff rules, providing that when cases of eggs received at shipping point and receipted for by the carrier as in apparent good order (contents and condition of contents of package unknown) arrived at destination in the same apparent conditions, showing no external evidence of damage, consignees should not be accorded the right to examine the contents of the cases prior to delivery and should receipt for said cases as in apparent good order (contents and condition of contents unknown), as unjust, unreasonable and unduly prejudicial to consignees of eggs in the metropolitan district of New York; enforcement of the rules there, and not elsewhere, being delegated to the inspection bureau of the Trunk Line Ass'n. The former rule permitting all cases to be examined on the docks had led to corrupt practices in properly swelling loss and damage claims, led to congestion at the terminals, and necessitated an army of inspectors at prohibitive cost. Inspection of all cases at joint of origin would be impossible at many small stations employing, but a single agent. Despite the more drastic rules of the metropolitan district, shipment of eggs hereto had increased in proportion with competing centers. HELD, that the rules involved had not been shown to be unjust, unreasonable or unduly prejudicial. Complaint dismissed. New York Merc. Exch. v. B. & O. R. R., 36 I. C. C. 156.

(b) In actual practice loading must be performed in a manner satisfactory to inspectors of each road, and where delivery is made by one road to another, the loading must be approved by inspectors of the receiving road. Sand Point Lumber & Pole Co. v. N. P. Ry., 48 I. C. C. 418, 420.

§12⅞. Empty Equipment and Returned Containers.

See Cars and Car Supply §31; Reduced Rates §5.

CASES 1887-1908

(a) A rate which may be reasonable when applied to the transportation of egg cases as a disconnected service may be unreasonable if the carriage of returned cases at favorable rates is in fact a special service, the discontinuance of which would unduly burden the business of shipping eggs to points of sale. Rhode Island Egg & B. Co. v. Lake Shore & M. S. R. Co., 6 I. C. C. 176.

IMPORTANT CASES SINCE 1908

(b) The Commission has repeatedly approved the cancellation of exceptionally low rates on empty used packages or containers. The Consolidated Classification Case, 54 I. C. C. 1, 65.

ALL OTHER CITATIONS

Stearns & Culver Lum. Co. v. L. & N. R. R., 37 I. C. C. 376; Official Classification Ratings, 46 I. C. C. 383; Aetna Explosives Co. v. Director General, 53 I. C. C. 175; Consolidated Classification Case, 54 I. C. C. 35, 42, 64; New Jersey Zinc Co. v. Director General, 57 I. C. C. 201; Express Classification, 59 I. C. C. 265, 273, 274.

§13. Loading and Unloading.

See Facilities and Privileges §10; Loading and Unloading; Transportation §10.

IMPORTANT CASES SINCE 1908

(a) It cannot be stated as a matter of law that it is the absolute duty of carriers to unload carloads of package freight, nor that this duty rests upon the shipper, as there is no hard and fast rule of law upon the subject. It is rather a question with respect to each commodity of what, under the circumstances, is just and reasonable, and perhaps also what has been the practice. Wholesale Fruit & Produce Ass'n v. A. T. & S. F. Ry. Co., 14 I. C. C. 410, 416.

(b) A rule is not unreasonable which compels shippers to count packages of perishable freight. Ponchatoula Farmers' Ass'n v. I. C. R. R. Co., 19 I. C. C. 513, 521.

(c) Carload freight, whether handled on carload or any-quantity ratings, is generally received and delivered at private sidings or on team tracks, and usually the loading and unloading is performed by consignors and consignees. Less than carload freight is usually handled through the depots and the expense

thereof is borne by the carriers. In addition, the movement of freight in carloads means more efficient use of equipment, for the average loading is much greater. Consolidated Classification Case, 54 I. C. C. 1, 8.

(d) The rule providing that if a shipment tendered as l. c. l. freight and loaded by the carriers or transported and unloaded by carriers is found to be subject to the carload rate, and tariffs do not provide that the cost of loading and unloading is included in the carload rate, a charge of 2.5 cents per 100 pounds will be made for the loading and unloading, approved. Consolidated Classification Case, 54 I. C. C. 19.

ALL OTHER CITATIONS

Brunswick-Balke-Collender Co. v. G. T. W. Ry. Co., Unrep. Op. 334; National Wholesale Lumber Co. v. A. C. L. R. R. Co., 14 I. C. C. 154, 160; Wholesale Fruit & Produce Ass'n v. A. T. & S. F. Ry. Co., 14 I. C. C. 410, 416; Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 15 I. C. C. 370, 373; Montague & Co. v. A. T. & S. F. Ry. Co., 17 I. C. C. 72, 75; Hood & Sons v. Del. & Hud. Co., 17 I. C. C. 15, 19; Brunswick-Balke-Collender Co. v. C. M. & St. P. Ry. Co., 18 I. C. C. 165, 166; Merchants & Mfrs. Ass'n v. A. C. L. R. R. Co., 22 I. C. C. 467; In Re Transportation of Wool, Hides and Pelts, 23 I. C. C. 151, 167; In Re Advances in Demurrage Charges, 25 I. C. C. 314, 317; In Re Suspension of Western Classification No. 51, 25 I. C. C. 442, 478, 491, 492, 494; Bagley & Co. v. P. M. R. R. Co., 25 I. C. C. 698, 699; Taylor Dry Goods Co. v. M. P. Ry. Co., 28 I. C. C. 205, 208; Klauer Mfg. Co., v. A. T. & S. F. Ry. Co., 28 I. C. C. 508, 509; Canton Bridge Co. v. P. Co., Unrep. Op. A-612; Consolidated Classification Case, 54 I. C. C. 1, 21, 24, 44.

§13½. Long Articles.

IMPORTANT CASES SINCE 1908

(a) Rule 29, note 2, elimination of special rule that "articles shipped l. c. l. * * * when exceeding 22 feet in length, or too wide to be loaded in a standard 36-foot box car through the side door thereof, and if all the articles are loaded together in or on one car, shall be charged at actual weight and class rate for each article, except that the minimum charge for each shipment shall be 1,000 pounds at first-class rate," approved. Consolidated Classification Case, 54 I. C. C. 22.

(b) It is proper to assess on long lumber, timbers, poles and piling too long to be loaded on a single car, rates as high as those maintained on lumber in single cars. Forbes Timber Co. v. Director General, 80 I. C. C. 36, 38.

ALL OTHER CITATIONS

Consolidated Classification Case, 54 I. C. C. 21.

§14. Marking and Addressing.

See Marking and Addressing.

IMPORTANT CASES SINCE 1908

(a) All questions as to marking packages ought to be settled before the carrier accepts the goods, reasonable rules as to marking and packing being proper. C. H. Algert Co. v. D. & R. G. R. R. Co., 20 I. C. C. 93, 94.

(b) A rule is neither unreasonable nor discriminatory which requires low-priced cotton factory products to be plainly marked on outside of package and stated in bill of lading in order to secure lower rate dependent upon value. Muse Bros. Co. C. R. I. & P. R. Co., 20 I. C. C. 235, 236.

(c) Packages containing fragile articles consisting wholly or in part of, or contained in, glass, must be plainly marked to inidcate contents. In Re Express Rates, 24 I. C. C. 380, 405.

(d) Inferior, insecure tags should be prohibited; no justification has been shown for rule which provides requirements of metal eyelets at an additional expense of 15 cents per 100. Western Classification Case, 25 I. C. C. 442, 484.

(e) A label need be attached to only one package in each shipment of perishable property, such label to indicate the number of packages in the shipments. In Re Express Rates, 28 I. C. C. 132, 136.

(f) Carriers reasonably may require shippers to properly mark their shipments and if shippers object to showing the value of their shipments they may use the code which defendant has adopted for that purpose. Viscoe Co. v. American Ry. Exp. Co., 62 I. C. C. 32, 33, 34.

ALL OTHER CITATIONS

Algert Co. v. C. B. & Q. R. R. Co., Unrep. Op. 379; Kessler & Co. v. So. Ry. Co., Unrep. Op. 12; Ellsworth Produce Co. v. U. P. R. R. Co., 17 I. C. C. 182, 183; Racine-Sattley Co. v. C. M. & St. P. Ry. Co., 18 I. C. C. 142; Colorado Tent & Awning Co. v. B. & M. R. R., 21 I. C.

C. 565, 566; In Re Express Rates, Practices, Accounts and Revenues, 28 I. C. C. 131, 136; Storage Charges in C. F. A. Territory, 28 I. C. C. 372, 373; Redmond v. Adams Exp. Co., 53 I. C. C. 39; Consolidated Classification Case, 54 I. C. C. 15; Tobacco Products Corp. v. Director General, 55 I. C. C. 69.

§15. Minimum Charge and Weight.

See Passenger Fares and Facilities §6½.

CASES 1887-1908

(a) Defendants' rule, providing that the minimum charge upon any single shipment of freight shall be for 100 pounds at the class or commodity rate applying upon the article, which is in force in the territory roughly described as south of the Ohio and Potomac and east of the Mississippi rivers, and also on traffic shipped to that territory from points in the central west,—is not, upon the facts of the case, shown to be unreasonable. Wrigley v. Cleveland, C. C. & St. L. R. Co., 10 I. C. C. 412.

(b) Defendants' rule, providing that the minimum charge upon any single shipment of freight shall be for 100 pounds at the class or commodity rate applying upon the article, which is in force in the territory roughly described as south of the Ohio and Potomac and east of the Mississippi rivers, and also on traffic shipped to that territory from points in the Central West. HELD, upon the facts in this case, not to be unreasonable or unjustly discriminating in its application to complainant's traffic. No opinion expressed as to the legality of the rule upon traffic generally. Wrigley v. Cleveland, C., C. & St. L. R. Co. et al., 10 I. C. C. 413.

(ba) Complainant attacked as unreasonable minimum charge in effect in official and southern classification territory. The defendants rule, providing that the minimum charge upon any single shipment of freight shall be for 100 pounds at the class or commodity rate applying on the article, which is in force in the territory roughly described as south of the Ohio and Potomac and east of the Mississippi rivers, and also on traffic shipped to that territory from points in the central west, HELD, not unreasonable or unjustly discriminatory. Wrigley, v. C. C. C. & St. L. Ry., 10 I. C. C. 412.

IMPORTANT CASES SINCE 1908

(c) The Commission considered the reasonableness of the rules in the three classification territories, relating to minimum charges on articles too long or too bulky to be loaded through the side doors of box cars. Under these rules there was no uniformity in charge on like shipments moving. If the article moved in a closed car it might be charged only the l. c. l. rate at actual weight; but if loaded on a flat car it was subject to charge on a 4,000 or 5,000 lb. minimum. The average length of cars varied from 36 to 40 ft. in the different territories, as well as the percentage of box cars provided with end doors or windows. The loading of these articles in closed cars entailed much unusual handling, and extra expense to the carrier in loading. HELD, that unless otherwise provided, a shipment containing articles the dimensions of which do not permit loading through the center side doorway, 6 feet wide by 7 feet 6 inches high, without the use of end door or window in a closed car not more than 36 feet in length by 8 feet 6 inches wide and 8 feet high shall be charged at actual weight and authorized rating, subject to a minimum charge of 4,000 pounds at the first-class rate for the entire shipment. Minimum Charges on Bulky Articles, 33 I. C. C. 378.

(d) Minimum charge should apply to car movement rather than to each shipment. Lighterage and Storage Regulations at New York, 35 I. C. C. 47, 63.

(e) The graduate minimum rule is founded upon the fact that the carriers have extra large cars designed for light and bulky freight. Certain regulations are necessary to secure the proper loading of such equipment, to prevent its wasteful use, and to insure the desired advantages to the shipper who will load economically. Consolidated Classification Case, 54 I. C. C. 1, 24.

(f) Proposed rule providing that if the excess over a full carload is loaded on a flat car, the minimum charge for that excess shall be for 4,000 pounds at first-class rate, which shall be in addition to the charge on the full carload at the minimum weight provided for a carload shipment, or at the actual weight if in excess of the minimum weight, approved. Consolidated Classification Case, 54 I. C. C. 20.

(g) Minimum weight on sheet iron cans, 28 gauge or thinner, found unrea-

sonable as compared with the minimum on tin cans, tin pails, and tin buckets. Minimum of 9,000 pounds on cars 36 feet 6 inches and under with graduated minimum for cars of larger sizes prescribed and reparation awarded. Armour & Co. v. B., S. L. & W. Ry. Co., 73 I. C. C. 415.

(h) Minimum charge of $15 per car established by the director general under General Order No. 28 and applied in connection with class and commodity rates for trans-Mississippi River movement between points within the St. Louis-East St. Louis switching district, during Federal control, found unreasonable to extent it exceeded charge of $12 subsequently established. Reparation awarded. St. Louis Chamber of Commerce v. Director General, as Agent, 74 I. C. C. 308, 324.

(i) Combination rates on glass bottles and bottle fittings from Reading, Ohio, to points in Kentucky found unreasonable due to the factor from Reading to Cincinnati, Ohio, composed of a minimum charge of $15 per car established under General Order No. 28 of the director general, to extent it exceeded 50 cents per ton, minimum 20 tons. Nivison-Weiskopf Co. v. Director General, as Agent, 77 I. C. C. 107.

(j) Old flat cars, unfit for maximum service, were furnished by carrier for transportation of slab wood, and were loaded to full stenciled cord capacity. Minimum charge of $15 per car assessed, higher than charges that would have accrued on basis of actual weight of marked capacity load of this commodity. HELD: Charges collected found unreasonable to extent they exceeded those that would have accrued at contemporaneous rates per cord on basis of actual number of cords loaded on each car. Reparation awarded. International Lime Co. v. Director General, as Agent, 77 I. C. C. 645.

(k) Minimum charge of $15 per car established under General Order No. 28 of Director General and assessed on shale from Buchtel to Logan, Ohio, during Federal control, found unreasonable to extent it exceeded those based on rate per net ton contemporaneously in effect and actual weight, subject to c. l. minimum. Reparation awarded. Hocking Valley Brick Co. v. Director General, as Agent, 80 I. C. C. 743.

(l) Complainant attacked commodity rate of 40 cents increased to 56 cents on August 26, 1920, with minimum charge of $15 per car collected on carloads of clay shipped from Bryan, Ohio, to Cement City, Mich., on and after June 25, 1918, as illegal, unreasonable, unjustly discriminatory and unduly prejudicial. Prior to June 25, 1918, rate applicable was 29 cents, increased on that date to 40 cents under defendants interpretation of the increase although 36.5 cents was the proper rate. Effective May 25, 1919, a specific rate of 40 cents was established. Distance 40 miles. HELD, applicable rates were 36.5 cents from June 25, 1918, to May 24, 1919, 40 cents from that date to August 25, 1920, and 56 cents thereafter, reparation awarded. Peninsular Portland Cement Co. v. Director General, 83 I. C. C. 10.

ALL OTHER CITATIONS

Bamble Bros. v. C. M. & St. P. Ry. Co., Unrep. Op. 173; Aetna Powder Co. v. C. M. & St. P. Ry. Co., 17 I. C. C. 165; Houston Structural Steel Co. v. Wabash R. R. Co., 18 I. C. C. 208, 209; Knox v. Wabash R. R. Co., 18 I. C. C. 185, 186; Brunswick-Balke-Collender Co. v. C. M. & St. P. Ry. Co., 18 I. C. C. 165, 166; Jones v. Southern Ry. Co., 18 I. C. C. 150, 153; Davies v. I. C. R. R. Co., 19 I. C. C. 3; Clinton Bridge & Iron Works v. C. B. & Q. R. R. Co., 20 I. C. C. 416; Kleibacker v. L. & N. R. R. Co., 22 I. C. C. 420; Brunswick-Balke-Collender Co. v. A. T. & S. F. Ry. Co., 23 I. C. C. 395; In Re Suspension of Western Classification No. 51, 25 I. C. C. 442, 488; Minneapolis Brewing Co. v. A. T. & S. F. Ry. Co., 28 I. C. C. 688; Minimum Charges on Bulky Articles, 33 I. C. C. 378, 383; Sloant v. S. P. Co., 33 I. C. C. 509, 510; Lighterage and Storage Regulations at New York, 35 I. C. C. 47, 63, 64; Memphis Freight Bureau v. S. Ry. Co., 36 I. C. C. 281, 284; Condie-Neale Glass Co. v. M. & O.. R. R. Co., Unrep. Op. 2126; Minimum Charges on Bulky Articles, 38 I. C. C. 257, 263; Prairie Oil & Gas Co. v. W. Ry., 45 I. C. C. 1; Live Stock Classification, 47 I. C. C. 335, 343; Condie-Bray Glass & Paint Co. v. C. R. I. & P. Ry. Co., 50 I. C. C. 607; Lowe Co. v. C. M. & St. P. Ry., 50 I. C. C. 403; Consolidated Classification Case, 54 I. C. C. 1, 20, 23, 24, 50, 56, 65, 66; Boldt Paper Mills v. Director General, 55 I. C. C. 331, 332; Increased Rates, 1920, 58 I. C. C. 220, 254; National Fuel Co. v. Director General, as

Agent, 59 I. C. C. 146; Minimum Charges on Less Than Carload Shipments, 61 I. C. C. 727; Swift & Co. v. Director General, 61 I. C. C. 751; Wausau Box & Lumber Co. v. Director General, 62 I. C. C. 56; Walter S. Dickey v Director General, 62 I. C. C. 223, 233; Peerless Portland Cement Co. v. Director General, as Agent, 61 I. C. C. 169; Rowland Power Consolidated Collieries Co. v. Director General, as Agent, 62 I. C. C. 101; Wanzer & Sons v. M., St. P. & S. S. M. Ry. Co., 62 I. C. C. 427; Boldt Paper Mills v. Director General, as Agent, 62 I. C. C. 471; Swift & Co. v. Director General, as Agent, 63 I. C. C. 389; Texarkana Pipe Works v. Director General, as Agent, 64 I. C. C. 6; Boldt Glass Co. v. Director General, as Agent, 64 I. C. C. 619; Ambrose v. Director General, as Agent, 66 I. C. C. 153; Hilb & Bauer v. Director General, as Agent, 66 I. C. C. 279; F. S. Royster Guano Co. v. Director General, 68 I. C. C. 552; Swift & Co. v. Director General, as Agent, 68 I. C. C. 287, 291; Wood Rates between North Pacific Coast Points, 69 I. C. C. 7; Armour & Co. v. E. R. R. Co., 69 I. C. C. 250; United Paperboard Co. v. Director General, as Agent, 69 I. C. C. 573; Edgar C. Foster v. Director General, 73 I. C. C. 723; Steel & Tube Co. v. Director General, 74 I. C. C. 689; Nivision-Weiskopf Co. v. Director General, 77 I. C. C. 107; St. Louis Chamber of Commerce v. Director General, as Agent, 74 I. C. C. 308, 325; Falls City Mill & Feed Co. v. Director General, as Agent, 74 I. C. C. 648; Steel & Tube Co. of America v. Director General, as Agent, 74 I. C. C. 689; International Lime Co. v. Director General, 77 I. C. C. 645; Carnation Milk Products Co. v. Director General, 78 I. C. C. 44; Standard Rail & Steel Co. v. Terminal R. R. Asso. of St. Louis, 81 I. C. C. 395; Carnation Milk Products Co. v. Director General, as Agent, 78 I. C. C. 44; Western Meat Co. v. Director General, as Agent, 78 I. C. C. 77; Boston Wool Trade Asso. v. Director General, as Agent, 78 I. C. C. 341, 343; Minimum Weights on Coal-Tar Paving Cement, 81 I. C. C. 762; Peninsular Portland Cement Co. v. Director General, as Agent, 83 I. C. C. 10, 11; Gulf Refining Co. v. Director General, 87 I. C. C. 690.

§15½. Nesting.

IMPORTANT CASES SINCE 1908

(a) It should be observed that merely bundling similar articles or packing together like articles which barely fit one within the other does not constitute such a nesting as to justify a reduction in rating. Obviously in a working classification every contingency can not be provided for and necessarily some exceptions must be established to a general rule of this character. Classification Nesting Rule, 37 I. C. C. 477, 481.

(b) Provision should be continued for the acceptance, without penalty, of hats or caps, other than millinery, when nested or folded flat, in standard fiber-board containers. Consolidated Classification Case, 54 I. C. C. 35.

ALL OTHER CITATIONS

Benjamin Elec. Mfg. Co. v. A. T. & S. F. Ry. Co., 40 I. C. C. 399; Classification Nesting Rule, 37 I. C. C. 477, 478; Temco Electric Motor Co. v. B. & O. R. R., 47 I. C. C. 76, 77.

§16. Packing and Private Cars.

See Reasonableness of Rates §2.

CASES 1887-1908

(a) Charge of transportation of oil in tank cars should be same as charged for transportation of barrel shipments of oil. Rice v. Louisville & Nashville R. Co., 1 I. C. R. 722.

(b) That there are greater risks to carrier's property than such shipments does not justify greater charges therefor. Rice v. Louisville & Nashville R. Co., 1 I. C. R. 722.

(c) Complainant attacked as unduly preferential and unreasonable rates on petroleum in tank cars as compared with rates on petroleum in barrels in that the rates on the former are lower than on the latter. HELD, that so much of the complaint as alleged unjust discrimination in favor of oil shipped in tank cars is sustained, and that it is the duty of the defendant and it must give the same rates on oil shipped in barrels in carload lots that it charges upon oil in tanks. Allegation of unjust discrimination between oil shipped in barrels in carload lots and less carload lots not sustained. Scofield v. L. S. & M. S. R., 2 I. C. C. 67.

(d) Upon the facts of this case it is found, and held, that there is an unlawful preference given by the carrier, in favor of oil shipments in tank car lots, as against like shipments in barrels carload lots, which is ordered to be corrected, and the mode prescribed by which

this must be done, giving equal rates on each per pound. Scofield v. Lake Shore & Michigan Southern R. Co., 2 I. C. R. 67.

(e) In this particular instance, on account of the phenomenal differences in expense of service rendered, the exceptionally high rates on oil in barrels less than carload lots as compared with oil in carload lots, are sustained; but the defendant and all other carriers engaged in interstate commerce are notified that there seems to be too great a tendency on their part to make excessive differences in favor of all shipments generally in carload lots, as against shipments of similar articles in less than carload lots, and that it would be well for each of them to look to their tariffs in this respect, before the Commission takes further action on this subject. Scofield v. Lake Shore & Michigan Southern R. Co., 2 I. C. R. 67.

(f) The carrier at its peril must see to it in every transaction in which the shipper furnishes the car for the transportation of his freight that such shipper shall not thereby receive a lower rate than other shippers who use and have to use the cars furnished by the carrier in the shipment of their freight. Scofield v. L. S. & M. S. R. R., 2 I. C. C. 67, 77.

(g) In cases against carriers who were charged with discriminating unjustly in their rates as against those shipping petroleum and its products in barrels in favor of those who shipped in tank-cars, the evidence among other things showed that in the territory served by the defendants the shipment in barrels was most dangerous, and also that when shipment was in tanks there was greater likelihood of return loads. The difference in rates made by the carriers was considerable; the Commission equalized this, but still permitted a charge for the weight of the barrel. In the same case it was incidentally made to appear that on the Pennsylvania system of roads some of the conditions affecting rates on this traffic were the reverse of those above stated, and the rates had therefore been made the same by quantity whether the shipment was in tanks or in barrels. On the decision above referred to being made the rates on barrel oil were raised by the managers of the Pennsylvania system so as to include a charge for the weight of the barrel. This was claimed to be done in order to come into conformity with the action of the Commission. HELD: That the action was unwarranted. A decision on facts does not establish a principle to govern where the facts are different, and no facts which had been laid before the Commission would have authorized a ruling raising the rates on the Pennsylvania roads on barrel oil, either absolutely or relatively. Re Relative Tank and Barrel Rates on Oil, 2 I. C. R. 245.

(h) Allowing a charge for weight of oil barrels, whose shipment in tanks is less dangerous, and also is more likely to result in return loads, does not authorize such a charge as against tank shipments on lines where these conditions do not exist. Re Relative Tank and Barrel Rates on Oil (Com.), 2 I. C. R 245.

(i) The Pennsylvania Railroad provided in a circular to its agents that rates on oil in barrels should be computed on the contents of the barrels as well as the barrel itself, claiming this was in line with the decision of the Commission in 1 I. C. C. 722. HELD: Circular should be withdrawn as in deciding a case against one or more carriers who are charged with making rates which are unjustly discriminating in a certain line of traffic, the decision made upon the facts of the particular case does not necessarily govern rates in other sections of the country where the facts bearing upon them may be altogether different. Re Relative Tank and Barrel Rates on Oil, 2 I. C. C. 245.

(j) The difference in the rate of transportation of compressed and uncompressed cotton by rail carriers should be the actual and necessary cost of compressing. New Orleans Cotton Exch. v. Illinois C. R. Co. (Com), 2 I. C. R. 777.

(kl) When a carrier engages in transporting oil in tanks, and also in barrels conveyed in box cars, in carloads, and charges for the weight of the barrel as well as the oil carried by the box-car mode of transportation, but for the weight of the oil only when carried in tanks, it unjustly discriminates between shippers, and subjects the traffic to undue prejudice and disadvantage. Rice, Robinson & Witherop v. W. N. Y. & P. R. Co., 3 I. C. R. 162.

(m) Complainant attacked rates charged on oil in tank cars as compared with rates on oil in barrels. HELD: When a carrier engages in transporting

oil in tanks and also in barrels conveyed in box cars, in carloads, and charges for the weight of the barrel as well as the oil carried by the box car mode of transportation, but for the weight of the oil only when carried in tanks, it unjustly discriminates between shippers, and subjects the traffic to undue prejudice and disadvantage. Rice, Robinson & Witherop v. W. N. Y. & P. R. R. Co., 3 I. C. C. 162.

(n) A carrier that employs different methods for the transportation of oil and its products in carloads, for example, tank cars in which the oil is carried in bulk and box cars in which the oil is carried in barrels, is not relieved from its duty in respect to equality of rates by the difference it makes between its patrons in the mode of carriage, but its charges for like quantities carried between like points of shipment and destination must be equal upon the commodity itself, irrespective of the mode of carriage or the tank or barrel package in which it is contained. Differences in circumstances and conditions of transportation that are of a carrier's own creation or connivance, or that by reasonable effort on the part of a carrier might be avoided, cannot justify exceptional rates. Rice, Robinson & Witherop v. W. N. Y. & P. R. R. Co., 3 I. C. C. 162, 167.

(o) A tank used in carrying oil is deemed by carriers part of the car and the rate is charged only upon the contents, while for carriage in box cars the barrels containing the oil are treated as freight and the rate is charged both for the weight of the barrel and its contents. The prevention of this prejudice to shippers in barrels requires that for purposes of rates, when a carrier used both tank and box cars for carrying oil in carloads, the barrels shall be deemed part of the box car, and that, as in the case of transportation in tanks, the rate shall be charged only for the weight or quantity of oil carried, exclusive of the weight of the barrels, and be the same for like weight or quantity carried in tanks. Rice, Robinson & Witherop v. N. Y. & P. R. R. Co., 3 I. C. C. 162, 167.

(p) The practice of allowing the tank shipper an arbitrary deduction of 42 gallons per tank car is wholly indefensible. Losses from leakage and evaporation are not less proportionally when the shipment is made in barrels, and no circumstance is discovered or reason advanced which justifies a concession of that nature to the shipper who furnishes his own conveyance, when no corresponding allowance is made to a rival shipper using the means of transportation provided by the carrier. Rice v. Cinn., W. & B. R. Co., 3 I. C. R. 841.

(q) Where oil is transported by the carrier both in barrels and tank cars, but the use of the tank cars is practically limited to one class of shippers, the charge for the barrel package in barrel shipments, in the absence of a corresponding charge on tank shipments, resulting in a greater cost of transportation to the shipper in barrels on like quantities of oil between like points of shipments and destination than to the tank shipper, is a discrimination against the former in favor of the latter, for which no legal justification has been shown in these cases. Independent Ref. Asso. v. Western N. Y. & P. R. Co. (Com.), 4 I. C. R. 162.

(r) Complainant attacked rates on oil in tank cars and oil in barrels from Oil City, Pa., and Titusville, Pa., to New York and New York Harbor points and Boston and Boston points as unreasonable. HELD: The rates themselves not unreasonable, but the rates on oil in barrels should be on the same carload basis as on oil in tank cars regardless of the ownership of the tank cars. Independent Refiners' Asso. v. W. N. Y. & P. R. Co., 4 I. C. C. 163.

(s) A shipper should not be subjected to unnecessary restrictions as to the kind of case or package he shall use. Rhode Island Egg & B. Co. v. Lake Shore & M. S. R. Co. (Com.), 4 I. C. R. 512.

(t) A shipper should have the right to use, without favor in classification of freight, any size egg case as best suits his purpose, provided such case is in good order at the time used. Rhode Island Egg & Butter Co. v. L. S. & M. S. R. Co., 4 I. C. C. 512, 517.

(u) Carriers are under no obligation to receive freight improperly packed or in otherwise unsafe condition. Rhode Island Egg & Butter Co. v. L. S. & M. S. R. Co., 4 I. C. C. 512, 517.

(v) Where oil is transported by the carrier both in barrels and tank cars, but the use of the tank cars is practically limited to one class of shippers, the

charge for the barrel package in barrel shipments, in the absence of a corresponding charge on tank shipments, resulting in a greater cost of transportation to the shipper in barrels on like quantities of oil between like points of shipments and destination than to the tank shipper, is a discrimination against the former in favor of the latter for which no legal justification has been shown in these cases. Independent Ref. Asso. v. Pennsylvania R. Co., 6 I. C. C. 52.

(w) A shipper should not be subjected to unnecessary restrictions as to the kind of case or package he shall use. Rhode Island Egg & Butter Case Co. v. L. S. & M. S. R. Co. et al., 6 I. C. C. 176.

(x) On failure of the defendant common carriers to cease charging for the transportation over their respective roads of barrel packages containing oil shipped from points in Western Pennsylvania to New York Harbor points and Boston and Boston points, or, as an alternative, promptly furnish tank cars to shippers of oil between said points, and to file and publish tariffs accordingly, and to make reparation to injured parties legally entitled thereto, by refunding all sums received for carrying barrel packages containing oil shipped between said points when the use of tank cars for such shipments had not been open to shippers impartially, and shippers had been thereby deprived of their use, all of which was required of defendants by order entered in these cases on November 14, 1892, and upon the filing of itemized claims for reparation, due hearing of the claimants and defendants, and full investigation of the matters involved, HELD: that the claims for reparation served upon defendant initial carriers by claimants, according to a stipulation entered into by the parties, are the claims to be considered in these cases. That the parties legally entitled to reparation under said order of November 14, 1892, are oil shippers from Titusville, Oil City and vicinity who were members of the complaining associations at the time the complaints were filed, or subsequently, up to the date of the hearing at Titusville on May 15, 1894. That the time which the claims herein may properly cover is from September 3, 1888, when the practice of charging for carrying barrels containing oil was commenced by defendants, to May 5, 1894, when hearing on the claims was had. That the shipments as to which reparation should be made are those from Titusville, Oil City, or vicinity, to New York or New York Harbor points, or Boston or points taking the Boston rate, that passed over routes in which some one of the defendants was the carrier receiving the freight for transportation, initiating and controlling the method or mode of carriage and billing the freight through to destination at the aggregate rates of compensation charged. That the amount to be refunded is the charge collected by defendants for the transportation of barrels containing petroleum oil shipped and carried as aforesaid. That the defendants are severally liable for the full amount of damages proved in these cases to result from violations in which they or either of them participated. Independent Refiners' Asso. v. Western N. Y. & P. R. Co., 6 I. C. C. 378.

(y) Complainant attacked rates on oil in barrels as compared with oil in tank cars from western Pennsylvania to New York Harbor points as unreasonable and unjustly discriminatory. Previous order dated Nov. 14, 1892. Upon hearing reparation awarded. Independent Refiners' Asso. v. W. N. Y. & P. R. Co., 378.

(z) Iron pipe fittings shipped in cases from northern points to southern territory take second class rates, but if shipped in casks, barrels or kegs a special iron rate, lower than the sixth-class rate, is applied on any quantity. The barrel package is cheaper than the case except when the quantity is insufficient to fill a barrel; but when that happens a keg can be used for packing, with but little inconvenience or additional expense, and the lower special iron rate is thereby secured. The choice is wholly with the shipper to pay the higher rate on fittings in cases or the lower rate on fittings in kegs or barrels. Such a classification does not operate of itself to aid dishonest shippers in underbilling goods of greater value, and the opportunity for false billing would not be lessened by giving the special iron rate to pipe fittings packed in cases. No ground of distinction appears in this respect between pipe fittings and numerous other articles included in the special iron list and taking higher rates when packed in boxes, and reclassification of all these other commodities is not warranted by the facts

in this case. HELD: That the defendant carriers have not exceeded the limits of their discretion in placing iron pipe fittings packed in cases in a higher class than iron pipe fittings packed in kegs or barrels, and that such action is not unreasonable or otherwise in violation of the Act to Regulate Commerce. Trades League v. Philadelphia, W. & B. R. R. Co., 8 I. C. C. 368.

(aa) A carrier does not exceed the limits of its discretion in placing iron pipe fittings packed in cases in a higher class than iron pipe fittings packed in kegs or barrels, and such action is not unreasonable or in violation of the Act to Regulate Commerce. Trades League of Phila. v. Philadelphia, W. & B. R. Co., 8 I. C. C. 368.

(bb) Defendant's published tariffs to various points in Alabama, including Gordo, as well as those of the Louisville & Nashville, Southern, and Illinois Central, to some points in Alabama, show in some instances charges per barrel of flour considerably less than double the rate per 100 pounds in sacks, while in other cases, as in the instance of Gordo, the barrel rate is materially in excess of double the rate per 100 pounds in sacks, and this, notwithstanding the weight of a barrel of flour is substantially double the weight of flour as shipped in sacks. The rates on sack flour are commodity rates, and the evidence leads to the inference that shipments of flour in barrels would be given double the rate on flour in sacks, although this may not correspond to actual published rate on flour in barrels. HELD, that it is manifestly contrary to law, and leads to confusion, for one line of rates to be retained in published tariffs, while others are in fact used on actual shipments, and that so long as carriers in Southern Classification territory deem it necessary to retain Class F in their classifications and publish rates applicable thereto, including flour in barrels, and at the same time publish commodity rates on the same article carried in sacks, there should be uniformly a just relation in such rates. Case retained with respect to the rates in question on flour shipped in barrels, unless same are changed to conform relatively to those applied to shipments in sacks. Cannon v. Mobile & O. R. Co., 11 I. C. C. 537.

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(cc) Classification is sometimes made with respect to the manner of packing of articles. Metropolitan Paving Brick Co. v. A. A. R. R. Co., 17 I. C. C. 197, 201.

(dd) Form in which goods are presented for shipment must be considered in framing classifications and rates. Ford Co. v. C. M. R. R. Co., 19 I. C. C. 507, 509.

(ee) It is clearly within the power and authority of carriers to establish reasonable and just regulations requiring proper packing and marking of consignment before acceptance by them for transtation, which will amply protect them from negligence by shippers in this respect. C. H. Algert Co. v. D. & R. G. R. R. Co., 20 I. C. C. 93, 94.

(ff) The public is interested in safe packing. Western Classification Case, 25 I. C. C. 442, 486.

(gg) From a classification standpoint, the security of a package may with propriety be considered when fixing the rating, and carriers are not justified in placing a higher rating upon a more secure than a less secure package, except, perhaps, in cases where articles known by the same name are, in fact, different commodities of widely different values. For example, charcoal, when shipped in the bulk in barrels or bags, is a fuel; when packed in glass it is practically a drug. In Re Suspension of Western Classification No. 51, 25 I. C. C. 442, 499.

(hh) Where wide variation in the value of the same commodities when shipped in fiber or metal cans or containers when packed in barrels or boxes, the rating on such double packages should not be higher than the rating on the same commodity when shipped in bulk in barrels. Western Classification Case, 25 I. C. C. 442, 499.

(ii) The propriety of increasing the rating upon an article when it is offered loose or in bundles with practically no protection as compared with the rating of the same commodity when boxed or otherwise fully protected, cannot be questioned. A package which is less desirable from a transportation standpoint deserves to be given a higher rating than one which is more desirable. This does not sanction disproportionate and arbitrary increases in the rating of an article when offered in a less desirable package. There should be some relation between

the increased rating and the increase in the risk, difficulty in handling and other proper considerations. In Re Suspension of Western Classification No. 51, 25 I. C. C. 442, 608.

(jj) Articles shipped in a safer and more secure package should not be rated higher than those shipped in a less safe package. In Re Suspension of Western Classification No. 51, 25 I. C. C. 442, 537.

(kk) The shipper should so pack and load his commodity as to insure against leakage from the package. Southwestern Missouri Millers' Club v. St. L. & S. F. R. R. Co., 26 I. C. C. 245, 250.

(ll) So long as proper and suitable equipment is furnished, it is the duty of the shipper to so pack his commodity as to admit of its transportation in a safe manner. It is going to extremes to claim that a perfectly new car must be "repaired" by the shipper before he can use it. There are many commodities sold to the trade in a form which the trade demands, which require no special equipment and are handled in ordinary box cars, but which do require protection from the damage which would result from friction with the sides and the floor of the car. To impose upon the carrier the duty of affording this protection for shippers of flour would necessarily require the furnishing of similar protection at the expense of the carrier on innumerable other articles or else create discriminations in favor of the chosen commodities. S. W. Missouri Millers' Club v. St. L. & S. F. R. R. Co., 26 I. C. C. 245, 251.

(mm) The Commission has no preferences in the matter of containers; and if it had it would not express them. It may be required, however, to draw a conclusion with reference to the reasonableness of certain rules of the carriers made applicable to a certain kind of container. Sea Gull Specialty Co. v. Baltimore Steam Packet Co., 27 I. C. C. 267, 272.

(nn) The duty should be placed upon the carriers' agents to notify the shippers whenever their containers do not comply with specifications laid down in the classification rules. This responsibility should rest upon the initial carrier. It should point out to the shipper that his box or container does not come within the classification rules, in order that he may have opportunity to correct the defect before incurring a penalty which may be imposed by the delivering carrier. Sea Gull Specialty Co. v. Baltimore Steam Packet Co., 27 I. C. C. 267, 273.

(oo) Different rates according to character of container or form in which commodity is shipped not uncommon. Gotron Bros. Co. v. G. & W. R. R. Co., 28 I. C. C. 38, 42.

(pp) Classification rules with respect to the construction, packing and sealing of fiber boxes should be rigidly enforced and the shipper held responsible for any violation thereof. Pridham Co. v. S. P. Co., 30 I. C. C. 117, 124.

(qq) The authorities have generally recognized that it is not only the right but the duty of the carrier to decline shipments which are not so prepared or packed as to render them safe for transportation, and to establish reasonable rules and practices in this respect. Dunnage Allowances, 30 I. C. C. 538, 542.

(rr) The primary purpose of packing requirements involved is to prevent what is technically known as concealed loss; i. e., loss by theft in transit, which is not discovered until after delivery of shipment to consignee, because of the fact that there is no indication on the package that it has been tampered with. Reynolds Tobacco Co. v. A. & S. Ry. Co., 39 I. C. C. 371, 373.

(ss) The covering of, or package in which an article is contained does not stamp with its character the contents of the package. Eastbound Transcontinental Canned Goods, 50 I. C. C. 62, 66.

(tt) If any particular packing specification is believed to be unreasonable it may be made the subject of complaint. Consolidated Classification Case, 54 I. C. C. 1, 14.

(uu) Concessions in freight charges based upon the manner in which goods are packed or the containers which are used are not unlawful, provided they are reasonably related to the advantages accruing to the carriers from the improved packing or loading. Pneumatic Sales Corp v. A. & R. R. R. Co., 57 I. C. C. 308, 309.

(vv) The contention that a difference in values warranted a lower rate on cotton linters, uncompressed, than on cotton found not sustained as in Louisiana Cotton, 46 I. C. C. 451, 453, the Commission approved rates on linters the same

as those on cotton. Speir & McKay v. Director General, as Agent, 61 I. C. C. 736.

(ww) The failure of carriers to provide for the shipment of machine-finished steel roller chains, in bags, at the same ratings when shipped in barrels or boxes, found unreasonable. Link-Belt Co. v. P., C., C. & St. L. R. R. Co., 64 I. C. C. 195.

(xx) The liability of an inner container to breakage depends chiefly on the method of packing and the character of the outer container, which the carrier may control. When shipments are properly packed in an outer container of the right character, the character of the inner container may become relatively unimportant. Indian Packing Corp v. Director General, as Agent, 64 I. C. C. 205, 208.

(yy) The word "cases" has generally been construed as including both the shell and the shell containing one or more empty bottles. The word does not cover casks. Duluth Brewing & Malting Co. v. G. N. Ry. Co., 73 I. C. C. 637, 638.

(zz) From a transportation standpoint boxed apples are more desirable traffic, especially on long hauls, than bulk apples. Holmes v. Director General, as Agent, 74 I. C. C. 668, 669.

(3a) The duty should be placed upon the carriers' agents to notify shippers whenever their containers do not comply with specifications laid down in the classification rules. This responsibility should rest upon the initial carrier. It should point out to the shipper that his box or container does not come within the classification rules, in order that he may have opportunity to correct the defect before incurring a penalty which may be imposed by the delivering carrier. Classification Specifications for Fiber Box Containers, 77 I. C. C. 713, 717.

(3b) Proposed rule in classification empowering carriers to refuse for shipment articles in fiber-board boxes which do not in all respects conform to specifications, in addition to present penalty rate provision if such shipments are accepted, found not justified. Present penalty provision is uniform throughout the United States and should be uniformly applied, and no necessity is shown for refusing articles in fiber-board boxes which will safely and securely transport commodities contained therein, although not conforming in all respects to carriers' specifications. Fiber-Box Containers, 77 I. C. C. 713.

(3c) Contention that, since carriers may lawfully refuse shipments of explosives and other dangerous articles in containers not conforming to specifications of the Commission, they may also refuse all articles in containers which do not meet the requirements which they prescribe, not sustained. Congress directed the Commission to formulate regulations governing transportation of dangerous articles for protection of life and property, and fact that shipments of that character may not be transported in containers not complying in every particular with specifications prescribed does not prove that there should be no latitude in that respect in transportation of articles which are not dangerous. Fiber-Box Containers, 77 I. C. C. 715.

(3d) Rates assessed on stoneware moved in crates and barrels found unreasonable to extent they exceeded lower rate contemporaneously in effect on same commodity "in bent-wood crockery crates," which lower rate applied generally to stoneware "in crates" prior to movement and was subsequently restored. Reparation denied for lack of proof. Hercules Powder Co. v. Director General, as Agent, 80 I. C. C. 219.

(3e) Failure of carriers in western classification territory to provide for shipment of, loose, in excelsior, hay, straw, or similar packing material, at same rating and minimum weight as apply on same commodity when shipped in barrels, boxes, or crates, found unreasonable, and c. l. rating and minimum weight ordered established accordingly. Schlieper v. S. P. Co., 80 I. C. C. 630.

ALL OTHER CITATIONS

Kruth & Co. v. C., M. & St. P. Ry. Co., Unrep Op. 539; Wells-Higman Co. v. T. & P. Ry. Co., Unrep. Op. 527; Hill Nursery Co. v. M. C. R. R. Co., Unrep. Op. 524; Imperial Candy Co. v. C., B. & Q. R. R. Co., Unrep. Op. 412; Wholesale Fruit & Produce Assn. v. A., T. & S. F. Ry. Co., 17 I. C. C. 596, 600; Millinery Jobbers' Assn. v. American Express Co., 20 I. C. C. 498, 502; Southern Queen Range Co. v. C., N. O. & T. P. Ry. Co., 21 I. C. C. 608, 609; Oster Bros. v. M., L. & T. R. R. & S. S. Co., 21 I. C. C. 511, 512; Robertson Paper Co. v. B. & M. R. R., 21 I. C. C. 254; In Re Advances in Rates for Transportation of Liquor, 21 I. C. C. 199;

Wadell Show Case & Cabinet Co. v. M. C. R. R. Co., 22 I. C. C. 106, 107; Republic Metalware Co. v. E. R. R. Co., 22 I. C. C. 565, 567; Crutchfield, Woolfolk & Clore v. F. E. C. Railway Co., 28 I. C. C. 274, 278; H. L. Keats Auto Co. v. O. W. R. R. & Nav. Co., 28 I. C. C. 412; Sea Gull Specialty Co. v. Baltimore Steam Packet Co., 27 I. C. C. 267, 270; Kellogg Food Co. v. G. T. Ry. Co. of Canada, 26 I. C. C. 611, 613; In Re Suspension of Western Classification No. 51, 25 I. C. C. 442, 443, 461, 475, 514, 523, 532, 538, 545, 573, 578, 579, 580, 582, 584, 588, 589, 592, 597, 600, 601, 606; Nat'l Wool Growers' Assn. v. O. S. L. R. R. Co., 25 I. C. C. 675, 678; Alexander v. S. P. Co., 24 I. C. C. 306; Red "C" Oil Mfg. Co. v. A. & V. Ry. Co., 24 I. C. C. 542; Crutchfield, Wolfolk & Clore v. F. E. C. Ry. Co., 28 I. C. C. 274, 276; Klauer Mfg. Co. v. A., T. & S. F. Ry. Co., 28 I. C. C. 508, 509; Pridham Co. v. S. P. Co., 30 I. C. C. 117, 122, 123; Dunnage Allowances, 30 I. C. C. 538, 543, 545; Wolverton v. U. P. R. R. Co., 31 I. C. C. 23, 24; Traffic Bureau of Knoxville, Tenn., v. A. & V. Ry. Co., Unrep. Op. A-559; Sea Gull Specialty Co. v. Baltimore Steam Packet Co., Unrep. Op. A-619; Wagner & Sons v. F. E. C. Ry. Co., Unrep. Op. A-678; Merchants' & Manufacturers' Asso. v. L. & N. R. R. Co., Unrep. Op. A-680; Knight Woolen Mills v. C. & N. W. Ry. Co., 32 I. C. C. 490; Rates on Boots and Shoes from Boston, Miss., 31 I. C. C. 154, 158; American Round Bale Press Co. v. A., T. & S. F. Ry. Co., 32 I. C. C. 458; Sloane v. S. P. Co., 33 I. C. C. 509; Pennsylvania Paraffine Works v. P. R. R. Co., 34 I. C. C. 179, 192; Des Moines Commodity Rates, 34 I. C. C. 281, 290; Memphis Freight Bureau v. S. Ry., 36 I. C. C. 281; Produce Distributors Co. v. L. V. R. R. Co., 40 I. C. C. 17, 18; Reynolds Tobacco Co. v. A. & S. Ry. Co., 39 I. C. C. 371, 376, 377; Kistler, Lesh & Co. v. A. G. S. R. R. Co., 39 I. C. C. 478, 480; Bon Marche v. C., M. & St. P. Ry. Co., 39 I. C. C. 611; Hungarian Milling & Elevator Co. v. C. & E. I. R. R. Co., 40 I. C. C. 610; Wool from California, 41 I. C. C. 314; Fish from Virginia, 42 I. C. C. 415, 416; Rosenblum v. N. Y., P. & N. R. R. Co., 43 I. C. C. 67; Silk Assn. of America v. Pa. R. R., 44 I. C. C. 578, 581; R. R. Comm. of Ala. v. C. of G. Ry., 45 I. C. C. 516; Closset & Devers v. N. P. Ry., 45 I. C. C.99, 100; Portland Traffic Tarnsportation Asso. v. O. W. R. R. & N., 45 I. C. C. 410, 411; Coca-Cola Co. v. A., T. & S. F. Ry., 45 I. C. C. 461, 463, 464; Warren Fish Co. v. L. & N. R. R., 46 I. C. C. 375, 377; Herrick Refrigerator & Cold Storage Co. v. C. G. W. R. R., 46 I. C. C. 421, 423; C. F. A. Territory Milk and Cream Rates, 46 I. C. C. 601, 620; Vegetable Oils Transportation, 46 I. C. C. 674, 675; Mathews & Bro. v. C. & E. I. R. R., 47 I. C. C. 36; National Wool Growers Asso. v. U. P. R. R., 49 I. C. C. 55; Delaware Punch Co. of Tex. v. G., H. & S. A. Ry., 49 I. C. C. 131; Eck Co. v. A., T. & S. F. Ry. Co., 49 I. C. C. 145; Casket Mfrs. Asso. of America v. B. & O. R. R., 49 I. C. C. 327, 328; National Asso. of Waste Material Dealers v. N. Y. C. R. R., 49 I. C. C. 383, 384; Reed Tobacco Co. v. C. & O. Ry., 51 I. C. C. 201, 202; Decker & Sons v. B. & O. R. R., 50 I. C. C. 47, 48, 49; Eastbound Transcontinental Canned Goods, 50 I. C. C. 62, 66; Reed Tobacco Co. v. C. & O. Ry. 51 I.C.C. 201; Chapin Sacks Mfg. Co. v. P. M. R. R., 51 I. C. C. 443, 446; Helvetia Milk Condensing Co. v. A. & V. Ry., 51 I. C. C. 624; Pneumatic Scales Corp. v. A. & R. R. R., 51 I. C. C. 686, 689, 692, 694, 695, 696; Monarch Paper Co. v. C. P. Ry. Co., 53 I. C. C. 620; Savage Tire Co. v. Director General, 53 I. C. C. 578; Consolidated Classification Case, 54 I. C. C. 1, 25, 30, 31, 33, 36, 37, 38, 44, 45, 47, 48, 54, 65; Brock Candy Co. v. A. G. S. Ry., 55 I. C. C. 107; Sauer Co. v. A. & V. Ry., 55 I. C. C. 11, 14; Brock Candy Co. v. A. G. S. R. R., 55 I. C. C. 107, 109; Rope Paper Sack Bureau v. Director General, 55 I. C. C. 209, 212, 213; Dahlstrom Metallic Door Co. v. E. R. R., 55 I. C. C. 402, 411; Perishable Freight Investigation, 56 I. C. C. 449, 554, 556, 557; Larkin Co. v. Erie R. R., 52 I. C. C. 413 DeLaval Separator Co. v. A. & R. R. R. Co., 57 I. C. C. 668, 673, 676; California Citrus League v. Director General, 58 I. C. C. 373, 382; Leigh Banana Case Co. v. Director General, 59 I. C. C. 113, 117, 118; Express Classification, 1920, 59 I. C. C. 265, 272, 275, 276, 277, 281; Viscoe Co. v. Amer. Ry. Exp. Co., 62 I. C. C. 32, 34; Swift & Co. v. Director General, as Agent, 61 I. C. C. 457; Classification Ratings on Flower and Garden Seeds, 63 I. C. C. 285; Boston Wool Trade Asso. v. A. & S. Ry. Co., 64 I. C. C. 365, 375; Packing Requirements of Deciduous Fresh Fruits, 64 I. C. C. 539; Agate Products Co. v. Director General, 66 I. C. C. 674; Murphy Manufacturing Co. v. O. W. R. R. & N.

Co., 68 I. C. C. 211; Standard Chemical Mfg. Co. v. Director General, 68 I. C. C. 467; R. J. Holmes & Herb Kelley Co. v. Director General, 74 I. C. C. 668; Cooper Co. v. Director General, as Agent, 74 I. C. C. 539; Traffic Bureau of Nashville v. L. & N. R. R. Co., 68 I. C. C. 623, 626; Gledhill Co. v. Director General, as Agent, 80 I. C. C. 701; Gallaudet Aircraft Corp. v. N. Y. N. H. & H. R. R., 88 I. C. C. 750.

§16a. Penalty Charge.

See Passenger Fares §4¼; Penalty Charges.

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(a) Respondents filed tariffs making it clear that the penalty charge of 25 per cent on eggs not packed in accordance with the classification would be made against the entire shipment even though only a small part did not conform to the classification requirements for packing. Respondents made no effort to justify the proposed rule, but proposed in lieu thereof one providing for the application of the less carload rate and actual weight on the improperly packed part of the shipment, and the carload rate and minimum weight on the properly packed part thereof. A sufficient and more logical penalty would be imposed by assessing on that part of the shipment the second class rate, applicable on carload shipments of eggs improperly packed. HELD: Respondent has not justified the proposed schedules. Penalty charge on eggs not packed in standard carriers between points in Western Trunk Line Territory, 74 I. C. C. 726.

§16½. Part of Same Article or Shipment.

See Infra §21; Follow-Lot Shipments.

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(a) The parts of a machine, although separately prepared for shipment, as constituent parts their identities are merged for the purpose of classification into the complete article. Meyer Co. v. A., T. & S. F. Ry., 41 I. C. C. 380, 382.

(b) It is sound principle that the machine and its parts should be provided for in straight or mixed carloads. Consolidated Classification Case, 54 I. C. C. 1, 29.

(c) Complainant loaded first car to visible capacity and forwarded shipments under separate bills of lading, but failed to comply with tariff requirements or make cross reference to the separate shipments in the actual billing which would indicate that commodities were offered as a single shipment. HELD: Follow-lot rule not applicable and charges legally applicable not found unreasonable. United Verde Extension Mining Co. v. Director General, 57 I. C. C. 483.

(d) Where classification provided different rates for different kinds of the same article and such articles are not separately packed, the rating applicable to the highest rated article in the package will apply. Torsion Balance Co. v. Director General, as Agent, 59 I. C. C. 218, 219.

(e) Following Parkersburg Rig and Reel Co., 50 I. C. C. 416, rates on nails, shipped with parts of oil-well outfits and supplies, in quantities sufficient for assembling the parts or constructing the derrick to be used in connection therewith, but not more than 500 pounds for each outfit, found unreasonable to extent they exceeded the rates on mixed carloads of oil-well outfits and supplies. Reasonable rate prescribed and reparation awarded. Parkersburg Rig & Reel Co. v. Director General, as Agent, 59 I. C. C. 563.

(f) Fourth-class rate on locomotives, k. d., essential parts of which were missing at time of shipment, found legally applicable as the absence of such parts did not affect the identity of the article transported or destroy its fundamental character from a transportation or tariff standpoint. Harris Bros. Co. v. Director General, as Agent, 60 I. C. C. 428.

(g) Steel crown blocks are manufactured specially as integral parts of oil-drilling outfits, and are not adapted to other uses. If they are parts of oil-well outfits when shipped l. c. l., their movement in carloads does not alter their character. Parkersburg Rig & Reel Co. v. Director General, as Agent, 64 I. C. C. 154, 155.

ALL OTHER CITATIONS

Bowling v. M., K. & T. Ry., of Texas, 45 I. C. C. 473, 474; Federal Bridge Co. v. A., T. & S. F. Ry., 45 I. C. C. 537, 538; Acme Cement Plaster Co. v. A., T. & S. F. Ry., 45 I. C. C. 551, 553; Louisville & N. R. R. v. Newell (Ala. 1917), 77 So. 553; Larkin Co. v. Erie R. R., 52 I. C. C. 413; Consolidation Classification Case, 54 I. C. C. 1, 19, 20, 44, 48, 52, 53, 56, 57; Texas Highway Department v. Director General 73 I. C. C. 629.

§16¾. Valuable Articles.

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(a) Proposed rule which contains list of several articles of extraordinary value that will not be accepted for transportation by freight, including money, stamps, valuable papers, etc., approved. Consolidated Classification Case, 54 I. C. C. 14.

IV. COMPARATIVE RATINGS.

See Infra §22; Advanced Rates §5 (3); Classification §6; §16; §22; Commodity Rates II; Comparative Rates; Evidence §12; §31.

(A) Analogous Articles.

§17. In General.

See Live Stock; Reasonableness of Rates §28.

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(a) The classification of railroad ties in a different class from other lumber, thus imposing a higher rate upon ties than upon other lumber, HELD, to be an unjust discrimination.. Reynolds v. Western N. Y. & Pa. R. Co., 1 I. C. R. 685.

(b) Complainant attacked as excessive rates and classification on rough hub blocks in that they are higher than on lumber. The blocks are the unseasoned raw material on their way to the hands of the manufacturer. They must be considered as properly classed with lumber. HELD: Rates and classification on rough hub blocks unreasonable to extent they exceeded those on lumber. Hurlburt v. L. S. & M. S. R. R., 2 I. C. C. 81.

(c) The rate on bitters as at present classified, compared with analogous articles, is not so unreasonable as to demand a change of the classification of that particular article. The propriety and extent of a change can more appropriately be acted upon, in connection with other articles, in a general revision of the classification. Myers, Survivor of Hostetter & Co., v. Pennsylvania, 2 I. C. R. 403.

(d) Grain and grain products classified alike are presumptively entitled to equal rates, and if a difference is made by a carrier it assumes the burden of sustaining it by satisfactory evidence. McMorran v. Grand Trunk R. Co., 2 I. C. R. 604.

(e) Upon complaint against the Grand Trunk Railway of Canada for alleged unreasonableness of a rate of eight cents a hundred pounds on grain and ten cents a hundred pounds on grain products from Port Huron to Buffalo, as compared with a through rate of fifteen cents a hundred pounds from Chicago to Buffalo over the line formed by that road and the Chicago & Grand Trunk road. HELD: That though the local rate from Port Huron to Buffalo might be regarded as disproportionate on the basis of distance alone, other considerations are involved, and, in view of the terminal and ferry expenses at Port Huron, the Niagara Bridge charges and the Buffalo terminal expenses, all of which are borne by the Grand Trunk Railway of Canada alone upon business originating at Port Huron, the complaint against the eight-cent rate on grain is not sustained, but no good reason having been shown for a higher rate on grain products, that portion of the complaint is sustained, and the products ordered to be carried at the same rate as grain. McMarran v. Grand Trunk R. Co., 2 I. C. R. 604.

(f) In arranging the classification of articles of commerce their market value and the shippers' representations to the public as to their character may properly be taken into account in ascertaining the analogy they bear to other articles, and determining the class to which they justly belong. This is especially applicable to articles in which there is no free competition among producers and shippers. And carriers are not required to estimate the intrinsic value of freight as distinguished from its commercial value for purposes of classification and rates. Warner v. N. Y. C. & H. R. R., 3 I. C. C. 74, 76.

(g) Complainant attacked classification on celery from Tecumseh, Mich., to Kansas City, Mo., as unjust and unreasonable. HELD: For that portion of its line over which the Western Classification is in force, the Wabash should class celery with cauliflower, asparagus, lettuce, green peas, string beans, oyster plant, egg plant, and other vegetables enumerated in Class C, rather than with berries, grapes, and other fruits specified in Class 111 thereof. Tecumseh Celery Co. v. C., J. & M. R. Co., 4 I. C. C.318.

(h) Complainant attacked classification of window shades as unjust and unreasonable, from Minetto, N. Y., to Chicago, Ill., and other western points.

HELD: Upon consideration of the great reduction which has taken place in the value of window shades, the arbitrary increase of shade classification during the progress of the proceeding, and all the other facts and circumstances herein which pertain to the rights of shade shippers and consignees generally, and of purchasers of that article of household necessity, HELD, the classification of window shades as first class in the official classification has become unjust, and the legal duty of defendants to so classify thereon that the burdens of transportation are reasonably and justly distributed among the articles they carry, requires them to reduce their classification of window shades to the class which, under the classification, is now applied to window hollands and shade cloth, plain, uncut and undecorated. Page v. D., L. & W. R. Co., 4 I. C. C. 525.

(i) Carriers who have uniformly placed in the same class all grades of a particular commodity, regardless of the difference in value between different grades, will not incur greater risks by continuing the same practice under an order of the Interstate Commerce Commission requiring a lower classification and rating for the great bulk of shipments of such commodity which are actually transported. Page v. Delaware, L. & W. R. Co., 6 I. C. C. 148, 548.

(j) The railroad companies named as defendants established and maintained a rate of 15 cents per hundred pounds on box shooks, and a lower rate of 12 cents per hundred pounds on lumber, laths and shingles carried from Bay City, Michigan, to Buffalo, Black Rock, Tonawanda and Suspension Bridge, New York. A carload of lumber weighs 36,000 pounds, a carload of box shooks or shingles weighs about 30,000 pounds. Lumber carried in carloads is worth from $350 to $800 per car; a carload of box shooks is worth about $220. The freight charges on both lumber and box shooks are about $43, and on shingles about $36 per carload. The rates on these several products are the same from Bay City to Cleveland and ports on Lake Erie other than Buffalo, and to points in Illinois, Indiana, Ohio and other states. HELD: That the higher rate on box shooks was not justified, and was excessive. Michigan Box Co. v. Flint & P. M. R. Co. et al., 6 I. C. C. 335.

(k) Complainant attacked rates on box shooks as unreasonable from Bay City, Mich., to Buffalo, Black Rock, Tonawanda and Suspension Bridge, N. Y., as compared with rates on lumber. The rate on box shooks was 15c per 100 pounds, and 12c on lumber, laths and shingles. Lumber in carloads is worth from $350 to $800 per car, box shooks about $220. The rates on these several products are the same from Bay City to Cleveland and ports on Lake Erie other than Buffalo and to points in Illinois, Indiana, Ohio, and other states. HELD: The higher rate on box shooks was not justified, and was excessive. Record held open as to proof of damage. Michigan Box Co. v. F. & P. M. R. Co., 6 I. C. C. 335.

(l) A charge of a higher tariff rate to designated points on "box shooks" made from an inferior grade of lumber than on lumber, laths and shingles to the same places, is unjustified and excessive, where these products are classed together and carried at the same rate to other points. Michigan Box Co. v. Flint & P. M. R. Co., 6 I. C. C. 335.

(m) Complainants' open-end envelopes, though made by a different and cheaper process than that employed in the manufacture of other open-end or side envelopes, and usually from an inferior grade of paper, are nevertheless made, used, and shipped like merchandise envelopes, and not like paper bags, which defendants place in a lower class; and rating complainants' envelopes in the higher class provided for merchandise envelopes is not unlawful. Wolf Brothers v. Allegheny Valley R. Co., 7 I. C. C. 40.

(n) Tomatoes and beans need not be rated in the same class where beans are more perishable than tomatoes, but such difference does not justify a difference of nearly one-half in the rate, where the actual cost of transportation is nearly the same. Rea v. Mobile & O. R. Co., 7 I. C. C. 43.

(o) Complainant attacked as unreasonable classification of iron handled bristle shoe blacking daubers in less carload lots in official classification territory. Classification charged first class which is the rating applicable to bristles, all kinds, and brushes made from bristles. HELD: It may be that carriers might, if they saw fit to do so, reduce the rates on this particular kind of brush without prejudice to others, but, in view of the necessity and purposes of the general

classification of traffic, the facts do not warrant requirement that this brush be removed from the class to which bristles brushes in general are assigned, complaint dismissed. Derr Manufacturing Co. v. Pennsylvania R. R., 9 I. C. C. 646.

(p) A cheap grade of brush, manufactured and sold as a blacking dauber, is not entitled to be classified lower than the class to which bristle brushes in general are assigned. Derr Mfg. Co. v. Pennsylvania R. Co., 9 I. C. C. 646.

(q) Validity of maintenance of rates on flour from points in Kansas and Missouri to points in Texas, which are 5 cents per 100 pounds higher than those on wheat, where such differential is not applied on flour or wheat carried in any other direction. Wichita v. Missouri P. R. Co., 10 I. C. C. 35.

(r) Cowpeas not to be classified with fertilizer in the adjustment of freight rates. Swaffield v. Atlantic Coast Line R. Co., 10 I. C. C. 281.

(s) Complainant attacked classification rating on Scheidel outfit as unreasonable. The Scheidel outfit is an electrical apparatus consisting of a so-called Ruhmkorff coil, an interrupter, a small rheostat and two switches, fitted to a strong table. The parts are detachable and are shipped in separate boxed packages, except the table, which is crated. This outfit, which transforms an electric current of low voltage into one of extremely high voltage, is used in medical and scientific work, including the use of the x-ray, and also in wireless telegraphy and in chemical works. The western classification places x-ray apparatus and scientific or medical instruments in double first class, and electrical apparatus, n. o. s., in first class. Complainant contended that their outfit should be treated as an ordinary eectrical appliance and carried at first class rates. HELD: That under conditions now governing the manufacture and use of complainant's outfit, such outfit is properly classified by defendants with the x-ray and medical or scientific apparatus as double first class, and is not entitled to a first class rating with dynamos, transformers and other electrical machinery, but no opinion is expressed upon the justice of the first class rate on such machinery, complaint dismissed. Scheidel & Company v. C. & N. W. Ry., 11 I. C. C. 532.

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(t) In making a classification, bulk, value, liability to loss and damage, and similar elements affecting the desirability of the traffic should be considered, and articles which are analogous in character should ordinarily be placed in the same class. Mettropolitan Paving Brick Co. v. A. A. R. R. Co., 17 I. C. C. 197, 203.

(u) Classification must be by analogy and comparison. German Kali Works, Inc., v. A., T. & S. F. Ry. Co., 28 I. C. C. 223, 225.

(v) And the fact that carriers have accorded to one article a basis of rates below normal is of itself no reason, in the absence of unjust discrimination or undue prejudice, for requiring the establishment of the same rates on analogous articles, especially where shipper is directly benefited by the lower basis of rates already in effect. Pioneer Pole & Shaft Co. v. Director General, as Agent, 64 I. C. C. 744, 746.

(w) In numerous cases involving rates on coal in almost every section of the United States the Commission has either approved or required establishment of lower rates on finer coal than on prepared sizes. Northern States Power Co. v. A., T. & S. F. Ry. Co., 80 I. C. C. 261, 264.

(x) There can be no justification for great difference between rates on anthracite and bituminous coal. Both kinds move in the same equipment, load to approximately the same weight, and are given the same minimum weights under tariffs. Western Coal Rates, 80 I. C. C. 383, 439.

(y) The fact that rates lower than those authorized have been accorded by certain carriers is of itself no valid reason, in the absence of unjust discrimination or undue prejudice, for requiring the establishment of the same rates on analogous articles. Hollingshead Co. v. A. & R. R., 88 I. C. C. 191, 195.

ALL OTHER CITATIONS

Portner Brewing Co. v. S. Ry. Co., Unrep. Op. 361; Walsh & Weidner Boiler Co. v. P. & R. Ry. Co., Unrep. Op. 560; Hill Nursery Co. v. M. C. R. R. Co., Unrep. Op. 524; Mead Auto Cycle Co. v. C., B. & Q. R. R. Co., Unrep. Op. 474; Heil Chemical Co. v. U. P. R. R. Co., Unrep. Op. 471; Orford Copper Co. v. P. & R. Ry. Co., Unrep. Op. 468; Cannon Mfg.

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§18. Specific Comparisons.

See Supra §3½; §17; Comparative Rates.

CASES 1887-1908

(a) The proper classification of an article is to be judged relatively by the classification of other articles similar in character, quality and conditions of transportation. Myers, Survivor of Hostetter & Co. v. Pennsylvania, 2 I. C. R. 403.

(b) From Sioux City, Iowa, to Mississippi River points, and from Sioux City to eastern markets and seaboard cities via Mississippi River points, the rates are made considerably higher by the carriers on live hogs than on packing house products. With, however, the single exception of Sioux City rates are made the same by rail carriers on live hogs and packing house products carried from Missouri River points to Mississippi River points or from Missouri River points to eastern markets via Mississippi River points, or from intermediate points in Iowa and Missouri to Mississippi River points, or from Chicago to eastern markets and intermediate points. But upon all shipments of live hogs and packing house products from Missouri River points to Chicago, or from intermediate points in Iowa and Missouri to Chicago, the rate charged is much higher on live hogs than on packing house products. HELD, defendants must cease from the unjust discrimination now made by them in rates on live hogs and packing house products from Missouri River points and from interior points in Iowa and Missouri upon shipments of these articles to Chicago, and that the rates made by them upon live hogs shall not be greater than upon packing house products carried by them on each of their lines from Missouri River points and Iowa and Missouri to Chicago. Board of Trade of Chicago v. C. & A. R. Co., 3 I. C. C. 233.

(c) For reasons peculiar to the territory lying west of the Missouri River, comprising a large portion of Texas, Missouri and a part of Kansas, the rates on wheat and wheat flour are grouped without reference to distance, and a lower rate has been charged on wheat than on wheat flour for fifteen years. Prior to 1886 the difference in the two rates was 15 cents per 100 pounds. In that year a readjustment of rates was made, and upon consideration of all the circumstances and conditions and claims of rival communities the differential was reduced to 5 cents per 100 pounds, which has since been maintained. Upon complaint made by millers of Missouri against a differential of 5 cents and claiming an equal rate on wheat and flour from Missouri and Kansas into Texas. HELD, that under the conditions existing in the territory in question a rate of 5 cents less than 100 pounds on wheat than on flour does not as a matter of fact work unjust discrimination, and is not therefore unlawful, complaint dismissed. Kauffman Milling Co. v. M. P. R. Co., 3 I. C. C. 400.

(d) Unreasonable or unjust classification of a commodity is not shown by evidence of lower classification for articles widely dissimilar in the elements of risk, weight, bulk, value, or general character. The proper method of comparison is the classification accorded by the carriers to analogous articles. Chas. H. Brounell, Columbus & Cincinnati Midland R. Co., 4 I. C. R. 285.

(e) Complainant attacked rates and classification on vegetables, carloads. Evidence presented concerning defendants alleged unlawful practice of charging second class rates on beans, while potatoes are carried by it at rates provided for third class articles. HELD, not sufficient to justify an order requiring a change in classification. The present difference of almost one-half in the rate on beans and tomatoes shipped from Verona, Miss., to East St. Louis, Ill., the actual cost of transportation being nearly the same, ought to be remedied. Group rates of 70 cents on second class articles and 44 cents on third-class applying within a distance of 271 miles from Prichard, Ala., to Verona, Miss., on shipments over an extreme distance of 640 miles to East St. Louis, and which in the next 200 miles fall to 30 cents second class, and 22 cents third class. HELD, prima facie unreasonable and unjustly discriminatory against points within the group which are nearer to East St. Louis, and unlawful as to shipments from Verona. Complainant offered the defendant a carload of potatoes at Verona, Miss., and asked that the shipment be forwarded to Cleveland, O., via a connecting line with which defendant had at the time through billing arrangements and through rates, but defendant's agent refused to receive and route the shipment in accordance with such direction, and complainant was thereby damaged. HELD, complainant was entitled to have his merchandise carried over the route which he directed, and the failure of defendant to receive and forward the shipment was a discrimination against complainant, reparation awarded. Rea v. M. & O. R. Co., 7 I. C. C. 43.

(f) Complainant attacked as unreasonable and unjustly discriminatory rates

charged from Kansas and Missouri to Texas on flour as compared with rates on wheat. Rates from Kansas and Missouri to Texas are five cents per 100 pounds higher on flour than on wheat, and such differential is not applied on flour or wheat carried in any other direction. In previous decisions, 4 I. C. C. 417, 3 I. C. C. 400 and 8 I. C. C. 304, this differential has been before the Commission and there has been no such change in conditions governing the traffic as to warrant interference by the Commission. HELD, differential attacked not unreasonable or unjustly discriminatory, complaint dismissed. Mayor and Council of Wichita, Kas., v. M. P. R. R., 10 I. C. C. 35.

(g) Complainant attacked classification on cowpeas in the southern classification as unreasonable and unduly discriminatory. Cowpeas, like clover and other grasses are sown and then turned over by the plow for the purpose of soil improvement, but this is not a reason why cowpeas should, in the adjustment of freight rates, be classed as a fertilizer, which is applied directly to the soil; and cowpeas are further distinguished from fertilizer in that fertilizer furnishes the carrier much greater tonnage, cowpeas have much greater value, and the vine as well as the pea itself is used as a food product. Defendant, L. & N., classifies cowpeas in class D of its freight classification, which also includes grain, while defendant, A. C. L., imposes a charge of 1 cent higher than class D rates on cowpeas shipped from North and South Carolina points to New Orleans, La. HELD, charge exacted by the A. C. L., is unreasonable and unjust and cowpeas should be placed by it in class D and carried at the rates fixed by that class. Swaffield v. A. C. L. R. R., 10 I. C. C. 281.

(h) Complainant attacked as unreasonable and unduly discriminatory rates on cattle and hogs as compared with livestock products from west, northwest and southwest to Chicago, Illinois. The desire of a carrier to secure additional business for its line of road does not justify a change in the relation of rates resulting in a higher rate upon cattle and hogs, the raw material, than upon livestock products, the manufactured article, where, as in this case, the articles are in sharp competition with each other in markets of purchase and sale, and where it appears that upon other lines and in other sections rates are generally no higher, and in many instances much lower, on the traffic prejudiced than on that favored by the change, and where numerous and important industries, which have been built up and maintained under the former adjustment, and those interested in such industries, will be injuriously affected by the action taken. Such discrimination is not justified by difference in cost of transportation or otherwise, and subjects the traffic in cattle and hogs at Chicago and other points, and those interested therein, to undue and unreasonable prejudice and disadvantage, and gives to the traffic in the products of hogs and cattle, and to shippers and localities interested in such traffic, undue and unreasonable preference and advantage, in violation of the act. HELD: The action of the C. G. W., in reducing rates on livestock products lower than on livestock and the action of other defendants in following with reductions on their lines, is unduly discriminatory against shippers of livestock and defendants ordered to withdraw the tariffs in question. Chicago Live Stock Exchange v. C. G. W. R. R., 10 I. C. C. 428.

(i) Complainant attacked as unreasonable and unduly discriminatory rates on shingles higher than on lumber from Duluth, Minn., to Chicago, Ill. Generally speaking, the demand for and use of shingles as building material are quite as important and general as for any other lumber product, and the necessity is equally as great that such product shall be charged only a reasonable and equitable rate for its transportation. Shingles being put up in bundles for shipment, the work of handling is facilitated so that no more, and perhaps even less, labor is required than for the handling of many other lumber products classed with and charged the same transportation rate as lumber, such as laths, shooks, sawdust and box and moulding material and other stuff of the regular dimensions. The weight of shingles that can be loaded in a car will also compare favorably with the above named and many other lumber products taking the lumber rate. HELD: Defendants unduly discriminate against shingles, and rates should be the same on lumber as on shingles. Duluth Shingle Company v. D. S. S. & A. R. Co., 10 I. C. C. 489.

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(j) A mere showing of the fact that

the rating in one classification territory is different from the rating on the same article in another territory does not establish that either of the ratings are unreasonable or unduly prejudicial. Dixie Mfg. Co. v. B., C. & A. Ry. Co., 31 I. C. C. 337, 340.

(k) Contention that the state of relativity between commodities which features the classification as the real foundation of its structures must necessarily extend to commodity rates, not sustained. Macaroni & Noodle Mfrs. v. A. G. S. R. R., 50 I. C. C. 289, 292.

(l) Western and southern classification rating of third class on Sudan seed, l. c. l., found unreasonable as compared with lower ratings contemporaneously maintained on sorghum seeds, and fourth class ratings prescribed for future. The transportation characteristics of Sudan seed are substantially similar to those of the competitive sorghum seeds, and there is no justification for according it the higher rating applicable to grass seeds. Mangelsdorf Seed Co. v. C., B. & G. R. R. Co., 74 I. C. C. 665.

ALL OTHER CITATIONS

Forest City Freight Bureau v. Ann Arbor R. R. Co., 13 I. C. C. 118, 121; Merchants' Traffic Assn. v. A., T. & S. F. Ry. Co., 13 I. C. C. 283, 285; Forest City Freight Bureau v. A., T. & S. F. Ry. Co., 13 I. C. C. 295, 297; Crocker Co. v. A., T. & S. F. Ry. Co., 14 I. C. C. 588, 589; Landers, Frary & Clark v. A., T. & S. F. Ry. Co., 17 I. C. C. 511, 512, 513; Nucoa Butter Co. v. E. R. R. Co., 20 I. C. C. 174; Rosenblatt & Sons v. C. & N. W. Ry. Co., 20 I. C. C. 447; Memphis Freight Bureau v. St. L. & S. F. R. R. Co., 21 I. C. C. 113; American Mfg. Co. v. L. & N. R. R. Co., 21 I. C. C. 483; Heil Chemical Co. v. Wabash R. R. Co., 21 I. C. C. 518; Heath Hardware Co. v. Penn. R. R. Co., 22 I. C. C. 223, 225; Gisholt Machine Co. v. C., C., C. & St. L. Ry. Co., Unrep. Op. 290; Lumber Rates from Helena, Ark., and Other Points, 33 I. C. C. 297, 301; Fruit and Vegetables, 43 I. C. C. 291, 319; Green v. A. & V. Ry. Co., 43 I. C. C. 662, 664; Rates on Dairy Products, 43 I. C. C. 700, 719; Wing Seed Co. v. B. & O. R. R. 45 I. C. C. 160, 161; Carnation Milk Products Co. v. Director General, 55 I. C. C. 665, 667; Sauer Co. v. A. & V. Ry., 55 I. C. C. 11, 12; Volker & Co. v. Director General, 55 I. C. C. 163; Southport Mill (Ltd.) v. Director General, 55 I. C. C. 154; United Paperboard Co. v. Director General, 55 I. C. C. 218; Oatman Condensed Milk Co. v. Director General, 55 I. C. C. 228; Crown Willamette Paper Co. v. Director General, 55 I. C. C. 231; Cornell Wood Products Co. v. A., T. & S. F. Ry., 55 I. C. C. 257; Rockford Paper Box Board Co. v. C., M. & St. P. Ry., 55 I. C. C. 262; Sturges & Burn Mfg. Co. v. Director General, 55 I. C. C. 345; Dahlstrom Metallic Door Co. v. E. R. R., 55 I. C. C. 402, 412, 413; McCrory Stores Corp. v. Director General, 55 I. C. C. 423; National Pole Co. v. A., T. & S. F. Ry., 55 I. C. C. 625; Portland Traffic & Transportation Asso. v. B. & M. R. R., 55 I. C. C. 733, 737; Southern Cotton Oil Co. v. Director General, 56 I. C. C. 263; Illinois Coal Traffic Bureau v. Director General, 56 I. C. C. 426, 429; Waukesha Pure Food Co. v. Director General, as Agent, 58 I. C. C. 49; Silica Sand Producers' Asso. v. Director General, as Agent, 58 I. C. C. 549, 552; El Paso Sash & Door Co. v. Director General, 58 I. C. C. 659, 661; Moreland Motor Truck Co. v. Director General, as Agent, 58 I. C. C. 735; Southern Cotton Oil Co. v. Director General, 61 I. C. C. 454; Cooper Co. v. Director General, as Agent, 74 I. C. C. 539; Bernard Co. v. Director General, as Agent, 74 I. C. C. 557; New Bedford Board of Commerce v. Director General, as Agent, 68 I. C. C. 85; Loewanthal Co. v. C. & N. W. Ry. Co., 68 I. C. C. 115; Rock Products Traffic League v. B. & O. R. R. Co., 68 I. C. C. 146, 148; Manganese Steel Co. v. Director General, as Agent, 68 I. C. C. 149; Phillips Excelsior Co. v. Director General, as Agent, 68 I. C. C. 165; National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co., 68 I. C. C. 213, 230; Aetna Explosives Co. v. W S. R. R. Co., 68 I. C. C. 264; Republic of France v. E. R. Co., 68 I. C. C. 270; Monitor Stove Co. v. Director General, as Agent, 68 I. C. C. 305; Southport Mill (Ltd.) v. Director General, 68 I. C. C. 352; Proctor & Gamble Co. v. C. N. O. & T. P. Ry. Co., 68 I. C. C. 373; Republic of France v. Director General, as Agent, 68 I. C. C. 424; Standard Chemical Mfg. Co. v. Director General, as Agent, 68 I. C. C. 467; West Virginia Pulp & Paper Co. v. Director General, as as Agent 68 I. C. C. 534; Refinite Co. v. Director General, as Agent, 68 I. C. C. 545; Old Ben Coal Corp. v. Director General, as Agent, 68 I. C. C. 584; Crown Williamette Paper Co. v. Director General, as Agent, 68 I. C. C. 631; Rosenberg Bros. & Co. v. Director General, as

Agent, 69 I. C. C. 103; Chevrolet Motor Co. v. Director General, as Agent, 69 I. C. C. 226; Friend & Co. v. Director General, as Agent, 69 I. C. C. 256; American Cyanamid Co. v. Director General, as Agent, 69 I. C. C. 337, 341, 342; Mayer & Co. v. C. M. & St. P. Ry. Co., 69 I. C. C. 519, 521; Western Newspaper Union v. Director General, as Agent, 69 I. C. C. 523; Bancroft & Sons Co. v. N. Y., N. H. & H. R. R. Co., 69 I. C. C. 681; Linseed Products Co. v. Director General, as Agent, 69 I. C. C. 753.

§18½. Split Classes.

IMPORTANT CASES SINCE 1908

(a) Continued use of the intermediate or split classes of Rule 25 and Rule 26 in official classification constitutes one of the principal difficulties in reaching uniform ratings. Consolidated Classification Case, 54 I. C. C. 11.

§19. Evidence and Procedure.

See Evidence; Procedure.

CASES 1887-1908

(a) In a proceeding to correct a classification of freight made by the initial carrier, which freight before reaching its destination must pass over the roads of several carriers, it is proper to make all such carriers parties; but if the initial carrier alone is made defendant, the proceeding is not for that reason defective. An order requiring that carrier to make the correction will be effectual for the purposes of all subsequent consignments, and there is no difficulty in its being complied with, without asking the consent of others. Hurlbert v. Lake Shore & Michigan Southern R. Co., 2 I. C. R. 81, 82.

(b) Complainant attacked as unjust and exorbitant rate upon mineral water in tank cars and an improper classification of mineral water. All of the defendants parties to the through rate were not made parties to the complaint, therefore complaint dismissed. Michigan Congress Water Co. v. C. & G. T. R., 2 I. C. C. 428.

(c) When an informal complaint is made in regard to such a matter against a classification committee alone, the Commission will, if it can, endeavor to reach some ground that will fairly and justly adjust the differences between the complaining shippers and the carriers, but if it appear that these conflicting differences exist not only between the carriers and the complaining shippers, but that there are other localities and other dealers whose interests are directly involved and who are opposed to the relief sought by the complaining shippers, then the practice of the Commission is not to proceed in any investigation of the complaint until the complaint is put into such shape that such localities and dealers, as well as the carriers complained of, can have an opportunity to be heard. McMillan & Co. v. W. Classification Committee, 3 I. C. R. 282.

(d) Whether a complaint to the Interstate Commerce Commission in regard to classification and rates is formal or informal, it is not enough that it be made against a classification committee or a rate committee concerning grievances alleged to be perpetrated by carriers in the matter of classification and rates, who are represented to some extent by such classification or rate committee in making rates, but which carriers are not bound to accept such classification and rates and do not accept them any further than they see proper to do so; in such a case the carriers who, it is alleged, are guilty of perpetrating the grievances should be made the parties defendant to the complaint and the complaint should point them out by name. McMillan & Co. v. W. Classification Committee, 3 I. C. R. 282.

(e) Complainant attacked classification on hides and pelts as provided in the western classification as unreasonable and unjustly discriminatory. The Western Classification Committee were the only defendants, notwithstanding carriers are not obligated to publish the recommendations of the Committee on classification matters. HELD: As all carriers involved were not made parties to the complaint, complaint dismissed. James McMillan & Co. v. Western Classification Committee, 3 I. C. C. 282.

(f) When on complaint of a carload shipper unjust discrimination is alleged to result from equal rates on carload and less carload quantities of the same commodity, the burden of proof is upon the complainant. Brownell v. C. & C. M. R. Co., 4 I. C. C. 285.

(g) An order of the Commission requiring a carrier to desist from enforcing a classification of specified articles higher than the classification, which upon the facts is found to be lawful, is not prescribing a rate for the future. Classi-

fication determines the relation of rates as between commodities, not the rate itself, and when a commodity is transferred from a higher to a lower class, the revenues of the carrier are not necessarily diminished, since it may advance the rates applicable to those classes. Myer v. Cleveland, Cincinnati & St. L. R. Co., 9 I. C. C. 78.

(h) Where the chief question involved is the justice of the change in the classification of the comodities shipped by complainant, and the decision will affect all shippers of the same commodity in the classification territory, the profits secured by complainant from the operation of the railway connected with the defendant's line are not material, and the case must be decided in accordance with the principle which properly governs the classification of freight articles. Proctor & Gamble Co. v. Cincinnati, H. & D. R. Co., 9 I. C. C. 440.

(i) A submission by a railway company of a shipper's claim for carload rating on a mixed carload of lemons and pineapples should be treated as a case upon complaint and answer. Roth v. Texas & P. R. Co., 9 I. C. C. 602.

IMPORTANT CASES SINCE 1908

(j) A bare reference to the ratings on particular commodities without supporting data as to volume of movement, weight, value, density, packing, and other criteria for determining the oppositeness of the comparison, is not helpful in determining the reasonableness of the ratings under attack. National Confectioners' Asso. v. A. & R. R. R., 49 I. C. C. 566, 572.

(k) When class rates are charged on isolated shipments, and it is not shown that the commodity is improperly classified or that the class rate is unreasonable, reparation will not be awarded. Multibestoc Co. v. S. P. Co., 73 I. C. C. 491, 492.

ALL OTHER CITATIONS

Milk and Cream Rates to New York City, 45 I. C. C. 412, 427.

§20. Different Classification Territories.

See Evidence §13 (1); Through Routes and Joint Rates §20¾.

CASES 1887-1908

(a) The difference in classification adopted by the "western classification" (which applies to business from the Pacific Coast to all points west of the Missouri River), between "raisins" and "dried fruits," by which a higher car load rates is imposed on raisins than on other dried fruits, while by the "Pacific Coast eastbound classification" (which applies to business over the same roads from the Pacific Coast to points on the Missouri River and east thereof), such distinction is not imposed, is, in connection with the different rules of the two classifications as to mixed carloads, an unreasonable discrimination. Martin v. Southern Pacific Co., 2 I. C. R. 1.

(b) The fact that different rates and classifications are in force in different sections of the country will not of itself, without proof of unlawful discrimination or disadvantage or of unreasonably high rates, warrant an extension of the lower rate and classification to the section where the higher rate and classification are applied. F. Schumacher Milling Co. v. Chicago, R. I. & P. R. Co. (Conn.), 4 I. C. R. 373.

(c) The complaining company has shown no reason why roads using the Western Classification should adopt the Official Classification as to cereal products. Neither is there sufficient evidence in this case to justify an order directing the defendants to establish the mixed carload rate prayed for in the complaint. But this will not preclude the filing of another complaint based on other grounds, and raising the question of unreasonable or relatively unreasonable rates on cereal products. The F. Schumacher Milling Co. v. The Chicago, R. I. & P. R. Co., 4 I. C. R. 373.

(d) The fact that different rates and classifications are in force in different sections of the country will not of itself warrant an extension of the lower rate and classification to the section where the higher rate and classification are applied. There must be proof of unlawful discrimination or disadvantage, or of unreasonably high rates, to procure an order directing changes in classification. F. Schumacher Milling Co. v. C., R. I. & P. R. Co., 4 I. C. C. 373, 378.

(e) The complaining company has shown no reason why roads using the Western Classification should adopt the Official Classification as to cereal products. Neither is there sufficient evidence in this case to justify an order directing the defendants to establish the mixed carload rate prayed for in the complaint. But this will not preclude the filing of

another complaint based on other grounds, and raising the question of unreasonable or relatively unreasonable rates on cereal products. F. Schumacher Milling Co. v. C., R. I. & P. R. Co., 6 I. C. C. 61.

(f) The fact that different rates and classifications are in force in different sections of the country will not of itself, without proof of unlawful discrimination or disadvantage or of unreasonably high rates, warrant an extension of the lower rate and classification to the section where the higher rate and classification are applied. F. Schumacher Milling Co. v. Chicago, R. I. & P. R. Co., 6 I. C. C. 61.

(g) Complainant attacked as unreasonable and unjust class rate of 30c charged on empty burlap bags, less carloads, from Newark, N. J., to Stanley, Luray and Greenville, Va., via the Pennsylvania C. V. and N. & W. A rate of 22c is charged to Barboursville and Charlottesville, Va., via the Pennsylvania, P., B. & W., and Southern. This difference in rate is brought about by different classifications, the first group being on the eastern classification, the second on the southern classification. Bags are third class in official and fifth in southern. His competitors are able to ship the bags at the 22c rate to the destinations last mentioned, they to be filled with bark and reshipped to Newark. HELD: Rate attacked unreasonable to extent it exceeded 22c. Henry M. Rau v. Pennsylvania R. R., 12 I. C. C. 200.

IMPORTANT CASES SINCE 1908

(h) While a uniform classification throughout the United States would doubtless tend to simplify the interrelations of tariffs and perhaps go far to level existing inequalities, it does not appear that the desired end would be attained by spreading western classification over official classification territory. Milburn Wagon Co. v. A. A. R. R. Co., 32 I. C. C. 582, 587.

(i) A mere showing of the fact that the rating in one classification territory is different from the rating on the same article in another territory does not establish that either of the ratings are unreasonable or unduly prejudicial. Western Newspaper Union v. A. & R. R. R., 34 I. C. C. 326, 328.

(j) Difficulty of complying with the law because of lack of uniformity in the three classifications can not be accepted as an excuse for existing violations. Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co., 39 I. C. C. 224, 238.

(k) In large part different ratings in the three classification territories are not due to actual or substantial differences in circumstances and conditions, but are the result of mere differences of opinion and the natural inclination of traffic officials to give expression to their respective theories of classification. Consolidated Classification Case, 54 I. C. C. 9.

(l) Differences in percentage relationships that are revealed when the three classification territories are compared with each other should not constitute a bar to efforts toward uniform ratings except in so far as carload freight in the lower classes is concerned. The percentage relationships are not uniform even within any of the three classification territories; nor among the tariffs of the same system of railroads or even for different distances in the same tariff. Consolidated Classification Case, 54 I. C. C. 1, 12.

(m) The Commission's conclusion is that ordinarily there can be no justification for a different rating on an article when transported wholly within a state than when moved into or out of the state or between states in the same general territory. Consolidated Classification Case, 54 I. C. C. 1, 70.

(n) Eastern trunk line territory, as that expression is generally understood, does not embrace New England. Peoria, Board of Trade v. A., T. & S. F. Ry. Co., 73 I. C. C. 532, 534.

(o) First class rating and rates, governed by western classification, on automobiles and chassis, freight, set up, from points in various states to points in Texas found not unreasonable as compared with second-class rating and rates applicable in official and southern classifications, which lower ratings and rates were subsequently established in western classification. State Highway Department of Texas v. Director General, as Agent, 73 I. C. C. 741.

(p) A mere showing of a reduction in a rating or a difference between the ratings in different classifications affords no basis for a finding of unreasonableness. State Highway Department of Texas v. Director General, as Agent, 73 I. C. C. 741, 742.

(q) Conditions differ in different classification territories and the rates in one territory are not of controlling importance in determining the reasonableness of rates in another territory on the same kind of traffic. Oliver v. O. G. & N. E. Ry. Co., Unrep. Op. A-496.

(r) Rates yielding excessive charges are indefensible, and this judgment is not weakened by comparisons showing rates in other territories apparently as high. National Petroleum Asso. v. Director General, as Agent, 78 I. C. C. 711, 717.

(s) The fact that the former ratings in the southern classification were much higher than the ratings in the official and western does not demonstrate that the higher rating was unreasonable. Diamond Match Co. v. Director General 88 I. C. C. 435, 436.

ALL OTHER CITATIONS

Milburn Wagon Co. v. St. L. & W. R. R. Co., 27 I. C. C. 63, 66; New England Investigation, 27 I. C. C. 560, 573; Commercial Club of Duluth v. B. & O. R. R. Co., 27 I. C. C. 639, 640; Iowa State Board of Railroad Commissioners v. A. E. R. R. Co., 28 I. C. C. 193, 197, 199, 563, 568; National Syrup Co. v. C. & N. W. Ry. Co., 28 I. C. C. 673, 676; Texarkana Freight Bureau v. St. L., I. M. & S. Ry. Co., 28 I. C. C. 569, 578; Atlanta Freight Bureau v. N., C. & St. L. Ry., 29 I. C. C. 476, 488; Pueblo Commerce Club v. D. & R. G. R. R. Co., 31 I. C. C. 133, 135; Hammerschmidt & Franzen Co. v. C. & N. W. Ry. Co., 30 I. C. C. 71, 73; Fourth Sections Violations in the Southwest, 30 I. C. C. 153, 156; Dixie Mfg. Co. v. B., C. & A. Ry. Co., 31 I. C. C. 337, 340; W. & J. Sloane v. S. P. Co., Atlantic S. S. Lines, Unrep. Op. A-699; Anson, Gilkey & Hurd Co. v. S. P. Co., 33 I. C. C. 332, 341; Knight Woolen Mills v. C. & N. W. Ry. Co., 32 I. C. C. 490, 491; Blackburn-Warden Co. v. I. C. R. R., 34 I. C. C. 58, 59; Louden Machinery Co v. A., T. & S. F. Ry., 34 I. C. C. 383, 385; Western Newspaper Union v. A. & R. R. R. Co., 34 I. C. C. 326, 328; Anson, Gilkey & Hurd Co. v. S. P. Co., 33 I. C. C. 332, 341; Eastern Fruit Growers' Asso. v. B. & O. R. R. Co., 33 I. C. C. 343, 351; Kellogg Toasted Corn Flake Co. v. A., T. & S. F. Ry. Co., 33 I. C. C. 534, 535; Menasha Wooden Ware Co. v. C. & N. W. Ry. Co., 33 I. C. C. 563, 565; Backburn-Warden Co. v. I. C. R. R. Co., 34 I. C. C. 58, 59; Merchants' Exchange of St. Louis v. B. & O. R. R. Co., 34 I. C. C. 341, 354; Louden Machinery Co. v. A., T. & S. F. Ry. Co., 34 I. C. C. 383, 384, 385; R. R. Com. of Louisiana v. St. L. S. W. Ry. Co., 34 I. C. C. 472, 478; Lehigh Portland Cement Co. v. B. & O. S. W. R. R., 35 I. C. C. 14, 17; Sodeman Heat, & Power Co. v. I. C. R. R. Co., Unrep. Op. 1971; New Richmond Roller Mills Co. v. M., St. P. & S. Ste. M. Ry. Co., Unrep. Op. 2032; Schloss & Kahn v. C. of G. Ry. Co., Unrep. Op. 2042; Platten Produce Co. v. M., St. P. & S. Ste. M. Ry. Co., Unrep. Op. 2046; Through Rates to Points in Louisiana and Texas, 38 I. C. C. 153, 159; Class and Commodity Rates Between St. Louis, East St. Louis, and Ohio River Points, 38 I. C. C. 411, 415; Nat. Soc. of Record Assns. v. A. & R. R. R. Co., 40 I. C. C. 347, 350; Hunt-Helm-Ferris & Co. v. A. A. R. R. Co., 40 I. C. C. 67, 68; R. R. Commission of La. v. A. H. T. Ry. Co., 41 I. C. C. 83, 123; Sanger Bros. v. H. & T. C. R. R., 41 I. C. C. 732, 733; Freight Bureau of M. & Mfrs. Assn. v. A. B. A &. R. R., 42 I. C. C. 161; Paducah Board of Trade v. I.C.C. R. R., 43 I. C. C. 537; Aluminum Mfg. Co. v. A., T. & S. F. Ry., 44 I. C. C. 562, 564; Board of Commerce, Lexington, Ky., v. C., N. O. & T. P. Ry., 44 I. C. C. 407, 415; Wisconsin Rate Cases, 44 I. C. C. 602, 640; Vulcanite Portland Cement Co. v. C. R. R. Co. of N. J., 46 I. C. C. 483; R. R. Comm. of La. v. A. H. T. Ry., 48 I. C. C. 312, 337, 338, 346; Showers Bros. Co. v. A. A. R. R., 48 I. C. C. 518, 523; West Virginia Nail Co. v. B. & O. R. R., 50 I. C. C. 318, 322; Holt et al. as Receivers of Aetna Explosives Co. v. Alabama Great Southern R. R. Co. et al., 52 I. C. C. 235; Monarch Paper Co. v. C. P. Ry., 53 I. C. C. 620; Consolidated Classification Case, 54 I. C. C. 1, 7, 67; Illinois Classification, 55 I. C. C. 290, 295, 298, 303; Illinois Classification, 56 I. C. C. 202; Sauer Co. v. A. & V. Ry., 55 I. C. C. 11, 14; Waukesha Pure Food Co. v. Director General, as Agent, 58 I. C. C. 49; Hirth-Krause Co. v. Director General, as Agent, 61 I. C. C. 350, 353; Boston Wool Trade Asso. v. A. & S. Ry. Co. 64 I. C. C. 365, 378; Public Service Commission of Indiana v. A., T. & S. F. Ry., 66 I. C. C. 512; Traffic Bureau of Nashville v. L. & N. R. R. Co., 68 I. C. C. 623; Barnes Automobile Co. v. D., T. & I. R. R. Co., 83 I. C. C. 350, 352; Cairo Board of Trade v. A. G. S. R. R. Co., 83 I. C. C. 761, 765.

§21. Follow Lot Shipments.

See Supra §16½; Follow-Lot Shipments; Minimums.

IMPORTANT CASES SINCE 1908

(a) It is not unreasonable to restrict the follow-lot privilege to machinery where the minimum is 30,000 pounds or more. Western Classification Case, 25 I. C. C. 442, 449.

(b) The carriers some years ago proposed that rule 7, section 2 (e), Western Cassification No. 51, should provide that the overflow, no matter how large, must be marked by the shipper as is l. c. l. freight. The Commission held the burden of marking overflow shipments should not fall on either party exclusively. Shippers having knowledge of the volume of shipments should be charged with the expense of ordering cars of the proper size, and carriers with the duty of furnishing cars of the size ordered. "Follow-lot" shipments should be marked by the shipper of the "follow lot," whenever they constitute an overflow resulting from the failure of the shipper to designate the dimensions of cars required for his shipments. But where the shipment could be loaded in a car of the size ordered by the shipper and two cars were furnished by the carrier, the marking, where necessary, should be done by the carrier. In Re Suspension of Western Classification No. 51, 25 I. C. C. 442, 485.

(c) Follow lots should be marked by the shipper. But where the shipment could be loaded in a car of the size ordered by the shipper and two cars are furnished, the marking should be done by the carrier. Western Classification Case, 25 I. C. C. 442, 485.

(d) The last car of each kind of ore from a cargo or stock pile should be transported at carload rates and actual weight. The general rule of the official classification governing part lot or follow lot shipments does not apply to bulk commodities, and it would seem that carriers would be justified in prescribing a minmum weight that would at least return revenues sufficient to cover the cost of transporting the car and its contents. Iron Ore Rate Cases, 41 I. C. C. 181, 206.

(e) Follow-lot and two-for-one rules are of general application in the west and in connection with transcontinental traffic from the west to the east. Both kinds of rules are desirable, and once established can be abrogated only for exceptional reasons. Furnishing Cars at Carrier's Convenience, 42 I. C. C. 379, 381.

(f) Both Official and Western Classifications provide that when parts or pieces constituting one or more complete articles are shipped at one time, by one shipper, to one consignee and destination, they will be charged at the rate provided for the complete article. Seth Thomas Clock Co. v. N. Y., N. H. & H. R. R. Co., Unrep. Op. A-213.

(g) Three separate l. c. l. shipments loaded in one car were billed to three consignees at two destinations, and three separate freight bills and three separate bills of lading were issued. Failure of carriers, after shipments left point of origin, to divert to one of the consignees as a c. l. shipment or to provide by rule for such diversion, found not unreasonable or otherwise unlawful. Consolidated Rendering Co. v. B. & M. R. R., 77 I. C. C. 101.

ALL OTHER CITATIONS

In Re Suspension of Western Classification No. 51, 25 I. C. C. 442, 607; Frick Co. v. C. V. R. R. Co., Unrep. Op. A-362; Heyman & Co. v. Rutland Transit Co., Unrep. Op. 2232; Teasdale & Co. v. V. & S. Ry. Co., 38 I. C. C. 565, 567; Byrd v. Atlantic Coast Line R. Co. (S. C. 1916), 90 S. E. R. 181. Crown Columbia Paper Co. v. Pa. R. R., 44 I. C. C. 495; Johns-Manville Co. v. L. V. R. R. Co., 53 I. C. C. 527; United Verde Extension Mining Co. v. Director General, 57 I. C. C. 483.

V. REASONABLENESS AND APPLICATION.

See Class Rates; Commodity Rates §3.

§22. In General.

CASES 1887-1908

(a) Pearline must be placed in fifth class freight in classification of Southern Railway & Steamship Association, and relative difference in rates on pearline and common soap must not exceed difference of sixty cents per 100 pounds on pearline and thirty-three cents on common soap. Pyle v. East Tennessee, Va. & Ga. R. Co., 1 I. C. R. 600, 767.

(b) It was not just or reasonable that the defendant railroad company should give a low special rate upon coarse lumber in other forms, to the exclusion of ties. Reynolds v. Western N. Y. & Pa. R. Co., 1 I. C. R. 685.

(c) The railway officials who have made a classification can not testify to their understanding of its construction. A classification sheet is put before the public for general information; it is supposed to be expressed in plain terms so that the ordinary business man can understand it, and, in connection with the rate sheet, can determine for himself what he can be lawfully charged for transportation. The persons who prepared the classification have no more authority to construe it than anybody else, and they must leave it to speak for itself. Hulbert v. Lake Shore & Michigan Southern R. Co., 2 I. C. R. 81.

(d) Under a classification which puts lumber in carload lots in the sixth class and unfinished wagon materials in the fifth class, it is HELD that hub blocks which are prepared as such to be sold to the manufacturers of hubs and of wheeled vehicles, but upon which only so much labor has been expended as is needful to put them in condition for seasoning are to be regarded as the raw material upon which the process of manufacture of hubs is not yet begun, just as boards are the raw material from which wagon boxes are made. The blocks belong, therefore, when not otherwise specified in the classification sheet, with lumber instead of with unfinished wagon materials. Hulbert v. Lake Shore & Michigan Southern R. Co., 2 I. C. R. 81.

(e) It is competent to prove by the testimony of witnesses in what sense terms of art or terms peculiar to any occupation or business are used by those engaged in such occupation or business. But when such terms are made use of in a classification sheet to designate the product of particular employment, they are supposed to be used as understood in that employment, and it is not competent for railroad experts, when the meaning of the classification is in question, to testify in what sense they are understood in transportation circles. Hulbert v. Lake Shore & Michigan Southern R. Co., 2 I. C. R. 81.

(f) Terms of art, or terms peculiar to any occupation or business, used in a classification sheet to designate the product of a particular employment, are supposed to be understood in that employment; and it is not competent for railroad experts, when the meaning of the classification is questioned, to testify in what sense they are understood in classification circles. Hurlburt v. Lake Shore & M. S. R. Co. (Com.), 2 I. C. R. 81.

(g) The railway officials who have made a classificatiton can not testify to their understanding of its construction. A classification sheet is put before the public for general information; it is supposed to be expressed in plain terms so that the ordinary business man can understand it, and, in connection with the rate sheet, can determine for himself what he can be lawfully charged for transportation. The persons who prepared the classification have no more authority to construe it than anybody else, and they must leave it to speak for itself. Hurlburt v. L. S. & M. S. R. R., 2 I. C. C. 82, 83.

(h) Complainant attacked as unreasonable and unjust rates on Hostetter's Bitters from Pittsburgh, Pa., to points in United States. Prior to April 5, 1887, bitters were rated fourth class carloads and third class carloads, subsequent thereto first class carloads and less carloads. Weight on carload shipments usually 24,500 pounds. It is manifest that before the passage of the act bitters were accorded exceptional transportation advantages. The favorable rates had little, if any, relation to the marketable value of the property or to the charges for carrying analogous articles. They were part of the former railroad practices of affording special advantages to favored shippers, based upon no principle whatever, and in violation of their duty to the public to apportion their charges justly and with fair regard to the value of the service. In the new adjustment made necessary by the act, the commodity shipped by the petitioners being similar for transportation purposes to many others, and no adequate reason existing for giving it a class and rate of its own, was very properly classed with other things similar in commercial value, and in the character of the service required of the carrier. The classification in less carloads has been raised to first class for the reason that, all things considered, it properly belongs in that class, which includes a variety of similar articles, and because a lower classification without sufficient reasons to justify it would be an undue preference, and in violation of the law. HELD: Rating attacked not unreasonable, complaint dismissed. Myers v. Pennsylvania Co., 2 I. C. C. 403.

(i) After the Act to Regulate Commerce, the Official Trunk Line classification superseded the former classification, and bitters were classified in first class with other liquids similar in character, marketable value and manner of shipment. The class rates under the official classification are lower than under the one previously used. Myers, Survivor of Hostetter & Co., v. Pennsylvania, 2 I. C. R. 403.

(j) Complainant attacked classification and rates applicable to Hostetter's Stomach Bitters, as unjust and unreasonable. Prior to the effectiveness of the act bitters took a preferred classification. HELD: A former special and preferred rate is not a fair test of the reasonableness of a present rate. Complaint dismissed. Myers v. Pennsylvania Company, 2 I. C. C. 403.

(k) The proper classification of an article is to be judged relatively by the classification of other articles similar in character, quality and conditions of transportation. Myers v. Pennsylvania Company, 2 I. C. C. 403, 405.

(l) Complainant attacked as unjust discrimination rates on corn and its products from Indianapolis, Ind., to seaboard points. A discrimination between the rate on corn and its direct products from a given locality resulting from a reduction of the rate on corn below the rate on its direct products, which subjected persons in that locality engaged in the business of manufacturing corn into its direct products and of selling the same to unreasonable prejudice or disadvantage; and was without necessity or advantage to the carrier, or any reason founded on the character or condition of the traffic. HELD: To be in violation of section 3 of the Act, notwithstanding the new rate on corn was open to all persons equally and with equal service. Bates v. Pennsylvania R. Co., 2 I. C. C. 715.

(m) A manufacturer's description of an article to induce its purchase by the public also described it for transportation, and carriers may accept his description for purposes of classification and rates. Carriers are not required to analyze freight to ascertain whether it is in fact inferior to the description or public representations under which it is sold, in order to give it a lower rate corresponding to its actual value. Andrews Soap Co. v. P., C., C. & St. L. R. Co., 3 I. C. C. 77, 79.

(n) Where questions of classification and rates are involved as to one particular article of freight, it is often necessary to examine and consider the classification and rates upon other articles in which the same calculations in respect of value, bulk and expense of handling, and of carriage, would to a considerable extent enter, and for the purpose of such comparison it is not indispensably necessary that the articles should be competitive with each other, though if they are competitive then this feature must more strongly bring to view the fact of discrimination in rates, if there be such. Harvard Company v. Pennsylvania Company, 3 I. C. C. 257, 261.

(o) Complainant charged discrimination in rates between corn and corn products from Indianapolis, Ind., to New York. Previous opinion found in 2 I. C. C. 715. Upon rehearing, HELD: The additional evidence warrants a finding contrary to what appeared and was found in the original hearing, that the cost to the defendants of transporting the direct products of corn, including terminal expenses, properly chargeable as freight charges, between Indianapolis and seaboard points, is greater on the product than on raw corn. The former order should be vacated. Bates v. Pennsylvania R. Company, 3 I. C. C. 296.

(p) The Commission will not hold that a classification that was wrong should be adhered to, although its change might work injury to individuals whom the wrong classification unduly favored. Potter Mfg. Co. v. C. & G. T. R. Co., 4 I. C. C. 223, 226.

(q) Celery should be classed with cauliflower, asparagus, lettuce, green peas, string beans, oyster plant, egg plant and other vegetables enumerated in Class C of the Western Cassification, rather than with berries, peaches, grapes, and other fruits specified in Class III. thereof. Tecumseh Celery Co. v. Cincinnati, J. & M. R. Co. (Com.), 4 I. C. R. 318.

(r) For that portion of its line over which the Western Classification is in force the Wabash road should class celery with cauliflower, asparagus, lettuce, green peas, string beans, oyster plant, egg plant, and other vegetables enumerated in Class C of that Classification, rather than with berries, peaches, grapes,

and other fruits specified in Class III. thereof, and the defendants should transport celery from Tecumseh to Kansas City at no higher rate per carload than they charge for carrying a carload quantity of any of said other vegetables named in Class C aforesaid; and mixed carloads of celery and cauliflower or other vegetables specified in said Class C of the Western Classification should be transported by defendants from Tecumseh to Kansas City at no higher rate per carload than they charge for carrying a carload quantity of either of said vegetable articles embraced in that class. Tecumseh Celery Co. v. Cincinnati, J. & M. R. Co., 4 I. C. R. 318.

(s) Cost of service is only one of the elements to be considered in determining proper classification and relative rates for different articles. While the difference in cost to the carrier in transporting cereal products and flour is not in itself sufficient to warrant a higher classification upon cereal products, these products range higher in value than flour, and in the matter of volume of traffic afforded there is a very wide difference in favor of flour; and there are other conditions compelling a low rate upon flour which do not apply in the transportation of cereal products. It appears, moreover, that the complaining company controls the production of half the cereal products manufactured in this country, and, under the present classification and rates, is an active competitor of other manufacturers of cereal products whose mills are located nearer to the points of destination involved in this case. The F. Schumacher Milling Co. v. The Chicago, R. I. & P. R. Co., 4 I. C. R. 373.

(t) Complainant attacked as unreasonable classification and rating on returned empty egg cases from Providence, R. I., to Chicago, Ill., Burlington, Ia., and other western points. The classification provided for first class rates applicable on egg carriers or cases new, and third class on egg carriers or cases old, rates 82c on first class and 55c third class. By a change in the classification the rating was advanced to first class on egg carriers or cases old. The evidence submitted was insufficient for the Commission to determine the question. HELD: The defendants should be allowed time to consider whether shippers generally are not unduly prejudiced by the rating complained of and take or refrain from taking action accordingly, and if the carriers fail to take satisfactory action, complainants may have the case reopened. Complaint dismissed. Rhode Island Egg and Butter Co. v. L. S. & M. S. R. Co., 4 I. C. C. 512.

(u) Upon consideration of the great reduction which has taken place in the value of window shades, the arbitrary increase of shade classification by the carriers during the progress of this proceeding, and all the other facts and circumstances herein which pertain to the rights of shade shippers and consignees generally, and of purchasers of that article of household necessity, HELD: That the classification of window shades as first class in the Official Classification has become unjust, and that the legal duty of defendants to so classify traffic and fix charges thereon that the burdens of transportation are reasonably and justly distributed among the articles they carry, requires them to reduce their classification of window shades to the class which, under the Official Classification, is now applied to "window hollands and shade cloth, plain, uncut and undecorated." Page v. Delaware, L. & W. R. Co., 4 I. C. R. 525.

(v) Bottles of medicine separately wrapped and shipped together in a box from another state are not original packages after the box is opened. State of Missouri v. Parsons, 5 I. C. R. 250.

(w) Cost of service is only one of the elements to be considered in determining proper classification and relative rates for different articles. While the difference in cost to the carrier in transporting cereal products and flour is not in itself sufficient to warrant a higher classification upon cereal products, these products range higher in value than flour, and in the matter of volume of traffic afforded there is a very wide difference in favor of flour; and there are other conditions compelling a low rate upon flour which do not apply in the transportation of cereal products. It appears, moreover, that the complaining company controls the production of half the cereal products manufactured in this country, and, under the present classification and rates, is an active competitor of other manufacturers of cereal products whose mills are located nearer to the points of destination involved in this case. F. Schumacher Milling Co. v. C., R. I. & P. R. Co., 6 I. C. C. 61.

(x) Upon consideration of the great reduction which has taken place in the value of window shades, the arbitrary increase of shade classification by the carriers during the progress of this proceeding, and all the other facts and circumstances herein which pertain to the rights of shade shippers and consignees generally, and of purchasers of that article of household necessity, HELD: That the classification of window shades as first class in the Official Classification has become unjust, and that the legal duty of defendants to so classify traffic and fix charges thereon that the burdens of transportation are reasonably and justly distributed among the articles they carry, requires them to reduce their classification of window shades to the class which, under the Official Classification, is now applied to "window hollands and shade cloth, plain, uncut, and undecorated." Alanson S. Page v. D., L. & W. R. R. Co. et al., 6 I. C. C. 148.

(y) Complainant attacked as unjust, unreasonable and unduly discriminatory classification rating on window shades. Original order dated March 23, 1894. Upon rehearing, HELD: Original order vacated and new order entered containing the same general requirement, but with a proviso permitting the defendants to restrict their transportation of window shades at third class rates to those limited to a specific maximum valuation at the time of shipment, and to prevent excessive undervaluation for transportation purposes of the much more expensive grades by such regulations as they may be advised are just and lawful. Page v. D., L. & W. R. Co., 6 I. C. C. 548.

(z) Complainant attacked classification rating on open end envelopes, though made by a different and cheaper process than that employed in the manufacture of other open end or side envelopes, and usually from an inferior grade of paper, are nevertheless made, used and shipped like merchandise envelopes, and not like paper bags, which defendants place in a lower class; and rating complainant's envelopes in the higher class provided for merchandise envelopes is not unlawful, complaint dismissed. Wolf Brothers v. Allegheny Valley R. Co., 7 I. C. C. 40.

(aa) Classifying open-end envelopes made for enclosed merchandise put up in paper boxes and shipped in wood cases as first class in less than carload lots and third class in carload lots, instead of as paper bags as third class in less than carload lots, and fifth class in carload lots, does not constitute a discrimination, where paper bags are usually done up in paper bundles so that a car which will with difficulty hold 20,000 pounds of envelopes will easily hold 36,000 pounds of paper bags. Wolf v. Allegheny Valley R. Co., 7 I. C. C. 40.

(bb) Hatters' furs and fur scraps and cuttings are unlawfully made double first class as compared with articles taking first class rates in defendant's classification, including hats, the finished product for which these commodities constitute raw material; and they cannot lawfully be classed higher than first class, where they are offered for transportation in packages in bulk, but of convenient size, and their value is not great, and they are not liable to be lost by damage in transit, and are more desirable for traffic than other commodities in the defendant's first class, and the difference in freight rates operate to damage complainant, who is a western manufacturer of hats, in his competition with eastern manufacturers. Myer v. Cleveland, Cincinnati & St. L. R. Co., 9 I. C. C. 78.

(cc) Complainant attacked the classification on hatters' furs and fur scraps and cuttings as unreasonable and unjustly discriminatory. Hatters' furs are classified double first class, likewise scraps and cuttings, and complaint is that he is entitled to first class on hatters' furs and second class on fur scraps and cuttings. Hatters' furs and fur scraps and cuttings are offered for transportation in packages not bulky, but of convenient size, their value is not great, they are not liable to be lost or damaged in transit, and the first class of the official classification contains hardly any article as desirable for traffic as they are. Complainant, located at Wabash, Ind., is the only manufacturer of hats west of the Atlantic seaboard territory, most of his competitors being located in the vicinity of New York. The difference in freight rates operates to damage complainant in his competition in western territory. HELD: That hatters' furs and fur scraps and cuttings as compared with articles taking first class, including hats, the finished product for which these commodities constitute raw material, are unlawfully made double first class and can not lawfully be classified higher than

first class. Myer v. C., C., C. & St. L. Ry., 9 I. C. C. 78.

(dd) The defendant carriers by keeping hay and straw in the sixth class and charging sixth class rates thereon for thirteen years or more, with the exception of a short period in 1894, were furnishing evidence that such classification and rates are reasonably high, and, while the continuance of such classification and rates is not conclusive evidence of their reasonableness, it is in the nature of an admission against them which tends to show the unreasonableness of the advance of hay and straw to fifth class rates in January, 1900, and the force of this admission becomes great in view of the largely increased business and profits of the defendants in 1899 and subsequent years. The National Hay Asso. v. L. S. & M. S. R. Co. et al., 9 I. C. C. 264.

(ee) The localities in Official Classification Territory wherein hay and straw are produced were discriminated against by the act of several carriers in advancing these commodities from the sixth to the fifth class, and thereafter charging fifth class rates for transportation. National Hay Asso. v. Lake Shore & Michigan S. R. Co., 9 I. C. C. 264.

(ff) The advancement of hay and straw by several carriers, from sixth to fifth class, and thereafter charging fifth class rates for transportation, is unreasonable and unjust, and resulted in unlawful discrimination and prejudice against hay and straw localities in Official Classification Territory wherein those commodities are produced, and against producers, shippers, dealers, and consumers of such articles in that section of the country. National Hay Asso. v. Lake Shore & Michigan S. R. Co., 9 I. C. C. 264.

(gg) The act of carriers in keeping hay and straw in the sixth class, and charging sixth class rates thereon for thirteen years, with the exception of a short period, is evidence that such classification and rates are reasonably high; and, while not conclusive, it is in the nature of an admission which tends to show the unreasonableness of the subsequent advance of such commodities to the fifth class, the force of which becomes great, in view of the carriers' largely increased business and profits. National Hay Asso. v. Lake Shore & Michigan S. R. Co., 9 I. C. C. 264.

(hh) Complainant attacked advance in classification from sixth to fifth class on hay and straw as unreasonable and unjustly discriminatory. Advance was made January 1, 1900. The defendant carriers, by keeping hay and straw in the sixth class and charging sixth class rates thereon for thirteen years or more, were furnishing evidence that such classification and rates are reasonably high, and, while the continuance of such classification and rates is not conclusive evidence of their reasonableness, it is in the nature of an admission against them which tends to show the unreasonableness of the advance, and the force of this admission becomes great in view of the largely increased business and profits of the defendants in 1899 and previous years. Hay and straw should take the same rates. Hay, in respect of character, use, value and volume, corresponds more nearly with articles taking sixth class or lower commodity rates than with those in fifth class. Apparently all commodities which come to defendants in aggregate volume or tonnage equal to or exceeding that of hay are given commodity rates. Hay is a raw agricultural product which is grown, shipped and consumed in all parts of the Official Classification territory, and, coming to the carriers in steady and large voume, is profitable to them at sixth class rates. HELD: The advance from sixth to fifth class was unreasonable and unjust and resulted in unlawful discrimination. National Hay Association v. L. S. & M. S. Ry., 9 I. C. C. 264.

(ii) Complainant attacked the legality of the change made on January 1, 1900, in the classification of common or laundry soap from sixth to fifth class carloads and from fourth to third class less carloads as unjust and unreasonable and unduly prejudicial. The action of defendants in placing soap in carloads with common grades of grocery and general merchandise in the fifth class of their freight classification and refusing to reduce soap in carloads to the sixth class, which includes only low grade freights, held not to be unlawful, while other articles with which carload soap is properly compared are retained in the fifth class. On January 1, 1900, the less carload rating was advanced from fourth to third class and on March 10 reduced to 20 per cent less than third class, but not lower than fourth class. The difference between sixth and fourth class based on

Chicago-New York rates is 10c, between the fifth and third class 20c, and difference between 20 per cent less than third class and fifth class is 10c. HELD: Increase in classification of soap in less carloads from fourth to third class unreasonable and their subsequent practice of applying 20 per cent less than third class also unlawful. Proctor & Gamble Co. v. C., H. & D. Ry., 9 I. C. C. 440.

(jj) The action of defendant in placing soap in carloads with common grades of groceries and other general merchandise in the fifth class of their freight classification, and refusing to reduce soap in carloads to the sixth class, which includes only low grade freights, where other articles to which carload soap properly compares are retained in the fifth class, is unlawful. Proctor & Gamble Co. v. Cincinnati, H. & D. R. Co., 9 I. C. C. 440.

(kk) The action of defendants in placing soap in carloads with common grades of grocery and other general merchandise in the fifth class of their freight classification and refusing to reduce soap in carloads to the sixth class, which includes only low grade freights, held not to be unlawful, while other articles with which carload soap is properly compared are retained in the fifth class of such classification; but this shall not operate to preclude the Commission from holding in an appropriate proceeding that fifth class rates in this territory are excessive. Proctor & Gamble Co. v. C., H. & D. Ry. Co., 9 I. C. C. 440.

(ll) A cheap grade of brush manufactured and sold by complainant as a blacking dauber is not entitled, upon the facts in this case, to be classified lower than the class to which bristle brushes in general are assigned. Derr Manufacturing Co. v. Penn. R. Co. et al., 9 I. C. C. 646.

(mm) While there are exceptional instances requiring deviation from methods generally employed in constructing freight classification, it is manifest that to require the separation and grading of different classes with varying rates different grades of the same articles of freight would greatly complicate the work and go far to defeat the very purpose of classification, and even then it would be impracticable to apportion with mathematical exactness the burdens of transportation; the best result obtainable in this direction is reasonable and substantial approximation. Derr Manufacturing Co. v. Pennsylvania R. R., 9 I. C. C. 646, 648.

(nn) An arbitrary charge of $80 per car imposed by the New York, New Haven & Hartford Railroad Company for the transportation from New York to Boston of peaches and other fruit shipped from Georgia points to Boston, its haul being part of the through service between the points of shipment and destination, is unreasonable and unjust, and $50 per car would be a just and reasonable charge for such transportation. Georgia Peach Growers' Asso. v. Atlantic Coast Line R. Co., 10 I. C. C. 255.

(oo) The charge imposed by the Atlantic Coast Line Railroad Company, of one cent higher than Class D rates on cowpeas shipped from South and North Carolina points to New Orleans, is unreasonable and unjust, and cowpeas should be placed by it in Class D and carried at the rate fixed for that class. Swaffield v. Atlantic Coast Line R. Co., 10 I. C. C. 281.

(pp) The defendant, the L. & N. R. Co., classifies cowpeas in Class D of its freight classification, which also includes grain, while the defendant, the A. C. L., imposes a charge of one cent higher than Class D rates on cowpeas shipped from South and North Carolina points to New Orleans. HELD: That the charge exacted by the A. C. L. is unreasonable and unjust and that cowpeas should be placed by it in Class D and carried at the rate fixed for that class. Swaffield v. Atlantic Coast Line R. Co. et al., 10 I. C. C. 281.

(ppa) Cowpeas, like clover and other grasses, are sown and then turned over by the plow for the purpose of soil improvement, but this is not a reason why cowpeas should, in the adjustment of freight rates, be classed as a fertilizer, which is applied directly to the soil; and cowpeas are further distinguished from fertilizer in that fertilizer furnishes the carrier much greater tonnage, cowpeas have much greater value, and the vine as well as the pea itself is used as a food product. Swaffield v. Atlantic Coast Line R. Co. et al. 10 I. C. C. 281.

(qq) The Missouri, Kansas & Texas Railway Company's rate of $1.90 per ton on coal, lump and slack, from South McAlester, I. T., to Denison, Tex., a distance of 97 miles, is unreasonable and unjust,

and should not exceed $1.25 per ton. Denison Light & Power Co. v. Missouri, K. & T. R. Co., 10 I. C. C. 337.

(rr) Defendant's present rate of $1 per 100 pounds on lemons in carloads from southern California to points on and east of the Missouri River is apparently reasonable. Consolidated Forwarding Co. v. Southern P. Co., 10 I. C. C. 590.

(ss) Complainant attacked classification on sectional or elastic book cases in less carloads from Cincinnati, O., to points in the Official Classification territory. While there is much to support the view that sectional book cases might properly be placed in the first class of the official classification, it does not appear from the proofs presented that one and one-half first class rates for all book cases is an unlawful discrimination against the sectional variety, and the action of defendants in fixing the same classification and rates for sectional as for other book cases does not exceed the limits of their discretion; nor is defendant one and one-half times first class rate for the transportation of sectional and other book cases shown by the record to be unreasonable. HELD: Classification attacked not unreasonable, complaint dismissed. Globe-Wernicke Company v. B. & O. S. W. R. R., 11 I. C. C. 156.

(tt) While there is much reason to believe that sectional bookcases might properly be placed in the first class by the Official Classification Committee, the same as has been done by the Southern and Western Classification Committee, it does not follow, however, that the classification fixed by the Committee, of one and one-half times first class rates for all bookcases, is an unlawful discrimination against the sectional varieties. Globe Wernickle Co. v. Baltimore & O. S. W. R. Co., 11 I. C. C. 156.

(uu) While the Commission does not decide that one and one half times first class rates for sectional bookcases are reasonable, they do hold that the evidence submitted is not sufficient to show such unreasonableness. Globe-Wernicke Co. v. Baltimore & O. S. W. R. Co., 11 I. C. C. 156.

(vv) While there is much to support the view that sectional bookcases might properly be placed in the first class of the Official Classification, it does not appear upon the proofs presented that one-and-one-half times first class rates for all bookcases is an unlawful discrimination against the sectional variety, and the action of defendants in fixing the same classification and rates for sectional as for other bookcases does not exceed the limits of their discretion; nor is defendant's one-and-one-half times first class rate for the transportation of sectional and other bookcases shown by the record to be unreasonable. Complaint dismissed without prejudice for further investigation. Globe-Wernicke Co. v. B. & O. S. R. Co. et al., 11 I. C. C. 156.

(ww) Defendant's refusal to grant lower rates on cotton in carloads of 45,000 pounds or more is not a violation of the regulating statute. Planters' Compress Co. v. Cleveland, C. C. & St. L. R. Co., 11 I. C. C. 382.

(xx) If the rate on an article is reasonable to those who ship the great bulk of that article in the form in which it is commonly prepared for transportation, that rate does not become unreasonable to the shipper of a small quantity of the same article merely because he chooses to prepare his shipments in a form which affords the carrier a greater profit per hundred pounds, particularly when the preparation of that article in the more profitable form would impose some degree of hardship upon a large majority of shippers because of its greater expense or for other reasons. Planters' Compress Co. v. C. C. C. & St. L. Ry., 11 I. C. C. 382, 405.

(yy) The exaction of first-class rates on cotton-piece goods between Missouri River points and Denver, in view of the long-prevailing differentials in other parts of the country, and other existing conditions, is unjust and unreasonable. Kindel v. Boston & A. R. Co., 11 I. C. C. 495.

(zz) Complainant attacked classification on leather scraps in Official Classification territory, as unreasonable and unjustly discriminatory. Defendants have classified leather scraps in less carloads as third class since 1887, but in January, 1894, they limited such classification to scrap refuse from the manufacture of leather goods, and excluded strips or pieces cut from hide leather and in January, 1905, such limitation was superseded in defendants freight classification by the words "this rating will apply only on scraps not available

in the manufacture of leather goods." All leather scrap purchased by complainant contains leather pieces which can be used in the manufacture of leather goods, and the sole purpose of complainant in purchasing such leather scrap is to separate such pieces and sell them to persons having use for the various sizes and kinds. The effect of the new rule was to advance complainants commodity from third to second class, which is the rating prescribed by defendants for leather. HELD, that a third-class rating for leather scraps in less carloads is sufficiently high and that defendants present classification and rating on that traffic is unjust and unreasonable. Newman v. N. Y. C. & H. R. R., 11 I. C. C. 517.

(3a) The "Scheidel outfit" is an electrical apparatus consisting of a so-called Ruhmkorff coil, an interrupter, a small rheostat and two switches, fitted to a strong table. The parts are detachable and are shipped in separate boxed packages, except the table, which is crated. This outfit, which transforms an electrical current of low voltage into one of extremely high voltage, is used in medical and scientific work, including the use of the x-ray, and also in wireless telegraphy and in chemical works. The Western Classification places x-ray apparatus and scientific or medical instruments in double first class, and electrical apparatus, n. o. s., in first class. Complainant contends that their outfit should be treated as an ordinary electrical appliance and carried at first class rates. HELD: That under conditions now governing the manufacture and use of complainant's outfit, such outfit is properly classified by defendants with the x-ray and medical or scientific apparatus as double first class, and is not entitled to a first class rating with dynamos, transformers and other electrical machinery; but no opinion is expressed upon the justice of the first class rate for such machinery. Scheidel & Co. v. Chicago & N. W. R. Co. et al, 11 I. C. C. 532.

(3b) If the rate on a given article is reasonable to those who ship the great bulk of that article in the form in which it is commonly prepared for transportation, that rate does not become unreasonable to the shipper of a small quantity of the same article because he chooses to prepare his shipments in a form which affords the carrier a greater profit per hundred pounds. Particularly is this so when the preparation of that article in the more profitable form would impose some degree of hardship upon a large majority of shippers because of its greater expense or for other reasons. Planters Compress Co. v. M. K. & T. R. Co., 11 I. C. C. 606, 610.

(3c) The rates complained of in this case are those on cotton goods from East St. Louis, Ill., to Kansas City, Mo., and from East St. Louis to Wichita, Kans., but the real question involved is the differential in rates from eastern markets to Kansas City and Wichita, which is 57 cents via all rail and 44 cents via rail and water routes in favor of Kansas City, the rail and water routes being via Galveston, Tex., and two of the lines passing through Wichita to Kansas City. The rate of 35 cents, East St. Louis to Kansas City, is not excessive. The rate of 66 cents, Kansas City to Wichita, is extremely high for the distance of 222 miles; but for reasons stated it would not benefit complainant at Wichita and might result to its disadvantage, and would involve a ruling either that rating cotton piece goods as first class in the Western Classification is wrong or that the class rates between the Missouri River and Chicago are too high. No reason appears why the classification of cotton goods should be changed or the class rates reduced at this time. The rates from the East and the differential mentioned are not the subject of complaint nor are the water and rail lines parties thereto. HELD, that the complaint be dismissed without prejudice to further proceedings. Johnston-Larimer Dry Co. v. Wabash R. Co., 12 I. C. C. 52.

(3d) Complainant attacked as unreasonable classification on cement burial vaults, less carloads. Defendants classify cement burial vaults with iron burial vaults as second class, less carloads and apply second class rates thereon, although the cement vault is about four times heavier and occupies but little more space in the car; in carload shipments the defendants classify cement vaults as fifth class and iron vaults as third class freight. The risk of breakage in the carriage of cement vaults is insignificant; their value and the value of the materials used in their construction is much less than in the case of the iron vaults; cement vaults are also

made with unskilled labor, while iron vaults require skilled mechanics and a plant with machinery and tools. HELD, defendants should charge not to exceed third class on shipments from Indianapolis, Ind., on cement vaults. Van Camp Burial Vault Co. v. C. I. & St. L. Ry., 12 I. C. C. 80.

(3e) There is no inflexible requirement that rates upon grain and the products of the grain should be, under all circumstances, the same, but rather that carriers may, in just regard for their own interest or to meet special conditions, vary those rates within narrow limits. When once the relation has been established, business developed, and money expended upon the strength of it, then the carrier cannot, in the absence of some sufficient reason, change that relation; nor would this Commission direct a change. Howard Mills Co. v. Missouri Pacific Ry. Co., et al., 12 I. C. C. 259.

(3f) The point here is, whether where an existing classification and rate are not shown to operate injuriously to the carrier from a given point, or to give undue advantage to shippers, a change is justifiable that materially injures an important industry and a class of shippers at that point who have there built up the industry in reliance upon the continuation of a previous classification and rate first established and long maintained by the carriers themselves without complaint from any quarter. The Commission thinks not. Howard Mills Co. v. M. P. R. Co., 12 I. C. C. 259, 263.

(3g) It appears that defendants' rate on cotton waste, in bales, a by-product of cotton goods, from Augusta, Georgia, to New York is 41 cents per 100 pounds, or the same as their rate on cotton goods between the same points, though cotton waste is considerably less in value and involves much less risk and expense in transportation than cotton goods. HELD, that cotton waste should be transported at less rates than cotton goods, and that no higher rate than 35 cents per 100 pounds should be charged for its transportation by defendants, sea and rail, from Augusta to New York. The Riverside Mills v. Southern Railway Co. et al., 12 I. C. C. 388.

(3h) Complainant attacked as unreasonable rates charged on denatured alcohol from Chicago and Missouri River points to north Pacific terminals. Rates on alcohol, all kinds, are 85 cents in carloads and $1.25 less carloads, these rates being less than the rates on petroleum products, whisky and paint. Denatured alcohol is manufactured in California and is sold in the north Pacific coast cities at a price which could be met by the eastern product only by reducing the transportation charges to nothing. An effort to place denatured alcohol upon a parity with proof spirits would lead either to a large increase in the charges on the proof spirits or a practical wiping out of the charges on the denatured article. Such increase in the charges on the proof spirits would probably render futile all effort to compete with the California product. HELD, rates attacked not unreasonable, complaint dismissed. Railroad Commission of Oregon v. C. & A. R. R., 12 I. C. C. 541.

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(3i) Where a carrier applies a combination of both classifications on traffic, the mere fact that the general rule applying Southern Classification rating on the entire haul into Official territory is in force from other points in Southern territory, does not in itself constitute undue prejudice. Virginia Mfg. Co. v. A. C. L. R. R. Co., 25 I. C. C. 68, 70.

(3j) The fact that a classification has long existed is persuasive of its reasonableness. Underwood Veneer Co. v. A. A. R. R. Co., 32 I. C. C. 265, 267.

(3k) A classification should apply universally in territory which it purports to cover, and exceptions should be made by individual carriers only for exceptional reasons. Portland Chamber of Commerce v. C. M. & St. P. Ry. Co., 32 I. C. C. 188, 190.

(3l) There is no provision of the Act, or rule of the Commission, which prescribes what rate shall apply on a combination of commodities made in course of transportation. Mixed Car Dealers Asso. v. D., L. & W. R. R. Co., 33 I. C. C. 133, 138.

(3m) There are no differentiating circumstances or conditions in the three classification territories justifying varying increases above basic rates for increased values on live stock l. c. l. Natl. Soc. of Record Assos. v. A. & R. R. R., 40 I. C. C. 347, 355.

(3n) The absence of uniformity in classification does not prima facie con-

note illegality, as difference in transportation conditions may, and frequently do, require a deviation from uniformity in particular instances to accomplish the legality and reasonableness of rates which the law exacts. National Confectioners' Asso. v. A. & R. R. R., 49 I. C. C. 566, 576.

(3o) Under the law the initiation of rates is with the carriers. In a comprehensive readjustment traffic officials of the various carriers are in the best position to prescribe the rates on the products. It is doubtless true that rates on hollow clay building tile have never been made in accordance with any system. That constitutes no good reason why a readjustment should not be made. Acme Cement Plaster Co. v. A. C. & Y. Ry., 53 I. C. C. 46.

(3p) Transportation conditions, generally speaking, have heretofore warranted a somewhat higher level of rates in territory west of the Mississippi River than in territory east thereof, but it does not follow that it is true as to all commodities on all routes, for all distances, and for all times. Commercial Club of Greeley v. C. & S. Ry., 53 I. C. C. 66, 67.

(3q) While the transportation of citrus fruits, apples, and other deciduous fruits, cabbage, and vegetables, is performed under circumstances more or less similar, these commodities do not constitute like kinds of traffic within the meaning of section 2. California Citrus League v. Director General, 58 I. C. C. 373, 392.

(3r) The absence of essential parts not affecting the identity of an article transported does not destroy its fundamental character from a transportation or tariff standpoint. Harris Bros Co. v. Director General, 60 I. C. C. 428, 430.

(3s) Fact that carriers have accorded to one article a basis of rates below normal is of itself no reason, in the absence of unjust prejudice, for requiring the establishment of the same rates on analogous articles, especially where shipper is directly benefited by the lower basis of rates already in effect. Pioneer Pole & Shaft Co. v. Director General, as Agent, 64 I. C. C. 744, 746.

(3t) When a manufacturer describes his article to the public for the purpose of making a market for it, he also describes it for purposes of carriage, and it seems as reasonable that the carrier should have the right to accept the manufacturer's representation concerning his products as that the public should be influenced by it in the purchase of the article. Cheseborough Mfg. Co. v. Director General 68 I. C. C. 555, 557.

(3u) It is possible to pick out of a classification commodities taking higher ratings than other more valuable articles, and vica versa. National Association Waste Material Dealers v. A. A. R. R. Co., 68 I. C. C. 748, 751.

(3v) Because carriers have published a lower rating on crude naphthalene, used chiefly for disinfecting purposes and as an insecticide and only to a small extent as a dye base, it does not follow that they should also give a like rating to crude anthracene, used solely as a dye base and very much more valuable. Du Pont de Nemours & Co. v. Director General, as Agent, 73 I. C. C. 129, 132.

(3w) Under similar transportation conditions finished or semifinished products ordinarily take a higher rate than the material from which they are produced, if any rate distinction is made. Lancaster Steel Products Corp. v. Director General, as Agent, 73 I. C. C. 567, 568.

(3x) A mere showing of a reduction in a rating or a difference between the ratings in different classifications affords no basis for a finding of unreasonableness. State Highway Department of Texas v. Director General, as Agent, 73 I. C. C. 741, 742.

(3y) Neither the approval by the commission of a tariff rule for future application in all classification territories, nor its existence in western territory when shipments moved, is proof of unreasonableness of the charges assessed under the provisions of a rule as stated in official classification. Kissel Motor Co. v. G. T. Ry. Co., 74 I. C. C. 45, 46.

(3z) The approval by the Commission of a tariff rule for future application in all classification territories does not prove the unreasonableness of charges assessed under the provisions of the rule as stated in official classification. Kissel Motor Co., v. G. T. Ry. Co., 74 I. C. C. 45, 46.

(4a) From a classification standpoint the establishment of a special rating on veneer, is desirable. Rating on Lumber and Veneer in Western Territory, 74 I. C. C. 247, 248.

(4b) The attempted limitation of the term "stucco" to plaster for coating walls, unduly restricts its meaning. In modern practice the term "stucco" describes more than what may technically be known as plaster, and the dictionaries accords to it the secondary definition of "any plaster or cement used for external coating of buildings." Magnesite Stucco in Western Trunk Line Territory, 74 I. C. C. 567, 569.

(4c) There is a lack of comprehensive adjustment of rates in southern territory. Generally speaking, it is not unusual in that territory to find for same distance widely varying rates, and often it is not difficult to develop numerous rates applying for some distance which compare favorably wtih almost any given rate. Increased Rates on Petroleum, 83 I. C. C. 98, 101.

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Naylor & Co. v. Lehigh Valley R. R. Co., 15 I. C. C. 9; Naylor & Co. v. L. V. R. R. Co., Unrep. Op. 168; Carstens Packing Co. v. C. M. & St. P. R. R. Co., 16 I. C. C. 469, 470; Anderson-Tully Co. v. C. R. I. & P. Ry., Co., 18 I. C. C. 48, 50; Roach & Seeber Co. v. C. M. & St. P. Ry., Co., 18 I. C. C. 172, 173; Bash Fertilizer Co. v. Wabash R. R. Co., 18 I. C. C. 522, 526; Lovelace Lbr. Co. v. L. & N. R. R. Co., 21 I. C. C. 585; Wells-Higman Co. v. St. L. I. M. & S. Ry. Co., 22 I. C. C. 288; Gill Co. v. O. R. R. & N. Co. 22 I. C. C. 442; Roberston Paper Co. v. B. & M. R. R. Co. Unrep. Op. 206; Legget & Platt Spring Bed. Co. v. M. P. Ry. 22 I. C. C. 513, 515; National Mohair Growers' Association v. A. T. & S. F. Ry. Co., 23 I. C. C. 180, 181; In Re Suspension of Western Classification No. 51, 25 I. C. C. 442, 449, 536, 606; Central California Traction Co. v. C. M. & St. P. Ry. Co., 24 I. C. C. 550; Bartlesville Salvage Co. v. M. K. & T. Ry. Co., 25 I. C. C. 672; Wagner Brewing Co. v. P. R. R. Co., Unrep. Op. A-48; Condensed Milk Rates Between Points in Illinois and Wisconsin, 29 I. C. C. 43; Michigan Seating Co. v. Grand Trunk Western Ry. Co., 29 I. C. C. 123; United States v. R. F. & P. Ry. Co., 29 I. C. C. 702; German Kali Works Inc. v. A. T. & S. F. Ry. Co., 28 I. C. C. 223, 224; Klauer Mfg. Co. v. A. T. & S. F. Ry. Co., 28 I. C. C. 508; Rates on Packing-House Products, 28 I. C. C. 599, 601; Gill Co. v. O-W. R. R. & N. Co., Unrep. Op. A211; Merchants & Manufacturers Asso. v. B. & O. R. R. Co., 30 I. C. C. 388, 392; Griffing v. C. & N. W. Ry., 32 I. C. C. 283; Tanners' Supply Co. v. L. & N. R. R. Co., 32 I. C. C. 394; Blackburn-Warden Co. v. I. C. R. R., 34 I. C. C. 58; California Corrugated Culvert Co. v. A. G. S. R. R., 33 I. C. C. 445; Classification of Address Plates, 33 I. C. C. 281; Milburn Wagon Co. v. A. A. R. R. Co., 32 I .C. C. 582, 587; Kansas-California Flour Rates, 32 I. C. C. 602; Weber Kirch Mfg. Co. v. C. B. & Q. R. R. Co., Unrep. Op. A-859; Western Trunk Line Rules, 34 I. C. C. 554; Centennial School Supply Co. v. C. & E. I. R. R. Co., Unrep. Op. 2027; Kansas Chemical Mfg. Co. v. A. T. & S. F. Ry. Co., Unrep. Op. 2050; Official Classification Ratings, 37 I. C. C. 166; Rates on Tin Cans, etc., 37 I. C. C. 360; American Steel & Wire Co. v. A. & V. Ry., 37 I. C. C. 525; Martin Cantine Co. v. C. H. & D. Ry., 38 I. C. C. 151; Classification of Cylinders, 38 I. C. C. 198; Rickards v. S. A. L. Ry., 38 I. C. C. 218; Jackson Chamber of Commerce v. P. & R. Ry., 38 I. C. C. 233; Hires Condensed Milk Co. v. Penn. R. R., 38 I. C. C. 441; Millar v. E. K. Ry., 38 I. C. C. 573; Marshalltown Buggy Co. v. C. B. & Q. R. R., 38 I. C. C. 634; Fargo Foundry Co. v. N. P. Ry., 38 I. C. C. 693; Classification of Rugs, Unrep. Op. 2102; Bergerman v. A. T. & S. F. Ry. Co., Unrep. Op. 2132; Hamilton Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 2170; Smith & Co. v. I. C. R. R. Co., Unrep. Op. 2157; Kirby & Co. v. P. R. R. Co., Unrep. Op. 2187; Benjamin Electric Mfg. Co. v. A. T. & S. F. Ry. Co., Unrep. Op. 2196; Houston Gas Co. v. N. C. Ry. Co., Unrep. Op. 2215; Pioneer Pearl Button Co. v. C. C. C. & St. L. Ry., 38 I. C. C. 727; Southern Classification Ratings, 39 I. C. C. 173; Classification of Chain, 39 I. C. C. 185; Bibb Brick Co. v. C. of G. Ry., 39 I. C. C. 625; Shecter v. S. P. Co., 39 I. C. C. 220; Jacob Co. v. A. T. & S. F. Ry., 39 I. C. C. 411; Bon Marche v. C. M. & St. P. Ry., 39 I. C. C. 611; Produce Distributors Co. v. L. V. R. R., 40 I. C. C. 17; Natl. Commercial Fixture Mfrs. Asso. v. A. A. R. R., 40 I. C .C. 484; Moore Granite & Monumental Works v. I. C. R. R. Co., 40 I. C. C. 77, 79; Lawlor Cycle Co. v. C. M. & St. P. Ry. Co., 40 I. C. C. 171; The Missouri-River-Nebrasba Cases, 40 I. C. C. 201, 260; National Commercial Fixture Mfrs. Asso. v. A. A. R. R. Co., 40, I. C. C.

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§23. Uniform or Consolidated Classification.

CASES 1887-1908

(a) The evils arising from the lack of uniformity in the existing rules in reference to rates on mixed car load shipments commented on, and the immediate adoption by the railroads of the country, of some uniform classification rule which shall definitely control the question of such shipments, recommended. Martin v. Southern Pacific Co. 2 I. C. R. 1.

(b) Where all the interstate carriers of the country, working through a committee selected by them for that purposes, are endeavoring to reach a uniform classification of freight, instead of having the various different and conflicting classifications that exist, it being apparent to the Commission that such uniform classification is a result that is greatly in the public interests, as well as in the interest of the carriers, and that has often been recommended by the Commission to the carriers, the Commission will not embarrass, delay or retard the carriers in this work by instituting investigations of its own under the 12th section of the Act to Regulate Commerce involving the classification of a few enumerated articles, transported from and to an extended area of country, but unless a formal complaint is made against the carriers in regard to such matter and a hearing of it pressed to a determination by the parties, the Commission will wait a reasonable time to see the result of the effort being made by the carriers in their efforts to arrive at a uniform classification. McMillan & Co. v. W. Classification Committee, 3 I. C. R. 282.

(c) Reserving any questions that may arise in case a uniform classification shall be established, at present an exception to a general rule of classification or rate-making may be justified by adaquate considerations in view of dissimilar conditions in different portions of the country, and when a rigid application of a general rule will be injurious to important public interests an exception is only reasonable. Kaufman Milling Co. v. Missouri Pac. R. Co., 3 I. C. R. 400.

IMPORTANT CASES SINCE 1908

(d) So the work of the uniform committee should not be discarded unless substantial reasons are shown. National Commercial Fixture Mfrs. Asso. v. A. A. R. R. Co., 40 I. C. C. 484, 488.

(e) It therefore has said it does not feel that the results attained should be jeopardized by leaving it optional with each carrier to remove undue prejudice by applying to commerce between Shreveport and Texas points the provisions of the Texas classification. This would in turn create discrimination in favor of Shreveport and against other competing points. Railroad Comm. of La. v. A. H. T. Ry., 48 I. C. C. 312, 370.

(f) The consolidated classification is the result of effort toward uniformity extending over a long term of years, and since uniform rules and descriptions

are necessary before uniformity in rates is possible, it marks an important step toward a uniform classification. Consolidated Classification Case, 54 I. C. C. 1, 3.

(g) The Commission is fully convinced that a uniform classification, with such exceptions or commodity rates as may be necessary in special cases, is practicable and desirable, and practical uniformity should not be unnecessarily delayed. Naturally there must be both increases and reductions, which may adversely or advantageously affect individual shippers and carriers, but a broad view of the situation justifies the statement that carriers and shippers alike will be amply repaid in the end by the benefits which will accrue from uniformity. The fact that a uniform classification would be of convenience is a consideration of relatively minor importance; the Commission has advocated uniformity because it is an essential part of the general scheme which contemplates greater consistency in rate making and elimination of discriminations and inequalities. Consolidated Classification Case, 54 I. C. C. 1, 9.

(h) The Commission has emphasized the point that uniformity in classification is highly desirable. Brunswick-Balke-Collender Co. v. C. G. W. Ry., 56 I. C. C. 340, 342.

(i) Complainant attacked as unreasonable fourth-class rating on soaps moving into or within southern territory. In the consolidated classification the ratings on soap in Official and Western Classifications remained fifth-class carloads, rule 28 and fourth-class, less carload, except that in Official Classification soap powders, and washing, cleansing, and scouring compounds, generally, were and are rated rule 26. Complainants seek restoration of the sixth-class any quantity rating on common soap in less carloads, subject to a released valuation. As this would tend to disrupt the desired identity in description for the three classification territories they are willing that like provisions as to released value be made in connection with the ratings in official and western classifications. The less than carload tonnage of soap in the south is heavier than in Official and Western territories and the hauls are longer. From a transportation standpoint soap is a desirable commodity, and as packed is conveniently loaded in the same car with other less carload shipments. Loss and damage claims are negligible. HELD, fourth-class rating in southern classification on soap, soap powders, and washing, cleansing and scouring compounds, in less carloads, was and is not unreasonable or illegal, complaint dismissed. Globe Soap Co. v. Director General, 62 I. C. C. 307.

(j) Fifteenth section applications were not filed with the Commission to cover consolidation No. 1. No approval from the Commission under that section was necessary as to lines under federal control. Globe Soap Co. v. Director General, 62 I. C. C. 307, 311.

ALL OTHER CITATIONS

Rates on Fruits and Vegetables, 30 I. C. C. 56, 62; Official Classification on Ratings, 37 I. C. C. 166, 181; Through Rates to Points in Louisiana and Texas, 38 I. C. C. 153, 159; Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co., 39 I. C. C. 224, 240; National Society of Record Assos. v. A. & R. R. R. Co., 40 I. C. C. 347, 352, 353; Associated Railways, Classification Exceptions, 41 I. C. C. 561, 564; Showers Bros. Co. v. A. A. R. R., 48 I. C. C. 518, 519; Johnson Service Co. v. A. A. R. R., 50 I. C. C. 361, 366; Consolidated Classification Case, 54 I. C. C. 1, 6, 11, 71; Perishable Freight Investigation, 56 I. C. C., 449, 616; Illinois Classification, 55 I. C. C. 290, 302, 303; Brunswick-Balke-Collender Co. v. C. G. W. R. R., 56 I. C. C. 340, 342.

§24. Exceptions to Classification.

IMPORTANT CASES SINCE 1908

(a) An exception to the classification ordinarily in its very nature presupposes the existence with respect to the commodity affected by it of special conditions; it is a question separate and distinct from the rate per 100 lbs.; and if it is not justified the rate-making plan itself in which the rate per 100 lbs. is used is not involved. Lettuce from Texas points, 36 I. C. C. 511, 513.

(b) Classification exceptions must be interpreted in the light of the classification and of the specifications and definitions contained in such classification. Carriers are admonished that more care must be exercised in the preparation of exception sheets to the end that they shall harmonize and conform in respect of governing rules, conditions, definitions, and like matters, with the classification proper. Attention is also di-

rected to the requirements of the Commission's rules concerning tariff publications that references in one publication to another must be in specific, clear and unambiguous terms as to every item affected. Marx & Sons v. I. C. R. R., 36 I. C. C. 519, 521.

(c) Exceptions are governed by the rules and regulations of the classification, unless otherwise specifically provided. Chicago Portland Cement Co. v. I. C. R. R., 45 I. C. C. 477, 478.

(d) The so-called "exceptions" to the Official and other classification ratings are numerous—perhaps too numerous—but such exceptions are not in themselves improper forms of tariff publication, either under the Act or under our tariff regulations based thereon. Merrell-Soule Co. v. B. & O. R. R., 49 I. C. C. 733, 734.

(e) An exception to the classification publishing rates as percentages of certain class rates does not in and of itself provide a specific rate, but requires reference to the tariff naming class rates. Such rates can in no sense be considered specific commodity rates. Boldt Paper Mills v. Director General, as Agent, 62 I. C. C. 471, 472.

(f) An exception to the classification can not be considered a specific commodity rate, and the minimum class rate under G. O. 28 is applicable. Fort Wayne Corrugated Paper Co. v. Director General, 66 I. C. C. 669, 670.

(g) Carriers parties to Agent Dulayney's exceptions to the Southern Classification proposed a general exception to that classification reading: "Class or commodity rates on cottonseed hull fiber or shavings, other than bleached or dyed, in bales, l. c. l. and c. l., will apply on fiber or shavings secured from cottonseed hulls after the latter have been separated from the kernel or meat of the cotton seed, or secured from cotton seed after first cut or linters has been obtained." In the Southern Classification cotton linters or regins in carloads, are rated sixth class, and in less carloads take cotton rates, while cottonseed hull fiber or shavings, other than bleached or dyed, are rated carloads class A, and in less carloads second class if in bags, barrels, or boxes, or fourth class if in machine pressed bales. Commodity rates lower than the corresponding class rates are generally in effect on cottonseed hull fiber or shavings, other than bleached or dyed. If all cotton seed were fairly uniform in the amount and length of fiber carried, the test might meet practical purposes, provided the linter rates were intended only for perhaps the first 20 pounds linters cut from a ton of cotton seed. But the weakness of respondents case is that cotton seed varies widely, and there is no showing that the linter rates are intended only for a definite cut, of say, 20 pounds and the shavings rates for any subsequent cut, no matter how light the latter may be. The "first cut" requirement is not so related as to justify its proposed use. The suspended schedules would confuse the situation and create undue prejudice and preference, because they would provide for the application of rates upon commodities depending upon the process used in obtaining them rather than upon their nature. The record shows that the first cutting, called linters, from one lot of cotton seed may be no better than the second cutting, called fiber or shavings, from another lot; and that in some instances even experts have difficulty in distinguishing fiber or shavings from mill run linters. HELD, suspended schedules not justified. Cotton hull fiber or shavings from and between southern points, 77 I. C. C. 727.

ALL OTHER CITATIONS

Marx & Sons v. I. C. R. R. Co., 36 I. C. C. 519, 522; Classification Nesting Rule, 37 I. C. C. 477, 481; Minimum Charges on Bulky Articles, 38 I. C. C. 257, 259, 260; Ludowici-Celadon Co. v. E. J. & E. Ry. Co., 39 I. C. C. 407, 408; The Missouri River-Nebraska Cases, 40 I. C. C. 201, 260; Associated Railways Classification Exceptions, 41 I. C. C. 561, 564; Swift & Co. v. N. Y., N. H. & H. R. R., 44 I. C. C. 481, 486; Pac. Coast Biscuit Co. v. S. P. Co., 49 I. C. C. 115, 125; Chamber of Commerce of Montgomery v. Director General, 55 I. C. C. 688; Burnam-Munger-Root Dry Goods Co. v. Director General, 58 I. C. C. 73, 74; Boldt Paper Mills v. Director General, 55 I. C. C. 331, 332; Dey Manufacturing Co. v. P. & R. R. Ry., 74 I. C. C. 475; Magnesite Stucco between points in western trunk line territory, 74 I. C. C. 567; Rates on Clam, Mussel, and Oyster Shells, 74 I. C. C. 245; Dey Mfg. Co. v. P. & R. Ry. Co., 74 I. C. C. 475; Cancellation of l. c. l. commodity rates on vehicles from and between points in southern territory, 78 I. C. C. 37; California Packing Corporation v. Director General, 78 I. C. C. 190, 195;

Cancellation of Rating on Fruits and Vegetables, 68 I. C. C. 401; Boston Wool Trade Asso. v. Director General, as Agent, 78 I. C. C. 341, 343; Morrell & Co. v. C., B. & Q. R. R. Co., 81 I. C. C. 200, 202, 203; Consolidated Products Co. v. C. B. & Q. R. R., 89 I. C. C. 103.

§24a. Relation of Section 4.

CASES 1887-1908

(a) The use by carriers of different freight classifications, the effect of which is to increase the revenue from local traffic as compared with that obtained from through traffic, is as much a violation of the Act, §4 (the long and short haul provision), as would be the imposition of a higher tariff upon the same class in the same classification. Martin v. Southern P. Co. (Com.), 2 I. C. R. 1

§25. Refusal to Transport.

IMPORTANT CASES SINCE 1908

(a) Allegation that increased classification rating is illegal because filed with the Commission before January 1, 1920, without prior approval as then required by section 15. HELD, Fifteenth section applications were not filed to cover consolidated classification No. 1, and no approval from the Commission under that section was necessary as to lines under federal control. Globe Soap Co. v. Director General, as Agent, 62 I. C. C. 307, 311.

(b) Rates charged on intrastate shipments of box board moving during federal control found legally applicable and not unreasonable, as provision published in exceptions and tariff naming class rates charged provided that "no rate shall be applied on traffic moving under class rates lower than amount for the respective classes, and the minimum shall be the rate for the class at which that article is rated in the classification applying in the territory where the shipments move." Ft. Wayne Corrugated Paper Co. v. Director General, as Agent, 66 I. C. C. 669.

(c) Third-class rates on "jacks or screws, n. o. i. b. n., not mounted on trucks, l. c. l.," charged on shipments of automobile jacks, in less than carloads, found legally applicable and not unreasonable or unjustly discriminatory as compared with lower commodity rates on wagon jacks. Commodity description "jacks, wagon" was neither misleading nor indefinite, as the term "wagon" is commonly accepted as applying to a vehicle which is not self-propelled. Chevrolet Motor Co. v. Director General, as Agent, 66 I. C. C. 677.

(d) A proposed change in a carrier's tariffs, so as to cancel the published classification and rates on artificial silk, and include it among articles that would not be accepted for shipment, constituted a change of classification, or of regulation affecting classifications, and under Interstate Commerce Act, §§ 1, 3, 6, 13, 15, the exclusive initial jurisdiction to suspend or annul such proposed change was in the Interstate Commerce Commission, and not in the courts, as "classification," in carrier rate-making practice, is grouping or associating in a designated list of commodities, which because of their inherent quality or value, or of the risks involved in shipment, or because of the manner or volume in which they are shipped or loaded, and the like, may justly and conveniently be given similar rates. Director General of Railroads et al v. Viscose Co., 41 Sup. Ct. 151.

ALL OTHER CITATIONS

Transit Privileges on Breakfast Foods, 69 I. C. C. 115.

§26. Jurisdiction of Courts.

CASES 1887-1908

(a) If the classification made by the Legislature operates uniformly, a court cannot decide whether it was the best that could have been made. Dow v. Beidelman, 2 I. C. R. 56.

(b) An order of the Interstate Commerce Commission, prohibiting railway companies from charging any greater compensation for the transportation of window shades of any description than the third-class rate charged for the transportation of the materials used in making shades is unjustifiable as ignoring the element of the value of the service in fixing the reasonable compensation of the carrier in denying him any remuneration for additional risk. Interstate Commerce Commission v. Deleware, L. & W. R. Co., 5 I. C. R. 144.

(c) An order by the Interstate Commerce Commission requiring specified carriers to desist from charging more than third-class rates for the transportation of window shades will, upon a rehearing after a refusal of the Federal court to enforce such order, on the sole ground that it applied to shades having a very high value as well as to

cheaper varieties, be vacated and a new order entered with the same general requirement, but with a proviso permitting such carriers to restrict their transportation of shades at third-class rates to those limited to a specified maximum valuation. Page v. Deleware, L. & W. R. Co., 6 I. C. C. 548.

(d) An order having been issued in this case on March 23, 1894, requiring the defendants to cease and desist from charging more than third-class rates for the transportation of window shades, and the circuit court of the United States having declined to enforce such order on the sole ground that it applied to shades having very high value as well as to the cheaper varieties. HELD, upon rehearing before the Commission, that said order of March 23, 1894, should be vacated, and a new order entered containing the same general requirement, but with a proviso permitting the defendants to restrict their transportation of window shades at third-class rates to those limited to a specified maximum valuation at the time of shipment, and to prevent excessive undervaluation for transportation purposes of the much more expensive grades by such regulations as they may be advised are just and lawful. Page v. Deleware, L. & W. R. Co., 6 I. C. C. 548.

IMPORTANT CASES SINCE 1908

(e) The contention that it is impracticable to single out individual items for special treatment, and that a reduction in the rating will inevitably be followed by demands for similar treatment of similar commodities, HELD: Reason insufficient for refusing to accord a reasonable rating and if other articles are entitled to similar treatment, they should have it. Indian Packing Corp. v. Director General, as Agent, 64 I. C. C. 205, 210.

(f) Though the power to suspend classifications or regulations issued by the President was taken from the Interstate Commerce Commission by the Federal Control Act, the power over them after hearing remained, and the power to suspend was restored by Transportation Act, Feb. 28, 1920, and the action of the Director General of Railroads on January 28, 1920, in filing a supplement to the freight tariff schedule, effective February 29, 1920, may be treated as if taken by a carrier in passing on the jurisdiction of the courts to annul such change without resort being had to the commission. Director General of Railroads et al v. Viscose Co. 41, Sup. Ct. 151.

§27. Reparation.

IMPORTANT CASES SINCE 1908

(a) Claims for reparation, based on causes of action which, excluding the period of Federal control as provided in section 206 (f) of the Transportation Act 1920, arose within two years from the date of filing complaint, found not barred. Ball, Seligman & co. v. N. Y., P. & N. R. R. Co., 73 I. C. C. 223.

(b) Claims for reparation covering shipments which moved during Federal control can not be considered where such claims were not filed with the commission within one year after the termination of Federal control, as required by the statute. Phoenix Chamber of Commerce v. Director General, as Agent, 73 I. C. C. 284.

(c) An award of reparation would not necessarily follow from a finding that a classification rating was unreasonable. State Highway Department of Texas v. Director General, as Agent, 73 I. C. C. 741, 742.

ALL OTHER CITATIONS

Multibestoc Co. v. S. P. Co., 73 I. C. C. 491, 492; Jones & Laughlin Steel Co. v. P. C. C. & St. L. R. R., 74 I. C. C. 687.

VI. TARIFFS AND CONSTRUCTION

See Tariffs.

§28. In General.

CASES 1887-1908

(a) It is competent to prove by the testimony of witnesses in what sense terms of art or terms peculiar to any occupation or business are used by those engaged in such occupation or business. But when such terms are made use of in a classification sheet to designate the product of particular employment they are supposed to be used as understood in that employment, and it is not competent for railroad experts, when the meaning of the classification is in question, to testify in what sense they are understood in transportation circles. Hurlburt v. L. S. & M. S. R. R. 2 I. C. C. 82, 83.

IMPORTANT CASES SINCE 1908

(aa) Different rates on "peanut hulls" and "ground peanut hulls" published in the same tariff. Shipments of hulls rolled under high pressure to effect com-

pactness for shipment, as well as to reduce them to smaller particles, found to consist of "peanut hulls," as the term when used in a tariff must be construed to apply to the commodity prepared in a practical manner for transportation. Shipments found overcharged and reparation awarded. Rothschild Co. v. Director General, as Agent, 73 I. C. C. 126.

(b) First class ratings and rates assessed on a shipment of accessories and parts comprising parts of motor truck and chassis previously shipped from Chicago, Ill., to Austin, Tex., found legally applicable. Such shipment found not to consist of bodies or chassis, k. d., upon which ratings of third and second class applied. Had such articles been included in cars with the motor trucks or chassis, the rating on the latter would have been applied on the parts on basis of actual weight. State Highway Department of Texas v. Director General, as Agent, 73 I. C. C. 629.

(c) When the description of commodity given by shipper and the rating applied by carrier's inspector are in conflict, the disposition of the commodity may properly be considered, but such evidence is not controlling, particularly when shipments clearly come within description contained in applicable tariffs. Western Cartridge Co. v. Director General, as Agent, 74 I. C. C., 654, 655.

(d) The term "scrap brass" is generally understood to mean pieces of brass or old brass articles useful only for remelting purposes. Western Cartridge Co. v. Director General ,as Agent, 74 I. C. C. 654, 655.

(e) Construction or interpretation of a classification tariff in order to encourage production and assist manufacturers is improper. If carriers' officials are of opinion that a specific commodity technically is ratable a certain class under the tariff, that rating and no other should be applied. General Gas Light Co. v. A. G. S. R. R. Co., 83 I. C. C. 361, 364.

ALL OTHER CITATIONS

Globe Soap Co. v. Director General, as Agent, 62 I. C. C. 307, 311; Ft. Wayne Corrugated Paper Co. v. Director General, as Agent, 66 I. C. C. 669; Chevrolet Motor Co. v. Director General, as Agent, 66 I. C. C. 677; Indiana Reduction Co. v. Director General, as Agent, 134; Chevrolet Motor Co. of Michigan v. Director General, as Agent, 68 I. C. C. 281; Refinite Co. v. Director General, as Agent, 68 I. C. C. 545, 546; Chesebrough Mfg. Co. v. Director General, as Agent, 68 I. C. C. 555; Automatic Sprinkler Co. v. Director General, 69 I. C. C. 247; Bernard Co. v. Director General, as Agent, 74 I. C. C. 557, 559; The Spreckles Savage Tire Co. v. A. T. & S. F. Ry., 78 I. C. C. 53; David Luptons Sons Co. v. Pennsylvania R. R. Co., 78 I. C. C. 396; Oklahoma Iron Works v. Director General, 80 I. C. C. 327; French Battery & Carbon Co. v. C. & N. W. Ry., 80 I. C. C. 344; Southern Cotton Oil Co. v. Director General, 80 I. C. C. 627; Tanners, Council v. Director General, as Agent, 78 I. C. C. 27, 28; California Packing Corp. v. Director General, as Agent, 78 I. C. C. 190, 195; Chevrolet Motor Co. of Calif. v. Director General, as Agent, 78 I. C. C. 297; Boston Wool Trade Asso. v. Director General, as Agent, 78 I. C. C. 341, 343; Marine Products Co. v. S. P. Co., 88 I. C. C. 227.

§29. Reduced Rates.

See Reduced Rates.

ALL CITATIONS

Indian Packing Corp. v. Director General, as Agent, 64 I. C. C. 205, 210.

COAL POOLS

IMPORTANT CASES SINCE 1908

(a) Where shippers of bituminous coal organized an association to facilitate shipments to tidewater through pooling of the coal, with debit and credit charges for coal deposited and withdrawn, withdrawals by each member not being limited to his deposit, and each pool being independent of others, HELD, that, under the rule of accounts that earlier payments are to be credited against earlier debits, the withdrawals by a railroad should first be credited against its existing credits on March 1, 1920, when the railroad wa redelivered to its owners under Federal Transportation Act, §200, before its deposits were applied. In Re Tidewater Coal Exch. 292 Fed. 225.

(b) Where a railroad was a member of an association of shippers of bituminous coal organized to speed up shipments of coal to tidewater by a pooling of the coal shipped, each member being credited with the coal deposited and debited with coal withdrawn, members in withdrawing not being limited to the amount of coal deposited, each pool being independent of the others, and each overdrawing member being required to replace in kind

his withdrawal, HELD, that on the redelivery of the railroad to its owners under Transportation Act, §200, the railroad under the terms of its contract with the Director General made under Federal Control Act, §1 (Comp. St. 1918, Comp. St. Ann. Supp. 1919, §3115¾a), providing that the Director General on redelivery of the railroad should return material and supplies equal in quantity and quality to those received, etc., was chargeable only with coal which it had actually withdrawn from the pools before March 1, 1920, and the Director General could claim as not transferred to the railroad only so much of the coal credits as were not represented by coal on hand in the pools less the debits on that day. In Re Tidewater Coal Exch. 292 Fed. 225.

CLAYTON ACT

IMPORTANT CASES SINCE 1908

(a) The power to hold a hearing and decide whether or not specific sections of the Clayton Anti-Trust Act are being or have been violated confers no jurisdiction to determine whether or not certain contemplated or proposed acts would constitute violations of those sections. Charleston & Norfolk S. S. Co., 47 I. C. C. 365, 368.

COASTWISE TRAFFIC

See Port-to-Port Rates; Rail and Water Rates.

IMPORTANT CASES SINCE 1908

(a) Steamship company and S. P. Co. may compete for interstate coastwise traffic within the meaning of the Act Application S. P. Co. in re Operation S. S. Co., 32 I. C. C. 690, 696.

(b) Coal placed on a vessel for use as fuel can not be regarded as a coastwise or export movement of that commodity. Basin Supply Co. v. T. & F. S. Ry. Co., 33 I. C. C. 157, 158.

(c) Reduction of period of free storage from 10 to 5 days on coastwise freight not found justified. Lighterage and storage Regulations at New York, 35 I. C. C. 47.

(d) Cosat to coast traffic is unattractive to steamship lines because of the exceptionally high prices obtained for ocean service between the United States and foreign countries. Reopening Fourth Section Applications, 40 I. C. C. 35, 38.

(e) There is no substantial difference between export and coastwise traffic with respect to transfer from cars to ship. Export Freight Free Time, 47 I. C. C. 162, 180.

ALL OTHER CITATIONS

Application S. P. Co. in re Operation S. S. Co., 32 I. C. C. 690, 696; Basin Supply Co. v. T. & F. S. Ry. Co., 33 I. C. C. 157, 158; Lighterage and Storage Regulations at New York, 35 I. C. C. 47; Reopening Fourth Section Applications, 40 I. C. C. 35, 38; Export Freight Free Time, 47 I. C. C. 162, 180; The Alaska Investigation, 44 I. C. C. 680, 682; Gulf Lumber Co. v. M. L. & T. R. R. & S. S. Co., Unrep. Op. A-574.

COMBINATION RATES

See Local Rates and Combinations.

COMMANDEERING OF VESSELS

See Demurrage §2¼.

COMMERCE COURT

See Courts §9a.

COMMODITIES CLAUSE

I. CONSTITUTIONALITY
II. APPLICATION AND CONSTRUCTION

I. CONSTITUTIONALITY.

IMPORTANT CASES SINCE 1908

(a) The provisions of section 1 of the Act, as amended June 29, 1906, making it unlawful for a railroad to transport in interstate commerce any article or commodity, other than timber and the manufactured products thereof, manufactured, mined or produced by it, or under its authority, or which it may own in whole or in part, or in which it may have any interest, direct or indirect, except such articles or commo lities as may be necessary and intended for its use in the conduct of its business as a common carrier, is in violation of the fifth amendment of the Constitution of the United States, forbidding the deprivation of private property without due process of law, since the provision is not a competent and efficient regulation of commerce directly dealing with the evil of the situation, but is destructive of property interests, which only indirectly affect interstate commerce, and a bill by the United States to enjoin carriers who have owned coal lands for many

years from violating the provision should be denied. (Buffington, J., dissenting.) U. S. v. D. & H. Co., 164 Fed. 215, 245, reversed, 213 U. S. 366, 29 Sup. Ct. 527, 53 L. ed. 836.

(b) The commodities clause in the Hepburn Act is inherently within the power of Congress to enact as a regulation of commerce, and constituted a regulation to which all pre-existing rates of the railroad companies were subordinated. U. S. v. D. & H. Co., 213 U. S. 415, Sup. Ct. 527, 53 L. ed, 836.

(c) The commodities clause of the Hepburn Act is not void because of the exception contained therein as to timber and the manufactured products thereof, since no constitutional limitation requires that such a regulation when adopted should be applied to all commodities alike. U. S. v. Del. & Hudson Co., 213 U. S. 366, 416, 29 Sup. Ct. 527, 53 L. ed 836.

(d) The commodities clause of the Hepburn Act is not unconstitutional as depriving railroads of property without due process of law, contrary to the fifth amendment, since the contentions to the contrary proceed upon the mistaken conception that inconvenience, not power, is the criterion by which to test the constitutionality of legislation. U. S. v. D. & H. Co., 213 U. S. 366, 416, 26 Sup. Ct. 527, 53 L. ed 836.

(e) The commodities clause of the Hepburn Act is not void as resulting in discrimination between carriers. U. S. v. D. & H. Co., 213 U. S. 366, 417, 29 Sup. Ct. 527, 53 L. ed. 836.

(f) The commodities clause of the Hepburn Act is not void because of the nature and character of the penalties which it imposes for violations of its provisions, since the question of the constitutionality of the clause relating to penalties is wholly separable from the remainder of the clause. U. S. v. D. & H. Co., 213 U. S. 366, 417, 29 Sup Ct. 527, 53 L. ed 836.

ALL OTHER CITATIONS

U. S. v. D. & H. Co., 164 Fed. 215, 245, reversed 213 U. S. 366, 29 Sup Ct. 527, 53 L. ed. 836.

II. APPLICATION AND CONSTRUCTION

CASES 1887-1908

(a) A railroad company carrying coal as interstate traffic is the owner of the capital stock of a coal company, which under its charter holds lands mines, buys and sells coal, and ships over the lines of said railroad company. HELD, where such conditions result in violations of the act, the only regulation practicable is the enforcement of the provision of the act requiring rates to be reasonable. Coxe Bros. & Co. v. L. V. R. Co., 3 I. C. C. 460.

(b) Where a railroad company carrying coal as interstate traffic is the owner of the capital stock of a coal company which ships over its lines and this results in violation of the Act to Regulate Commerce, the only regulation practicable is to enforce the provision requiring rates to be reasonable. Coxe v. Lehigh Valley R. Co., (Com.) 3 I. C. R. 460.

(c) The defendant railway, owning most of the mines upon its system, is engaged both in mining and transporting coal to market, and it is a matter of entire indifference to it whether a profit accrues from the mining or from the transportation; it may so adjust its rates that the mining of its coal will be conducted at a loss, the profit being derived from the carriage, and in that event every coal operator upon its line paying such rates must do business at a loss. HELD, that the only remedy available in such case to the independent operator is to secure to him a reasonable rate. McGrew v. M. P. R. Co., 8 I. C. C. 630, 641.

IMPORTANT CASES SINCE 1908

(d) The ownership of a rail line by a shipper which serves that shipper calls for closest scrutiny to ascertain whether, through divisions or allowances, rebates are made to the shipping owner. Crane R. R. v. P. & R. Ry. Co., 15 I. C. C. 248, 253.

(e) So long as the identity of ownership, in the agency of transportation and the thing transported, it is extremely difficult, if not impossible, to prevent discrimination between shippers. Cedar Hill Coal & Coke Co. v. A. T. & S. F. Ry. Co., 15 I. C. C. 73, 78.

(f) Identity of ownership of terminal and adjoining refinery is a relationship which should be subjected to the closest scrutiny. Federal Sugar Refining Co. v. B. & O. R. R. Co., 17 I. C. C. 40 47.

(g) The fact that the United States Steel Corporation, through a subsidiary, controls two roads and owns the larger portion of the ore shipped over them demands a strict interpretation of any

standard of unreasonableness which is adopted. Lum v. G. N. Ry. Co., 33 I. C. C., 541, 546.

(h) The commodities clause of the Hepburn Act was intended to prevent railroads from occupying the dual and inconsistent position of public carrier and private shipper; and in order to separate the business of transportation from the business of selling, the statute made it unlawful for railroads to transport in interstate commerce any coal in which the company had any interest, direct or indirect. Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 254.

(i) The commodities clause forbids common carriers by railroad to transport any articles or commodities, other than timber and the manufactured products thereof and company material, which they own; or in which they have any interest, direct or indirect; or manufactured, mined, or produced by them, or under their authority, from which they have not genuinely dissociated themselves before the act of transportation. The argument frequently is made that this provision conflicts with the provision of section 15 of the Act relative to the compensation of shippers by railroads for assisting them in the service of transportation or for furnishing facilities for such service and that industrial railroads and tap lines are therefore beyond the purview of the commodities clause. The argument is fallacious. Section 15 recognizes the common-law right of railroads to perform their public duties through agents and by means of hired facilities and merely provides that the Commission may regulate the compensation paid to the agent employed or to the owner of the facility hired if the agent or the owner of the facility is also a shipper. Allowances to K. G. J. & E. Ry., 41 I. C. C. 53, 59.

(j) The Act does not prohibit the mere ownership by a mining company of the stocks or other securities of a railroad over which its products are shipped. The Alaska Investigation, 44 I. C. C. 709.

(k) The conduct of the business of a common carrier by rail embraces among other things, the maintenance of its right of way. When it becomes necessary to replace its worn rails with new ones, it becomes equally necessary to make disposition of the old rails. The money resulting from the sale of worn rails returns to the treasury of the road. Such sale, therefore, is for the use of the railroad as much as the further employment of the particular rails as tracks. The transportation of the second hand rails was not in violation of the commodities clause. Valley & Siletz Railroad Co. v. S. P., 53 I. C. C. 397, 399.

(l) Determination of question of payment of divisions to short lines by trunk lines in violation of commodities clause does not come within Commission's administrative function, and is more appropriately a matter for the courts. St. Louis, Troy & Eastern R. R. Co., 57 I. C. C. 371, 374.

(m) Complainant alleged defendant violated the commodities clause of the act; that the defendant's rates on coal to Jersey city, N. J., from Buck Mountain, Vulcan, and New Boston collieries in the Lehigh region and East Boston colliery in Wyoming region were unreasonable; that defendant loaned to the coal company large sums of money without interest or security, and otherwise aided it financially, that the assistance thus rendered offset the unreasonable freight charges paid by the coal company to defendant and enabled it and its customers to underbid complainant; that the reduction of 15c per ton in the price of coal sold by the company to complainants competitors for delivery in New York was a departure from the tariff rates of defendant; that defendant also discriminated against complainant and in favor of competitors in switching service; that defendant collected from complainant improper and discriminating demurrage charges; that defendant further subjected complainant to unjust discrimination in the matter of credit for freight charges and circulated false reports concerning complainants financial standing. At time complaint was filed, rates on coal from Lehigh and Wyoming regions to Jersey were on prepared sizes, $1.60, pea $1.45, buckwheat $1.25 and rice and barley, $1.15. In 35 I. C. C. 220, the Commission decided the anthracite case and evidence therein is relied on by complainant in this case. In that case the Commission found $1.45 on prepared sizes and $1.35 on pea and smaller sizes as reasonable. The record does not warrant a finding on anything other than unreasonableness of the rates. HELD, rate charged unreasonable to extent exceeded $1.45 per long ton on prepared sizes, and $1.35 on smaller sizes, reparation awarded. Werthein Coal and Coke Co. v. L. V., 62 I. C. C. 211.

(n) Control of a carrier through stock ownership by an industrial corporation which is its principal shipper is not prohibited by the interstate commerce act. Adriatic Mining Co. v. C. & N. W. Ry., 78 I. C. C. 611, 619.

(o) While under the commodities clause of the Hepburn Act the right of a railroad company as a stockholder in a coal company to use its stock ownership for the purpose of a bona fide separate administration of the affairs of the coal corporation may not be denied, the use of such stock ownership for the purpose of destroying the entity of the producing corporation and of commingling its affairs in administration with the affairs of the railroad company, so as to make the two corporations virtually one, brings the railroad company within the prohibition of the commodities clause. U. S. v. L. V. R. R. Co., 220 U. S. 257, 274, 31 Sup. Ct. 387, 55 L. ed. 458.

(p) By the operation and effect of the commodities clause of the Hepburn Act, a duty is cast upon a railroad company proposing to carry in interstate commerce the products of a producing corporation in which it has a stock interest, not to abuse such power so as virtually to do by indirection that which the commodity clause prohibits, a duty which plainly would be violated by the unnecessary commingling of the affairs of the producing company with its own so as to cause them to be one and inseparable. U. S. v. L. V. R. R. Co., 220 U. S. 257, 274, 31 Sup. Ct. 387, 55 L. ed. 458.

(q) The commodities clause in the Hepburn Act prohibits a railroad company engaged in interstate commerce from transporting in such commerce articles or commodities: (a) when the article or commodity has been manufactured, mined or produced by a carrier or under its authority, and at the time of transportation the carrier has not in good faith before the act of transportation disassociated itself from such article or commodity; (b) when the carrier owns the article or commodity to be transported in whole or in part; (c) when the carrier at the time of transportation has an interest, direct or indirect, in a legal or equitable sense in the article or commodity, not including, therefore, articles or commodities manufactured, mined, produced or owned, etc., by a bona fide corporation in which the railroad company is a stockholder. U. S. v. D. & H. Co., 213 U. S. 366, 415, 29 Sup. Ct. 527, 53 L. ed. 836.

(r) Under the commodities clause of the Hepburn Act forbidding a railroad to transport articles or commodities "in which it may have any interest direct or indirect," the prohibition does not apply to commodities owned by separate corporations in which the carrier owns stock. (Harlan, J., dissenting.) U. S. v. D. & H. Co., 213 U. S. 366, 414, 29 Sup. Ct. 527, 53 L. ed. 836.

(s) Under the commodities clause of the Hepburn Act, making it unlawful for any railroad company to transport any article or commodity, other than timber and the manufactured products thereof, manufactured, mined or produced by it, or under its authority, or which it may own in whole or in part, or in which it may have an interest, direct or indirect, etc., the prohibition applies only to articles manufactured, mined or produced by the railroad which are at the time of transportation owned by it and does not apply to such articles when the same have become, prior to the time of transportation, the property of someone else. U. S. v. D. & H. Co., 213 U. S. 366, 412. 29 Sup. Ct. 527, 53 L. ed. 836.

(t) The commodities clause of the Hepburn Act is general in its scope, and applies not only to those particular instances in which the carrier may use its power to the prejudice of the shipper, but to all shipments which, however innocent in themselves, come within the scope and probability of the evil to be prevented. D. L. & W. Ry. Co. v. United States, 34 Sup Ct. 65, 67, 231 U. S. 363, 58 L. ed. —.

(u) Where hay is purchased by a railroad company for use in operating mines, in which 75 per cent of the coal produced is "assorted sizes" intended to be sold for domestic purposes and the remaining 25 per cent is steam coal used as fuel on the company's locomotives, the steam coal is in the nature of a by-product from a mine operated primarily for the purpose of obtaining coal for sale, and the hay cannot be said to be, within the purview of the exception to the commodities clause, necessary for the use of the company in the conduct of its business as a common carrier. D. L. & W. Ry. Co. v. United States, 34 Sup. Ct. 65, 67, 231 U. S. 363, 58 L. ed.—.

(v) The contention that an arrangement made by certain carriers with a terminal company violates the commodities clause of the Interstate Commerce Act will not be considered by the

Supreme Court on an appeal from the Commerce Court from an order by the latter enjoining the enforcement of an order of the Commission, where there is nothing in the record showing that such a contention was pressed upon the Commission, considered by that body, or that the order rendered was in any respect based upon the commodities clause. United States v. Baltimore & O. Ry. Co., 34 Sup. Ct. 75, 82, 231 U. S. 274, 58 L. ed. —.

(w) Control of a carrier through stock ownership by an industrial corporation which is its principal shipper is not prohibited by the interstate commerce act. Adriatic Mining Co. v. C. & N. W. Ry., 78 I. C. C. 611, 619.

ALL OTHER CITATIONS

In re Wharfage Facilities at Pensacola, Fla., 27 I. C. C. 252, 261; Consolidated Fuel Co. v. A. T. & S. F. Ry. Co., 27 I. C. C. 554, 557; United States v. D. L. & W. R. R. Co., 213 Fed. 240, 251, 254, 255; Campbell's Creek Coal Co. v. A. A. R. R. Co., 29 I. C. C. 682, 692, 693; Industrial Railway Case, 32 I. C. C. 129, 131, 132; 31 I. C. C., Coal and Oil Investigation 193, 224, 212, 213; Second Industrial Railways Case, 34 I. C. C. 596, 604; S. P. Co., Ownership of Oil Steamers, 34 I. C. C. 77, 82; Second Industrial Railways Case, 34 I. C. C. 596, 604; Allowances to K. G. J. & E. Ry., 41 I. C. C. 53, 60; Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 249, 251, 255; Divisions of Joint Rates for Transportation of Stone, 41 I. C. C., 321, 328; The Alaska Investigation, 44 I. C. C. 680, 704; D. L. & W. Coal Co. v. D. L. & W. R. R., 49 I. C. C. 203; Ketcham v. Denver & R. G. R. R., 248 Fed. 106, 111; Coal Operators Traffic Bureau of St. Louis v. T. T. R. A. of St. L., 57 I. C. C. 371, 374; West Virginia Rail Co. v. P. C. C. & St. L., 59 I. C. C. 241, 242; Wertheim Coal & Coke Co. v. L. V. R. R. Co., 62 I. C. C. 211, 216.

COMMODITY RATES

I. CREATION AND PURPOSE.
- § 1. Nature in general.
- § 2. Relation to class rates.

II. APPLICATION AND CONSTRUCTION.
- § 2½. In general.
- § 3. Specific commodity rating.
- § 4. Creation subsequent to shipment.

III. REASONABLENESS AND DISCRIMINATION.
- § 5. In general.

CROSS REFERENCES

See Alternative Rates; Class Rates; Differentials; Evidence §13 (1½); Special Rates; Tariffs.

I. CREATION AND PURPOSE.

§1. Nature in general.

CASES 1887-1908

(a) The power of interstate carriers to make commodity class rates and special class rates to meet the circumstances and conditions of traffic along their lines recognized and defined. N. Y. Board of Trade and Transportation v. Pa. R. Co., 3 I. C. R., 417.

(b) Salt requires and gets a commodity rate lower than class rates, and the roads should not only be limited as to such lower rating by the rule that a commodity shall not be carried at such unremunerative rates as will impose burdens upon other articles transported to recoup loss incurred in carrying that commodity. Anthony Salt Co. v. M. P. R. Co., 4 I. C. C. 33, 40.

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(c) A rate that applies to one commodity only is hardly comparable with a rate under which two different commodities move. 1915 Western Rate Advance Case, 35 I. C. C., 497, 573.

(d) A commodity rate is fixed in a normal case when under the particular facts special treatment not afforded by the classification is required. Eastern Live Stock Case, 36 I. C. C. 675, 704.

(e) The publication of a multitude of commodity rates in order to avoid the maintenance of class rates which exceed the aggregates of the intermediate rates is not desirable. Through Rates to Points in Louisiana and Texas, 38 I. C. C., 153, 160.

(f) Commodity rates are made with regard for the actual volume of movement, and relative commodity rate adjustments can only be reviewed satisfactorily when the relative volume of movement of the various commodities involved is known. Commercial Club of Mitchell, S. Dak. v. A. & W. Ry., 46 I. C. C. 1, 14.

(g) The establishment of such rates is governed largely by volume of movement and usage in the territory affected. Railroad Comm. of La. v. A. H. T. Ry., 48 I. C. C. 312, 341.

(h) Commodities moving in large volume are accorded what are known as commodity rates, i. e., specific rates ap-

plicable only on a designated commodity and articles grouped therewith. R. R. Comm. of La. v. A. H. T. Ry., 48 I. C. C. 312, 369.

(i) Commodity rates are established to meet special conditions and because of special considerations which are not met by or reflected in classification or subclassifications. Those conditions may change. The consideration may gain or wane in compelling force. But so long as they are potent they find expression in exceptions to that uniformity and symmetry of rates which should characterize a classified system. Public Utilities Commission of the State of Colorado v. A. T. & S. F. Ry., 52 I. C. C. 439, 448.

(j) A commodity rate applicable to less than carload traffic is a pronounced departure from the usual practice and the Commission should require its establishment only upon a clear showing of compelling reasons. Public Utilities Commission of the State of Colorado v. A. T. & S. F. Ry., 52 I. C. C. 439, 477.

(k) While it is true that commodity rates are generally regarded as designed to take care of particular movements, the circumstances and conditions surrounding which require a departure from the normal adjustment as provided by the classifications and in the class rates, it is also true that as to many commodities the movement at commodity rates is to such an extent predominant that the class rates can no longer be regarded the normal adjustment. When that is the case it is desirable to ascertain whether or not a standardization of rate relationships such as the classifications were intended to afford can again be effected, upon a new basis different from that found inadequate in the existing classifications. In the Matter of Rates on and Classification of Lumber and Lumber Products, 52 I. C. C. 598, 604.

(l) Commodity rates are generally regarded as designed to take care of particular movements. In making commodity rates, the rate-maker must observe the law which requires that rates shall be reasonable in and of themselves, and also reasonable by relation. In the Matter of Rates on and Classification of Lumber and Lumber Products, 52 I. C. C. 598, 628.

(m) The reason for the establishment of commodity rates is that the considerations which governed the classification makers are not, under our present conditions of railroad transportation, controlling, either because the articles on which they apply can not bear the proportion of the transportation costs that the class to which they are assigned would place upon them or else because it has been found expedient to give lower rates in order that competition of carriers, by rail or water, or of markets may be met. In the Matter of Rates on and Classification of Lumber and Lumber Products, 52 I. C. C. 598, 641.

(n) Commodity rates lower than class rates are ordinarily established when special treatment not afforded by the classification is required, and their establishment is governed largely by the volume of movement. Samuel v. Director General, as Agent, 59 I. C. C. 190, 191.

(o) In the establishment of rates on a single commodity the fact that the carriers are operating at a loss or on a narrow margin of profit should not be given too much weight, unless it clearly appears that the particular commodity constitutes the bulk of the traffic transported. Holmes & Hallowell v. G. N., 60 I. C. C. 687, 702.

(p) The establishment of commodity rates is governed largely by volume of movement and usage in the territory affected. Nevada Public Service Commission v. S. P. Co., 73 I. C. C. 240, 248.

(q) Volume of tonnage can not be made the sole criterion for the establishment of commodity rates but it is an important factor. California Packing Corporation v. Director General, 78 I. C. C. 190, 200.

(r) While the substitution of commodity rates based on mileage for a group adjustment must necessarily result in many instances in different rates to points formerly grouped together and accorded the same rates, there is no sound reason why, as a general rule, commodity rates constructed on a distance basis should not be graded according to distance in substantially the same manner as class rates. Memphis-Southwestern Investigation, 77 I. C. C. 497.

(s) While it is true that the use of the class-rate structure as a basis for commodity rates would remove some of the flexibility which is generally understood to be a peculiar part of every commodity rate, as much may be said of any distance scale of commodity rates whether constructed with or without regard to corresponding class rates. Memphis-Southwestern Investigation, 77 I. C. C. 497.

(t) Steel articles, being keenly competitive and moving in large volume, should move on commodity rates and not class rates. Iron and Steel to Virginia Cities, 83 I. C. C. 82, 86.

(u) Commodity rates should be established as need for them arises. Sonora v. D., L. & W. R. R. Co., 83 I. C. C. 399, 401.

ALL OTHER CITATIONS

R. R. Commissioners of Kansas v. A. T. & S. F. Ry. Co., 22 I. C. C., 407, 415; Goerres Cooperage Co. v. C. M. & St. P. Ry. Co., 21 I. C. C. 5, 6; United States Leather Co. v. S. Ry. Co., 21 I. C. C. 323, 325; R. R. Commission of Nev. v. S. P. Co., 21 I. C. C., 329, 332; Portland Chamber of Commerce v. O. R. R. & N. Co., 21 I. C. C. 640, 643; Tone Bros. v. I. C. R. R., 26 I. C. C. 279, 281; Furniture Rates in the Northwest, 26 I. C. C. 655, 667; Western Classification Cases, 25 I. C. C. 442, 453; Holland Blow Stave Co. v. A. C. L. R. R. Co., 24 I.C.C. 81, 83; Columbia Chamber of Commerce v. S. Ry. Co., 28 I. C. C. 339, 345; Decker & Sons v. C. M. & St. P. Ry. Co., 30 I. C. C. 547, 551; Des Moines Commodity Rates. 34 I. C. C. 281, 284; Anson, Gilkey & Hurd Co. v. S. P. Co., 33 I. C. C., 332, 335; Corp. Comm. of Oklahoma v. A., T. & S. F. Ry. Co., 33 I. C. C. 503, 505; Lehigh Portland Cement Co. v. B. & O. S. W. R. R. Co., 35 I. C. C. 14, 17; Rates and Rules on Shipments of Packing House Products, 36 I. C. C. 62, 65; The Iron and Steel Cases, 36 I. C. C. 86, 93; Lumber Rates from Newcastle, Cal., 37 I. C. C. 596, 597; Paducah Board of Trade v. I. C. R. R., 51 I. C. C. 462, 464; Helvetia Milk Condensing Co. v. A. & V. Ry., 51 I. C. C. 625, 626; Du Pont de Nemours & Co. v. Director General, as Agent, 58 I. C. C. 427, 428; Porter Mirror & Glass Co. v. Director General, as Agent, 59 I. C. C. 308, 311; Galion Iron Works & Mfg. Co. v. Director General, as Agent, 60 I. C. C. 515, 517; Bissinger & Co. (Inc.) v. Director General, as Agent, 60 I. C. C. 657; Swift & Co. v. Director General, as Agent, 62 I. C. C. 618, 623; Aetna Explosives Co. (Inc.) v. B. & O. R. R. Co., 63 I. C. C. 213, 214; Grain, Grain Products and Feeds, 78 I. C. C. 209. 217; Wright & Wimmer v. B. & O. R. R. Co., 81 I. C. C. 685, 687; National Paving Brick Manufacturers Asso. v. Ry. Co., 68 I. C. C. 213, 252.

§2. Relation to class rates.

See Class Rates.

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(a) Class rates on heavy commodities are made to move the more or less limited shipments from place to place, and commodity rates to move large, steady shipments. James & Abbot Co. v. B. & M. R. R., 17 I. C. C. 273, 275.

(b) Where a commodity rate is made for a manufactured product capable of classification, a certain equilibrium between competing points of manufacture should be preserved, if possible, and only some peculiar circumstance or condition can warrant the maintenance of a commodity rate from a few points of manufacture in a limited locality, while the class rate basis as to the same commodity is maintained from all other points of manufacture. Westbound Lake and Rail Knit Goods Commodity Rates, 32 I. C. C. 54, 57.

(c) While the Commission has recognized the fact that a commodity rate usually is lower than the rate applicable to the class from which the commodity is withdrawn, it has been held that it is not obligatory upon carriers to establish such lower rates. In the absence of proof that the commodity rate is unreasonable, a finding of unreasonableness cannot be predicated upon the mere fact that the commodity rate is higher than the corresponding class rate. Chamber of Commerce, Houston, Texas, v. I. & G. N. Ry. Co., 32 I. C. C. 247, 255.

(d) So many elements enter into the determination of a commodity rate that it can not be said that a commodity rate must always bear a fixed relation to the class rate, even as between competing points. Peet Bros. v. I. C. R. R., 34 I. C. C. 634, 637.

(e) There can be no question about the propriety of commodity rates where conditions justify such departures from the regular class rates. Rates and Rules on Shipments of Packing House Products, 36 I. C. C. 62, 69.

(ea) The ratios of the commodity rates involved to the class rates that would apply in the absence of commodity rates are not absolute measures of proper relationships between commodity rates, but may be of significance in a certain case Oklahoma Traffic Assn. v. A. & S. Ry. Co., 36 I. C. C. 329, 338.

(f) The Commission can not ignore the fact that rates for the transportation service are divided into class rates and commodity rates and that some articles, which move in large volume and in car-

load quantities, are usually accorded commodity rates, while articles of general merchandise, moving in less-than-carload quantities, usually take class rates. Harness to Oklahoma, 37 I. C. C. 726, 728.

(g) Commodity rates higher than the class rates that would otherwise apply are unusual, but are not necessarily unreasonable on that account, unless the class rates are fixed at the highest reasonable level. Sulphuric Acid from New Orleans, La., 42 I. C. C. 200, 202.

(h) A contention that a commodity rate should bear a fixed, different, or any relation whatever to the corresponding class rate overlooks the fact that the article on which the commodity rate applies has been removed from the classification and from its association with or relation to other articles, so far as the movement between certain points is concerned. Western Trunk Line Rate Increases, 43 I. C. C. 481, 489.

(i) A showing that the commodity rate on a particular article is a less proportion of the corresponding class rate than on certain other articles is no more justification for an increase in the commodity rate on that particular article than a showing that the commodity rate on another article is a greater proportion of the corresponding class rate is a justification for reducing the commodity rate on that article. Western Trunk Line Rate Increases, 43 I. C. C. 481, 489.

(j) A reduction of a class rate below the level of a rate upon a particular commodity would not put in issue the reasonableness of that commodity rate if not attacked in the complaint. Wisconsin Rate Cases, 44 I. C. C. 602, 627.

(k) Where the circumstances and conditions of transportation to two destinations are not substantially the same, it does not necessarily follow that because the class rates from certain points of origin are the same the rates on a certain commodity should also be the same. Natchez Cham. of Com. v. Y. & M. V. R. R., 46 I. C. C. 60, 62.

(l) In instances where carriers are authorized to publish and charge lower class rates to more distant than to intermediate points, the publication of rates on commodities to intermediate points to which such commodities do not ordinarily move will not be required if the item containing the commodity rate to the more distant point makes proper reference to described note. Second Duluth Case, 46 I. C. C. 585, 594.

(m) A contention that class rates are the "normal" rates for practically all freight, and that ordinarily a commodity rate lower than the class rate which would otherwise apply is "unreasonably low" or "subnormal," is unsound. The Southeastern Sugar Cases, 48 I. C. C. 739, 742.

(n) While commodity rates are generally lower than the corresponding class rates the fact that the commodity rates in certain instances are higher than the class rates is not conclusive of their unreasonableness. Heldmaier v. C. I. & L. Ry., 49 I. C. C. 81, 82.

(o) The Commission can not subscribe to the contention that the state of relativity between commodities which features the classification as the real foundation of its structure must necessarily extend to commodity rates. As a matter of fact the reason why a commodity rate is established is that conditions require a departure as to the particular article from this very plan of grouping together certain articles. Those exceptional conditions do not necessarily apply to all commodities; otherwise the class rates would give way entirely to the commodity rate. Nor is the idea of classification relationship necessarily to be followed as between carload and less-than-carload commodity rates on the same article. Conditions may demand a departure from the classification basis as to carload and not as to less-than-carload traffic. Macaroni & Noodle Mfrs. v. A. G. S. R. R., 50 I. C. C. 289, 292.

(p) Whether or not commodity rates are constructed with definite relation to class rates for the classes to which commodities are assigned, a commodity rate adjustment as a whole should have due regard for the corresponding class rate adjustment. That is to say the same basic principles should be observed. Natchez Chamber of Commerce v. L. & A. Ry., 52 I. C. C. 105, 121.

(q) If a commodity rate is established between certain points on a particular article which ordinarily moves under class rates in the territory in which such points of origin and destination are located, it is presumed to be the result of special circumstances attending the transportation of that article between such points. Porter Mirror & Glass Co., v. Director General, 59 I. C. C. 308, 311.

(r) In the last analysis the presump-

tion that a commodity rate higher than the class rate which would otherwise apply is unreasonable is predicated on the antecedent presumption that the class rate is fixed at the highest reasonable figure. Rath Packing Co. v. Director General, 59 I. C. C. 427, 428.

(s) In the absence of other evidence that a commodity rate is unreasonable or unduly prejudicial the fact that it is a moderately greater or less percentage of a corresponding class rate is not sufficient ground for condemning it. Greater Des Moines Committee v. Director General, 60 I. C. C. 403, 404.

(t) So many elements enter into the determination of a commodity rate that it cannot be said that a commodity rate must always bear a fixed relation to the corresponding class rate, even as between competing points. Macon Chamber of Commerce v. N. Y. N. H. & H. 63 I. C. C. 327, 332.

(u) In case of conflict the commodity tariff takes precedence over the classification. Queen City Iron & Metal Co. v. Director General, as Agent, 73 I. C. C. 618, 619.

(v) Carriers contend that their commodity rates on rails are on an improper basis, pointing to the fact that most iron and steel articles generally move on class rates. Comparisons were submitted of the rates on steel rails with rates on steel billets and pig iron, which take class rates, but in the absence of a showing as to the relative movement, such comparisons are not convincing. Rails and Crossties from Eastern Points to Canada, 74 I. C. C. 3, 5, 6.

(w) Commodity rates are not unreasonable merely because they exceed the corresponding class rates. Lustig-Burgerhoff v. Director General, as Agent, 74 I. C. C. 395.

(x) If it is true that the use of the class rate structure as a basis for commodity rates would remove some of the flexibility which is generally understood to be a peculiar part of every commodity rate, as much may be said of any distance scale of commodity rates whether constructed with or without regard to corresponding class rates. Memphis-Southwestern Investigation-Commodity rates, 77 I. C. C. 473, 497.

(y) So many elements enter into the determination of a commodity rate that it can not be said that a commodity rate must always bear a fixed relation to the corresponding class rate, even as between competing points. Fairmont Creamery Co. v. Director General, 68 I. C. C. 507, 513.

(z) So many elements enter into the determination of a commodity rate that it can not be said that a commodity rate must always bear a fixed relation to the corresponding class rate, even as between competing points. Kerr & Co. v. Director General, 68 I. C. C. 653, 655.

(aa) In case of conflict the commodity tariff takes precedence over the classification. Queen City Iron & Metal Co. v. Director General, as Agent, 73 I. C. C. 618, 619.

(bb) Commodity rates charged on petroleum and its products from Findlay, Ohio, to Indianapolis, Ind., found unreasonable to extent they exceeded 90 per cent of sixth class, which is the general basis of rates on this traffic throughout central territory. Reparation awarded. National Refining Co. v. Director General, as Agent, 73 I. C. C. 668.

(cc) Commodity rates in excess of the class rates are not unreasonable. Lustig-Burgerhoff Co. v. Director General, 74 I. C. C. 395.

(dd) Rails, steel: Carrier contend that their commodity rates on rails are on an improper basis, pointing to the fact that most iron and steel articles generally move on class rates. Comparisons were submitted of the rates on steel rails with rates on steel billets and pig iron, which take class rates, but in the absence of a showing as to the relative movement, such comparisons are not convincing. Rails and Crossties from Eastern Points to Canada, 74 I. C. C. 3, 5, 6.

(ee) Commodity rates are not unreasonable merely because they exceed the corresponding class rates. Lustig-Burgerhoff v. Director General, as Agent, 74 I. C. C. 395.

(ff) Tariff provided that commodity rates on bulk shipments should be computed not to exceed the applicable class rates, and to that extent shipments of apples, in bulk, from Mosier, Oreg., to Louisville, Ky., found overcharged and reparation awarded. Holmes v. Director General, as Agent, 74 I. C. C. 668.

(gg) If it is true that the use of the class rate structure as a basis for commodity rates would remove some of the flexibility which is generally understood to be a peculiar part of every commodity rate, as much may be said of any dis-

tance scale of commodity rates whether constructed with or without regard to corresponding class rates. Memphis-Southwestern Investigation-Commodity rates, 77 I. C. C. 473, 497.

(hh) While the substitution of commodity rates based on mileage for a group adjustment must necessarily result in many instances in different rates to points formerly grouped together and accorded the same rates, there is no sound reason why, as a general rule, commodity rates constructed on a distance basis should not be graded according to distance in substantially the same manner as class rates. Memphis-Southwestern Investigation, 77 I. C. C. 473, 497

(ii) It does not necessarily follow that because the percentage relationship between proposed commodity rates and the commodity rates applicable in other territories is less than the percentage relation which the class rates in the territory under consideration bear to the class rates in other territories, the proposed commodity rates are reasonable. Memphis-Southwestern Investigation, 77 I. C. C. 501.

(jj) Unusual for a commodity rate to exceed applicable class rate. Grain from Memphis, 80 I. C. C. 141.

(kk) The classification generally imposes the highest rate which a particular commodity should bear under normal conditions. A commodity rate which is higher than the class rate is an abnormality which on its face requires special justification. John Morrell Co. v. C. B. & Q. R. Co., 81 I. C. C. 200, 201.

(ll) Peculiar conditions surrounding commodity rates negative the presumption of a necessarily close percentage relationship between classes and commodities. Carnation Milk Products Co. v. A. & W. Ry., 81 I. C. C. 699, 701.

(mm) There is no well-defined basis of relating commodity rates on steel articles to class rates in trunk-line territory. Iron and Steel to Virginia Cities, 83 I. C. C. 82, 86.

(nn) So many elements enter into determination of a commodity rate that it can not be said that a commodity rate must bear a fixed relation to corresponding class rate, even as between competing points. Wood Iron & Steel Co. v. P. R. R. Co., 83 I. C. C. 503, 505.

ALL OTHER CITATIONS

Scheuing v. L. & N. R .R. Co., 20 I. C. C. 550, 552; R. R. Commission of Nev. v. S. P. Co., 19 I. C. C. 238, 255; Wheeling Corrugating Co. v. B. & O. R. R. Co., 18 I. C. C. 125, 126; Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 15 I. C. C. 367, 369; Crombie & Co. v. S. P. Co., 25 I. C. C. 233, 235; Coffins Box & Lumber Co. v. C. & N. W. Ry. Co., 25 I. C. C. 249, 250; In re Advances on Apples, 24 I. C. C. 38; In re Express Rates, 24 I. C. C. 380, 412; Meritas Mills v. N. Y. N. H. & H. R. R. Co., Unrep. Op. A-51; Austin Mill & Grain Co. v. G. C. & S. F. Ry. Co., Unrep. Op. A-91; Iowa State Board of Railroad Commissioners v. A. E. Co., 28 I. C. C. 193, 196; Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 581; Kittoe Boiler & Tank Co. v. E. R. R. Co., Unrep. Op. A-319; Ramsey & Co. v. R. G. & E. R. R. Co., Unrep. Op. A-355; Schaller v. N. Y. C. & H. R. R. Co., Unrep. Op. A376; Sulzerger & Sons Co. v. S. P. Co., Unrep. Op. A400; Decker & Sons v. C. M. St. P. Ry. Co., 30 I. C. C. 547, 551; Rock Spring Distilling Co. v. I. C. R. R. Co., 29 I. C. C. 18, 27; Oklahoma Traffic Assn. v. A. T. & S. F. R. Co., 29 I. C. C. 129, 135; Mississippi River Case, 29 I. C. C. 530, 535; Allen & Lewis v. C. B. & Q. R. R. Co., Unrep. Op. A453; Hyman v. L. & N. R. R. Co., Unrep. Op. A-589; Van Voorhies & Co. v. C. M. & St. L. Ry. Co. Unrep. Op. A-622; Brown-Roberts Hdw. & Supply Co. v. L. R. R. & N. Co., Unrep. Op. A-623; Merchants' Freight Bureau of Little Rock v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-633; D. & W. Ry. Co. v. R. C. B. H. & W. R. R. Co., Unrep. Op. A-646; California Ink Co. v. M. O. & G. Ry. Co., Unrep. Op. A-664; Cudahy Packing Co. v. A. T. & S. F. Ry., 32 I. C. C. 560; New Orleans Shippers' Asso. v. I. C. R. R., 34 I. C. C., 32, 34; United States Glue Co. v. C. & N. W. Ry. Co., Unrep. Op. A-930; Massie & Pierce Lumber Co. v. N. & W. Ry. Co., 33 I. C. C. 14, 19; Commodity Rates to Pacific Coast Terminals, 34 I. C. C. 13, 19; New Orleans Shippers' Asso. v. I. C. R. R. Co., 34 I. C. C., 32, 34; Lehigh Portland Cement Co. v. B. & O. S. W. R. R. Co., 35 I. C. C. 14, 17; 1915 Western Rate Advance Case, 35 I. C. C. 497, 636; New Orleans Joint Traffic Bureau v. M. L. & T. R. R. & S. S. Co., 38 I. C. C. 11; Smith & Co. v. I. C. R. R. Co., Unrep. Op. 2157; New Orleans-Texas Rates, 38 I. C. C. 1, 8; Through Rates to Points in Louisiana and Texas, 38 I. C. C. 153, 160; Natl. Commercial Fixture Mfrs. Asso. v. A. A. R. R., 40 I. C. C. 484, 486; Memphis Freight

Bureau v. St. L., I. M. & S. Ry. Co., 39 I. C. C. 224, 242; Cities of Marshall and Jefferson, Tex. v. T. & P. Ry. Co., 39 I. C. C. 249, 254; City of Memphis v. C. R. I. & P. Ry. Co., 39 I. C. C. 256, 263, 265, 270; Swanson v. T. & P. Ry. Co., 39 I. C. C. 725, 730; Lehigh Portland Cement Co. v. B. & O. S. W. R. R. Co., 42 I. C. C. 406, 410; Swift & Co. v. B. & M. R. R., 45 I. C. C. 119; Northern Potato Traffic Asso. v. C. & A. R. R., 44 I. C. C. 426, 430; Oakley & Son v. C. T. H. & S. E. Ry., 44 I. C. C. 488; Meyer v. Wabash Ry., 49 I. C. C. 169; Class Rates from Chestnut Ridge by Stations, 50 I. C. C. 152, 155; Johnson Service Co. v. A. A. R. R., 50 I. C. C. 361, 363; Natchez Chamber of Commerce v. L. & A. Ry., 52 I. C. C. 105, 114; Helvetia Milk Condensing Co. v. A. & V. Ry., 51 I. C. C. 625, 626; Galion Iron Works v. C. C. C. & St. L. Ry. Co., 53 I. C. C. 173; Memphis-Southwestern Investigation, 55 I. C. C. 515, 537, 541; Rath Packing Co. v. I. C. R. R., 56 I. C. C. 303, 306; Mobridge Grocery Co. v. C. M. & St. P. Ry. Co., 52 I. C. C. 307, 311, 312; Rath Packing Co. v. Director General, 59 I. C. C. 427, 429; Samuel v. Director General, 59 I. C. C. 190, 191; E. I. DuPont de Nemours Co. v. Director General, 61 I. C. C. 605; Morrell & Co. v. C. B. & Q. R. R. Co., 61 I. C. C. 153, 157; Quinton Spelter Co. v. Ft. S. & W. R. R. Co., 61 I. C. C. 43, 44; Buxton-Smith Co. v. Director General, as Agent, 61 I. C. C. 623; Southern Carbon Co. v. A. & L. M. Ry. Co., 62 I. C. C. 733, 738; Certain-Teed Products Corp. v. A., T. & S. F. Ry. Co., 63 I. C. C. 65, 71; Rates to, from, and between points south of Ohio River, 64 I. C. C. 306, 316; Armour & Co. v. C. & N. W. Ry. Co., 64 I. C. C. 641; Northern Potato Traffic Association v. Director General, 69 I. C. C. 26; The State Highway Department of Texas v. Director General, 69 I. C. C. 220; Chevrolet Motor Co. of California v. Director General, 69 I. C. C. 226; Phoenix Chamber of Commerce v. Director General, 73 I. C. C. 284; National Refining Co. v. Director General, 73 I. C. C. 668; Arizona Copper Co. (Ltd.) v. A. & N. M. Ry. Co., 73 I. C. C. 493; Doors and Sash, 77 I. C. C. 710; Boston Wool Trade Asso. v. B. & A. R. R. Co., 78 I. C. C. 178, 185; Grain from Memphis 80 I. C. C. 138, 141; Radiators from Dunkirk, N. Y., to interstate destinations, 83 I. C. C. 21.

II. APPLICATION AND CONSTRUCTION.

See Application of Rates; Tariffs §7.

§2½. In general.

CASES 1887-1908

(a) It is often impracticable to establish different rates on the same commodity from practically the same locality to the same market, although the distances vary. Coxe v. Lehigh Valley R. Co. (Com.) 3 I. C. R. 460.

IMPORTANT CASES SINCE 1908

(b) Publication of specific commodity rates to cover all possible combinations lower than through class rates is a matter which can not be accomplished at once, nor would it seem practicable. Memphis Freight Bureau v. St. L. I. M. & S. Ry. Co., 39 I. C. C. 224, 240.

(c) Rate on any commodity to or from any intermediate point shall not exceed the rate on the same commodity to or from the next more distant point to or from which a lower rate is charged by a greater amount than the rate to or from the intermediate point on the class to which the commodity belongs exceeds the rate on the corresponding class to or from the more distant point. Rates between C. F. A. Territory and Points on the C. & O. Ry., 47 I. C. C. 576, 580.

(d) While volume of movement is not the only consideration in the establishment of commodity rates, it is an important element which, other considerations being equal, may and not infrequently does become determinative. E. I. DuPont de Nemours & Co. v. Director General, 58 I. C. C. 427, 428.

(e) In southwestern territory a great many commodity rates, substantially lower than the class rates, apply on most traffic moving in carloads, which has the effect of making the class rates largely paper rates. Certain-Teed Products Corp. v. A., T. & S. F. Ry. Co., 73 I. C. C. 82, 91.

(f) It is a well settled doctrine that commodity rates may not be applied by analogy. Cutler Hammer Mfg. Co. v. Director General, 88 I. C. C. 600, 602.

ALL OTHER CITATIONS

Missouri River Building Stone Rates, 28 I. C. C. 269, 271; Coffins Box & Lumber Co. v. C. & N. W. Ry. Co., 25 I. C. C. 249, 250; Mississippi River Case, 28 I. C. C. 47, 63; West Co. v. E. R. Co., Unrep. Op. A-316; Gamble Robinson Co. v. C. G. W. R. R. Co., Unrep. Op. 1848; Swift & Co. v. B. & O. R. R., 45 I. C. C.

8; Russi & Co. v. O. S. R. R, 45 I. C. C. 77; Bishop-Babcock-Becker Co. v. N. Y. C. R. R., 45 I. C. C. 141; Otis Elevator Co. v. N. Y. C. R. R., 45 I. C. C. 201, 202; Herrick Refrig. & C. S. Co. v. C. G. W. R. R., 46 I. C. C. 421; Romann & Bush P. I. & C. Co. v. C. & O. Ry., 49 I. C. C. 338; International Paper Co. v. B. & M. R. R., 50 I. C. C. 341; Lang v. M. P. Ry., 50 I. C. C. 377; American Bridge Co. v. N. Y. N. H. & H. R. R., 51 I. C. C. 181; Houston Exporters Assn. v. A. T. & S. F. Ry., 51 I. C. C. 509; Stielow Bros. Co., et al v. C. & N. W. Ry., 63 I. C. C. 339; J. F. Anderson Lumber Co. v. Director General, 55 I. C. C. 467; Saginaw & Manistee Lumber Co. v. A. T. & S. F., 57 I. C. C. 167-169; Savage Tire Co. v. A. T. & S. F. Ry., 52 I. C. C. 499; E. I. DuPont de Nemours & Co. v. Director General, 58 I. C. C. 146, 427; Coffee from Galveston, Tex., and other Gulf Ports, 58 I. C. C. 716, 727; Lake Park Refining Co. v. Director General, 60 I. C. C. 381; Badger Lumber Co. v. A., T. & S. F. Ry. Co., 60 I. C. C. 278; Boldt Paper Mills v. Director General, as Agent, 62 I. C. C. 471, 472; Southern Carbon Co. v. A. & L. M. Ry. Co., 62 I. C. C. 733; William L. Carney v. Director General, 68 I. C. C. 309; Chevrolet Motor Co. of Calif. v. Director Northern Potato Traffic Asso. v. Director general, as Agent, 69 I. C. C. 26; Chevrolet Motor Co. of Calif., v. Director General, 78 I. C. C. 297; Keith Co. v. Director General, as Agent, 83 I. C. C. 167.

§3. Specific commodity rating.

IMPORTANT CASES SINCE 1908

(a) A shipment moving under a commodity tariff is not subject to any regulation not contained in that specific tariff. Wheeler Lumber Bridge & Supply Co. v. Astoria & Columbia River R. R. Co., 20 I. C. C. 10.

(b) The Commission's tariff regulations have continuously contained a rule that the naming of a commodity rate on any article takes that article out of the class rates between the same points. This rule, however, does not prevent the alternative offering and use of class and commodity rates contained in the same tariff. Wheeler & Motter Mercantile Co. v. C. B. & Q. R. R. Co., 20 I. C. C. 141, 145.

(c) Where a specific rate is established on wax paper, such rate must be applied to all grades and qualities of wax paper regardless of the use to which it is put. Pacific Coast Biscuit Co. v. O. R. R. & N. Co., 20 I. C. C. 178, 180.

(d) A commodity rate legally established remains in effect and is the only legal rate until canceled, notwithstanding a subsequently published conflicting rate. Jewel Tea Co. v. P. Co., 46 I. C. C. 314, 316.

ALL OTHER CITATIONS

Goerres Cooperage Co. v. C. M. & St. P. Ry. Co., 21 I. C. C. 5; Wheeler & Motter Mercantile Co. v. C. B. & Q. R. R. Co., 20 I. C. C. 141, 147; Thompson v. L. & N. R. R. Co., 20 I. C. C. 161, 163; Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 16 I. C. C. 56, 70; Newton Gum Co. v. C. B. & Q. Ry. Co., 16 I. C. C. 341, 347; Porter v. St. L. & S. F. R. R. Co., 15 I. C. C. 1, 5; Crombie & Co. v. S. P. Co., 25 I. C. C. 233, 235; Central California Traction Co. v. C. M. & St. P. Ry. Co., 24 I. C. C. 550, 551; Pecos & N. T. Ry. Co. v. Porter, (Tex., 1913), 156 S. W. 267, 272; Dewey Bros. Co. v. P. C. C. & St. L. Ry. Co., Unrep. Op. 2117; Worden-Allen Co. v. C., M. & St. P. Ry. Co., 42 I. C. C. 362, 363; Boardman Co. v. A. T. & S. F. Ry., 46 I. C. C. 352, 354; Carrollton Excelsior & Fuel Co., Ltd., v. N. O. & N. E. R. R., 49 I. C. C. 6; George C. Holt v. Hines, 55 I. C. C. 170; Jacob E. Decker & Sons v. Director General, 55 I. C. C. 433; Gimbel Bros. v. Barrett, 218 Fed. 880, 886; Galveston, H. & S. A. Ry. Co. v. Lykes Bros., 294 Fed. 968.

§4. Creation subsequent to shipment.

Important Cases Since 1908

(a) Complainant attacked as unreasonable and in violation of the fourth section rate of 54.5 cents per 100 lbs., on wet nitro cellulose from Norfolk, Va., to Carneys Point, N. J. Contemporaneously there was in effect from Hopewell thru Norfolk to Carneys Point, by the route of movement from Norfolk, an all rail commodity rate on this commodity in carloads, of 38.9 cents per 100 lbs. The tariff containing this rate provided, in accordance with Rule 77 of Tariff Circular 18-A, that upon application therefor rates would be established from or to intermediate points not exceeding those from or to more distant points on one day's notice. The complainant did not make application prior to the shipments, and it had not been published. HELD, rate charged was unreasonable to the extent it exceeded 38.9 cents per 100 lbs. Reparation with interest awarded. Du Pont de Nemours & Co. v. Director General, 55 I. C. C. 247.

(b) Commodity rates charged on petroleum and its products from Findlay,

Ohio, to Indianapolis, Ind., found unreasonable to extent they exceeded 90 per cent of sixth class, subsequently established, which is the general basis of rates on this traffic throughout central territory. Reparation awarded. National Refining Co. v. Director General, as Agent, 73 I. C. C. 668.

ALL OTHER CITATIONS

Willamette Pulp & Paper Co. v. B. & A. R R. Co., 21 I. C. C. 178; Jones v. K. C. S. Ry. Co., 17 I. C. C. 468, 469; Balfour Quarry Co. v. S. Ry. Co., 41 I. C. C. 610; Hartzell v. C. I. & L. Ry., 41 I. C. C. 756; International Paper Co. v. M. C. R. R., 45 I. C. C. 453; Loveland & Hinyan Co. v. D. & H. Co., 51 I. C. C. 15; New Jersey Power & Light Co. v. Director General, 57 I. C. C. 147; Mississippi Valley Iron Co. v. C., B.& Q. R. R., 64 I. C. C. 441; Armour & Co. v. C. & N. W. Ry., 64 I. C. C. 641; Empire Refineries, Inc. v. Director General, 68 I. C. C. 648; Winslow & Co. v. Director General, 77 I. C. C. 387.

III. REASONABLENESS AND DISCRIMINATION.

§5. In general.

See Advanced Rates §5 (3); Discrimination; Distance Rates; Reasonableness of Rates.

CASES 1887-1908

(a) The commodity tariff applying on traffic from the Middle West to Pacific Coast territory names rates upon over 400 commodities in carloads only, leaving the movement of these commodities in less than carloads to be governed by the greatly higher class rate provided for such shipments and producing a differential as between carload and less than carolad quantities which, even under the peculiar circumstances of this traffic, is in many cases excessive where there is any general movement in less than carloads or other commercial reason for a corresponding less than carload rate; and the tariff is also to some extent unlawful in that it specifies a number of varied commodity rates, especially for the hardware schedule, and unduly prevents in some instances the shipment of articles of the same class in mixed carloads at carload rates. Business Men's League v. A., T. & S. F. Ry. Co. et al, 9 I. C. C. 318.

(b) The commodity tariff applying on traffic from the Middle West to the Pacific Coast territory is, to some extent, unlawful, in that it specifies a number of varied commodity rates,—especially for the hardware schedule, and unduly prevents, in some instances, the shipment of articles of the same class in mixed carloads at carload rates. Business Men's League of St. Louis v. Atchison, T. & S. F. R. Co., 9 I. C. C. 318.

(c) The present wheat rate of 30½ cents from Wichita to Galveston is excessive to the extent of 2 cents per 100 pounds. Mayor and City Council of Wichita v. Atchison, T. & S. F. R. Co., 9 I. C. C. 534.

(d) The rate of 28½ cents per 100 pounds charged by the different lines running to Wichita for the transportation of lumber from Camden, Ark., and Trinity, Tex., to Wichita, is excessive. Mayor and City Council of Wichita, Kansas v. Chicago, Rock Island & Pacific R. Co., 9 I. C. C. 569.

(e) The Texas & Pacific Railway Company's rate on beef cattle in carloads from Ft. Worth, Tex., to New Orleans, La., is 42½ cents per 100 lbs., and $15 per car additional when shipment is made in lots of less than ten carloads. Upon complaint against the imposition of the additional $15 per car,—HELD, that the charge of $15 per car in addition to the rate of 42½ cents per 100 lbs. is unreasonable when applied to single carload shipments. New Orleans Live Stock Exchange v. Texas & P. R. Co., 10 I. C. C. 327.

(f) A wheat rate of 75 cents per 100 pounds from Nebraska common points to California terminals via the C., B. & Q. Ry., through Denver and thence via the Union Pacific and Southern Pacific railroads to destination is unreasonable and excessive. It is manifestly so as compared with the through rate of 55 cents on corn over that route, and a through rate of 55 cents on both corn and wheat from Nebraska points via the Union Pacific and Southern Pacific to those destinations. Any rate on wheat over the route in question from these points of origin to California terminals in excess of 65 cents per 100 is unreasonable, and complainant is entitled to reparation on his shipments on that basis, but is not entitled to an order of reparation on his shipment to Reno, Nev. A. J. Poor Grain Co. v. C. B. & Q. Ry. Co. et al, 12 I. C. C. 418.

(g) Complainant attacked the commodity rate, charged on wheat from Nebraska points through Denver via the

C. B. & Q., U. P., and S. P., to California, as unreasonable. The shipment moved from Marquette and Phillips, Nebr., to Reno, Nev., and California terminals. Rate charged 75c, the rate on corn being 55c via this route as well as via the U. P., and S. P. HELD, rate attacked unreasonable to extent it exceeded 65c, reparation awarded. A. J. Poor Grain Company v. C. B. & Q. Ry., 12 I. C. C. 418.

(h) Upon full hearing of this complaint and consideration of the matter submitted, it is the opinion of the Commission that the rate of 22 cents per 100 pounds applying on shipments of salt in carloads from New Orleans, La., to Cullman, Ala., is unduly excessive, unreasonable and unjust, and that a rate of 20 cents per 100 pounds for such transportation would be reasonable and just. The Farmers Warehouse Co. v. Louisville & N. R. R. Co., 12 I. C. C. 457.

(i) Rates on alcohol, all kinds, from Chicago and from Missouri River common points to north Pacific coast terminals and to certain points in Oregon, are 85 cents per 100 pounds in carload lots and $1.25 per 100 pounds in less than carload lots. These rates are less than the rates from same points of origin on petroleum products, whisky, or paint. Complainant asks for reduction in the rates on denatured alcohol. The record shows that denatured alcohol is manufactured in California and is sold in the north Pacific coast cities at a price which could be met by the eastern product only by reducing the transportation charges to nothing. An effort to place denatured alcohol upon a parity with proof spirits would lead either to a large increase in the charges on the proof spirits or a practical wiping out of the charges on the denatured article. Such increase in the charges on the proof spirits would probably render futile all effort to compete with the California product. Rates complained of are not shown to be unreasonable per se, unduly discriminatory, or unjustly prejudicial. Complaint dismissed. R. R. Commission of Oregon v. Chicago & Alton R. R. Co. et al, 12 I. C. C. 541.

IMPORTANT CASES SINCE 1908

(j) The fact that there is a commodity rate on the articles in question lower than rates on other iron articles rated fifth class is not of itself convincing that the rate in question is unduly low and should be increased. Iron and Steel from Pacific Coast Points, 38 I. C. C. 545, 548.

(k) Commodity rates, however, are made with greater regard for the actual volume of movement than class rates, and relative commodity rate adjustments can only be reviewed satisfactorily when the relative volume of movement of the various commodities involved is known. Commercial Club of Mitchell, So. Dak. v. A. & W. Ry., 46 I. C. C. 1, 14.

(l) Commodity rates are not necessarily unreasonable merely because higher than class rates which have been depressed by water competition. Aetna Explosives Co. v. S. A. L. Ry., 51 I. C. C. 675, 676.

(m) And the reasonableness of commodity rates is not dependent solely upon regularity of movement. Swift & Co. v. Director General, as Agent, 62 I. C. C. 618, 623.

(n) Proposed restricted application of commodity rates on grain and grain products from points in Kansas, Nebraska and eastern Colorado to north Pacific coast and California terminals and to intermediate points, the effect of which would be to cancel the joint rates now applicable from points in the origin territory when reshipped from Missouri River or Interior markets over lines other than the carrier originating the traffic, leaving in effect over such routes higher combinations of rates to and from the markets, found not justified. Routing on Transcontinental Grain and Grain Products, 73 I. C. C. 116.

(o) Testimony to the effect that commodity rates are not ordinarily maintained on the traffic and in the territory here involved and that the class rates charged represent the normal basis. HELD, such evidence falls short of a satisfactory rebuttal of the presumption of unreasonableness inhering in joint rates which exceed the aggregate of intermediates. Pittsburgh Steel Co. v. Director General, as Agent, 73 I. C. C. 555, 556.

(p) Carriers contend that their commodity rates on rails are on an improper basis, pointing to the fact that most iron and steel articles generally move on class rates. Comparisons were submitted of the rates on steel rails with rates on steel billets and pig iron, which take class rates, but in the absence of a showing as to the relative movement, such comparisons are not convincing. Rails and Crossties from Eastern Points to Canada, 74 I. C. C. 3, 5, 6.

(q) While the substitution of commodity rates based on mileage for a group adjustment must necessarily result in many instances in different rates to points formerly grouped together and accorded the same rates, there is no sound reason why, as a general rule, commodity rates constructed on a distance basis should not be graded according to distance substantially the same manner as class rates. Memphis-Southwestern Investigation, 77 I. C. C. 497.

(r) It does not necessarily follow that because the percentage relationship between proposed commodity rates and the commodity rates applicable in other territories is less than the percentage relation which the class rates in the territory under consideration bear to the class rates in other territories, the proposed commodity rates are reasonable. Memphis-Southwestern Investigation, 77 I. C. C. 501.

ALL OTHER CITATIONS

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rector General, 66 I. C. C. 313; John M. Buckland v. Director General, 66 I. C. C. 503; Farris Hardwood Lumber Co. v. Director General, 68 I. C. C. 181; Empire Refineries, Inc. v. Director General, 68 I. C. C. 192; Duluth Brewing & Malting Co. v. N. P. Ry. Co., 68 I. C. C. 315; West Virginia Pulp & Paper Co. v. Director General, 68 I. C. C. 534; Humble Oil & Refining Co. v. Director General, 68 I. C. C. 629; Victory Window Glass Co. v. A. T. & S. F. Ry., 69 I. C. C. 51; V. G. Tice v. Director General, 69 I. C. C. 140; Heggem & Davis v. Director General, 69 I. C. C. 162; Natchez Chamber of Commerce v. St. L. I. M. & S. Ry., 69 I. C. C. 666; Rath Packing Co. v. Director General, 73 I. C. C. 203; Illinois Brick Co. v. Director General, 73 I. C. C. 215; Nevada Public Service Commission v. S. P. 73, I. C. C. 240; Peninsular Portland Cement Co. v. Director General, 73 I. C. C. 542; Minnesota Steel Co. v. Director General, 73 I. C. C. 571; Clear Cedar Shingle Co. v. Director General, 73 I. C. C. 632; Standard Oil Co. v. Director General, 73 I. C. C. 743; Routing on Transcontinental Grain and Grain Products, 73 I. C. C. 116; Nevada Public Service Commission v. S. P. Co., 73 I. C. C. 240; Phoenix Chamber of Commerce v. Director General, as Agent, 73 I. C. C. 284; Increased Rates between Ruston and Texas Points, 73 I. C. C. 341; Rates from Northern Points to Bristol, Tenn.-Va., 73 I. C. C. 389; Less-Than-Carload Commodity Rates from St. Louis, 73 I. C. C. 396; Silicia from Southern Illinois, 73 I. C. C. 406; Farm Wagons to Louisiana Points, 73 I. C. C. 547; Pittsburgh Steel Co. v. Director General, as Agent, 73 I. C. C. 555, 556; Classification exceptions on linseed oil from New York lighterage points to C. F. A. territory, 74 I. C. C. 155; Mississippi Valley Iron Co. v. C. & N. W. Ry., 74 I. C. C. 369; Wilckes, Martin & Wilckes Co. v. Director General, as Agent, 74 I. C. C. 13; Linseed Oil from New York Lighterage Points, 74 I. C. C. 155; Proportional Rates on Petroleum and its Products, 74 I. C. C. 349; Salt Lake Chemical Co. v. Director General, as Agent, 74 I. C. C. 399; Magnesite Stucco in Western Trunk Line Territory, 74 I. C. C. 567; Doors and Sash, between Paducah, Ky., and Ohio River Crossings, 77 I. C. C. 710; Maine Spinning Co. v. Director General, 73 I. C. C. 279; John A. Roeblings Sons Co. v. Western Maryland Ry., 78 I. C. C. 349; Cancellation of Vehicle Rates, 78 I. C. C. 37; Magnolia Provision Co. v. Director General, as Agent, 78 I. C. C. 151; Melczer Co. v. A. E. R. R. Co., 78 I. C. C. 319, 321, 323; Hanford Produce Co. v. Director General, as Agent, 80 I. C. C. 29; Penick & Ford v. Director General, as Agent, 80 I. C. C. 152; Morrell & Co. v. C. B. & Q. R. R. Co., 81 I. C. C. 200; Miller v. N. & W. Ry. Co., 81 I. C. C. 588; Wright & Wimmer v. B. & O. R. R. Co., 81 I. C. C. 685, 687; Fertilizer between Points in W. T. L. Territory, 80 I. C. C. 604; Dayton Malleable Iron Co. v. K. & M. R. Co., 81 I. C. C. 22; Memphis-Southwestern Investigation, 77 I. C. C. 482, 484, 486, 487, 490, 491, 493, 497, 501, 512, 513, 514; Standard Sanitary Mfg. Co. v. S. Ry. Co., 80 I. C. C. 7; Grain from Memphis, 80 I. C. C. 138; Plumbers' Supplies from Chattanooga, 80 I. C. C. 251; Fertilizer and Fertilizer Material, 80 I. C. C. 604; Catsup, Kraut, carloads between Michigan and Chicago, 81 I. C. C. 212; Orange Rice Mill Co. v. Director General, 81 I. C. C. 285; American Asphalt Roof Corp. v. A. T. & S. F. Ry., 81 I. C. C. 522; Philadelphia Quartz Co. v. Pa. R. R., 81 I. C. C. 535; Merritt & Co. v. C. of Ga. Ry. Co., 81 I. C. C. 559; Metal & Thremit Corp. v. Director General, 81 I. C. C. 654; Iron and Steel to Virginia Cities, 83 I. C. C. 82; Radiators from Dunkirk, N. Y., 83 I. C. C. 21; Waste Paper from Long Island R. R., 83 I. C. C. 35; Canned Goods from Princeton, Ind., 83 I. C. C. 547; American Cone & Pretzel Co. v. C., B. & Q. R. R. Co., 83 I. C. C. 575; Minnesota & Ontario Paper Co. v. M. K. & T. Ry., 87 I. C. C. 539; Jacobs Malcolm and Burtt v. A. E. R. R., 87 I. C. C. 419; C. Reiss Coal Co. v. P. M. R. Co., 87 I. C. C. 438; Automobile Gasoline Co. v. Director General, 87 I. C. C. 514; Schuett Co. v. C. M. & St. P. Ry., 87 I. C. C. 709; American Publishing Co. v. Director General, 87 I. C. C. 711; Amalgamated Sugar Co. v. Director General 88 I. C. C. 266; Southern Cotton Oil Co. v. Director General, 88 I. C. C. 280; Gilbert Company v. L. & N. R. R., 88 I. C. C. 405; Sunderland Bros. Co. v. Director General, 88 I. C. C. 585; Headington & Hedenburg v. Director General, 88 I. C. C. 745; Palmolive Company v. C. M. & St. P. Ry., 88 I. C. C. 756; Lackawanna Steel Co. v. Pennsylvania R. R., 88 I. C. C. 759; McCleland Hardware Co. v. I. C. R. R., 89 I. C. C. 129; Northwestern Terra Cotta Co. v. P. C. C. & St. L. Ry., 89 I. C. C. 157.

COMMON CARRIER

I. TEST OF STATUS.
§ ½. In general.
§ 1. Incorporation.
§ 2. Lease of line.
§ 3. Public offer to carry.
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CROSS REFERENCES

See Branch Lines §3; Electric Lines; Express Companies; Gas and Electric Companies; Pipe Lines II; §4; Tap Lines §6; Telephone and Telegraph Companies; Transfer Companies; Stock Yard Companies; Water Carriers.

I. TEST OF STATUS.

§½. In general.

See Hours of Service Law.

IMPORTANT CASES SINCE 1908

(a) The principal test of common carriage is whether there is a bona fide holding out coupled with the ability to carry for hire. Atchison, Topeka & Santa Fe Ry. Co. v. Kansas City Stock Yards Co., 33 I. C. C. 92, 100.

(b) Complainant, a switching road in the Chicago district, owning 1.68 miles of main track and 3.50 miles of yard track and sidings, all standard gauge, having equipment of 6 engines and 54 freight cars, connecting directly or having trackage rights, with common carriers in said district, holding itself out as a common carrier and complying with federal laws and state requirements, issuing bills of lading and waybills on through shipments, requests the Commission to reconsider its status as a common carrier so it might participate in through rates and receive a proportion thereof either under absorption tariffs of other carriers or as divisions of thru rate. The complainant was owned and controlled by one large industry located on its tracks. HELD, complainant is a common carrier and entitled to just compensation for its service. Chicago & Calumet River R. R. v. Director General, 55 I. C. C. 194.

(c) The inherent character of the traffic and the facts in each case are determinative of the intrastate status of a common carrier rather than the mere billing, place of passing of title, or other incidents of commerce. Empire Steel & Iron Co. v. Director General, 56 I. C. C. 158, 162.

(d) Fact that portions of a line were formerly mere plant facilities can not justify different treatment to the plant or its owners, since said portions of the lines were properly acquired by a common carrier duly organized, treated, and regulated as such, and are no longer plant facilities, but part of the public institution. Empire Steel & Iron Co. v. Director General, 56 I. C. C. 158, 189.

(e) It does not necessarily follow that all roads complying with the laws and regulations governing common carriers become common carriers by virtue of such compliance alone. Wyandotte Terminal R. R. Co., 62 I. C. C. 1, 5.

(f) The size of a road does not determine its character. Beaver Land Co. v. Director General, 66 I. C. C. 285, 287.

(g) The extent to which, and the time during which, a switching road acts as an agency and the extent and the time as to which it acts as a common carrier can not depend on its mere say-so. It can not for years acquiesce in the role of agent and directly disclaim the responsibilities attaching to an independent common carrier, and immediately, upon its mere asseveration as to its status, or upon allegation or proof that it is not fully compensated by its principals for the service it has been claiming to perform, as agent only, acquire the status of a common carrier and exert the latter's rights against connecting railroads. Switching Charges at Peoria, 77 I. C. C. 43, 49.

(h) The normal use of a steam tug in New York Harbor is a use in interstate commerce. Rivara v. James Stewart & Co., 195 N. Y. S. 841.

(i) Fact that stock of a short line is not owned directly by industry served by it affords no ground for exempting it from application of such rules as may be reasonable in case of other industrial railways. Possibility of undue prejudice is just as great where there is common ownership of stock of the railway and industry, and commission has made no

distinction in this class of cases because of different manner in which stock was held where there was in fact an identity of interest. L. E. & Ft. W. R. R. Co., 78 I. C. C. 475, 480.

(j) In determining whether a utility is a common carrier or public utility, whether it is operated by a foreign or domestic corporation, or whether the corporation is authorized to perform a public service by its articles, is not controlling, but the important thing is what it does. Pacific Spruce Corporation v. McCoy, 294 Fed. 711.

ALL OTHER CITATIONS

Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 93; Flour S. S. Co. v. L. V. R. R., 24 I. C. C. 179, 185; Decatur Nav. Co. v. L. & N. R. R. Co., 31 I. C. C. 281, 285; Rates in Chicago Switching District, 34 I. C. C. 231, 238; Second Industrial Railways Case, 34 I. C. C. 596, 600; Cincinnati, N. O. & T. P. Ry. Co. v. Rankin, 36 Sup. Ct. 555, 241 U. S. 319; 60 L. ed. 1022; Charleston & Norfolk S. S. Co., 47 I. C. C. 365; Miller Engineering Co. v. Louisville Ry. & Nav. Co., (La. 1919), 81 So. 314; P., A. & McK. R. R. R. Co. v. Director General, 57 I. C. C. 1, 9; Delray Connecting R. R. Co., 57 I. C. C. 97, 105; Matthiessen & Hegeler Zinc Co v. C., B. & Q. R. R. Co., 57 I. C. C. 173, 176; Peerless Coal Co. v. A., T. & S. F. Ry. Co., 57 I. C. C. 274, 280; St. Louis, Troy & Eastern R. R. Co., 57 I. C. C. 371; Lake Erie & Fort Wayne Railroad Co., 58 I. C. C. 558; Chicago Short Line Ry. Co., 58 I. C. C. 561; Manufacturers' Jct. Ry. Co., I. & S. Docket No. 414, 58 I. C. C. 666; Lakeside & Marblehead Railroad Company, 58 I. C. C. 671; Valley Railroad Company, 58 I. C. C. 677; Bay Terminal R. R. Co., I. & S. Docket No. 414, 58 I. C. C. 680; Wharfage, Handling and Storage Charges, 59 I. C. C. 488; Divisions received by Brimstone R. R. & Canal Co., 68 I. C. C. 375, 386, 387; Thornhill v. Davis, (S. C., 1922), 113 S. E. 370; Adriatic Mining Co. v. C. & N. W. Ry. Co., 78 I. C. C. 611, 619; St. Louis & O'Fallon Ry. Co. v. E. St. L. & S. Ry Co. 81 I. C. C. 538, 541.

§1. Incorporation.

IMPORTANT CASES SINCE 1908

(a) Mere fact that the Lake Terminal Railroad Company is incorporated under the general railroad law of Ohio, without regard to its real purpose and actual relation to the tube company, seems to be no substantial basis for its claim to the status of a common carrier. HELD, to be a plant facility. National Tube Co. v. B. & O. R. R., 50 I. C. C. 489, 495.

(b) Whether or not a corporation is a common carrier does not depend upon whether its charter declares it to be a common carrier, nor upon whether the state of incorporation considers it such, but upon what it does. Empress Coal Co. v. O. W. R. R. & N., 59 I. C. C. 738, 742.

(c) Incorporation is not a necessary incident to a common carrier status under the Interstate Commerce Act and, conversely, the mere fact of incorporation can not transform a plant facility into a common carrier. Wyandotte Terminal Ry., 62 I. C. C. 1, 5.

(d) Where a railroad originally created as a plant facility for an iron works is subsequently chartered as a railroad by the state in which located, and exercised the power of eminent domain and files tariffs with the Interstate Commerce Commission, it is a common carrier and thereby entitled to recover its public switching charge from a shipper along its line, irrespective of the fact that such shipper had a contract with the iron works to accept a less charge for the same. Crane R. Co. v. Central R. Co. of New Jersey, (Pa. 1915), 93 Atl. 1076.

ALL OTHER CITATIONS

The tap-line case, 23 I. C. C. 277, 291, 292; In Re Wharfage Charges at Galveston, 23 I. C. C. 535, 544; Gulf Coast Navigation Co. v. K. C. S. Ry. Co., 19 I. C. C. 544; Trucker"s Transfer Co. v. C. & W. C. Ry. Co., 27 I. C. C. 275, 277, 278; Laona & N. R. R. Co. v. M. St. P. & S. Ste. M. Ry., 24 I. C. C. 639; U. S. v. Brooklyn Eastern District Terminal, 249 U. S. 296; Wyandotte Terminal R. R. Co., 62 I. C. C. 1, 5; Inland Ry. Co. 78 I. C. C. 59, 64.

§2. Lease of Line.

CASES 1887-1908

(a) The Lehigh Valley Railroad Company, a common carrier subject to the provisions of the Act to Regulate Commerce, could not, by leasing its road, free itself from the liabilities for practices made illegal by that statute; nor, after resuming operation of its property, pending proceedings against it to enforce statutary provisions so violated, and to recover damages for injuries sustained under such violations, can it claim exemption from liability during

the time of the lease. Independent Refiner's Asso. v. Western N. Y. & P. R. Co., 6 I. C. C. 378.

IMPORTANT CASES SINCE 1908

(b) No evidence of device in complainant relinguishing part of its track to a common carrier, even though it be the owner of that carrier, thus setting up another link in transportation to and from its plant, and the intervening common carrier can not be deprived of its right to compensation for services performed nor excuse the trunk lines from according complainant the same treatment given others under substantially similar circumstances. Empire Steel & Iron Co. v. Director General, 56 I. C. C. 158, 189.

(c) Although a stock yards company by charter has the power to operate a railroad, and for a period of time does do so, it ceases to be a common carrier subject to the Act after it has leased its tracks to an independent railroad corporation, discontinues operating the same, and retains a mere reversionary interest in the railroad property, and this despite the fact that an investment company through stock ownership controls both the stock yards and the lessee railroad corporation. U. S. v. Union S. & T. Co., 192 Fed. 330, 341.

§3. Public Offer to Carry.

IMPORTANT CASES SINCE 1908

(a) The Manufacturers Railway Company of St. Louis, Mo., and a number of shippers located on its lines, asked that through routes be established to and from points on its lines of railway in St. Louis, Mo., from and to points on the lines of each of the defendant railway companies and points beyond; also for the fixing of reasonable divisions or absorptions out of the St. Louis rates to be paid to the Manufacturers Railway Company for terminal services rendered by it and for reparation. This company was incorporated in 1887 to furnish terminal facilities for the southern section of industrial St. Louis, which, owing to the physical conditions existing there, seem both reasonable and necessary. The terminal Railroad Association dominates entirely the terminal facilities of St. Louis and the stock of this company is owned equally by the fourteen carriers running into that city. The only terminal facilities in the southern section were furnished by the Manufacturers Railway and by the lines of the St. L. I. M. & S. R. R. The latter's tracks, however, follow the bank of the Mississippi river and reach such industries as are adjacent thereto. For a considerable distance along the river there is a steep grade to be overcome in reaching industries back from the river and it was to afford service to these that the Manufacturers Railway was constructed. The Manufacturers Railway leased its tracks to the St. L. I. M. & S. R. R. until 1908, since when it was operated independently. The majority of its stock is owned by the Anheuser-Busch Brewing Ass'n. For the year ending April 30, 1910, it handled 42,970 cars, of which 37,546 cars were handled for the brewing association, and 5,424 cars were handled for some 87 other industries or patrons, of which 35 shipped or received 10 cars or more. The traffic of the brewing association constitutes one-thirtieth of the total traffic of St. Louis. The complainant operates about 20 miles of track, of which 2¼ miles are classed as main track, and the remainder as side track, switches and yard track. Of this total six miles are leased from the brewing association, and are used in part both for the services of the brewery and the public. The only physical connection other than that with the St. L. I. M. & S. R. R. is with the St. Louis Transfer Co., one of the constitutent properties of the Terminal Railroad Association. Two-thirds of the tracks of the Manufacturers Railway have been constructed solely for the purpose of serving the public, while the remaining one-third is used in serving both the brewery and the public. Prior to March 1, 1910, there existed through routes and joint rates over the lines of defendant carriers and complainant carriers to and from points on the line of the complainant company. Since that date the defendants declined to absorb the charges for the services of the Manufacturers Railway. While the Manufacturers Railway was operated by the St. L. I. M. & S. R. R. during 23 years and also when operated under the tariffs which permitted an allowance to the Manufacturers Railway itself in 1909 until March 1, 1910, delivery was made to the public served by it at the St. Louis rates. HELD, in view of all the facts, circumstances and conditions bearing upon the question there is no doubt that the Manufacturers Railway Company is in fact a common carrier at common law, notwithstanding any modification thereof, and therefore within the provisions of the first section of the Act to Regulate Commerce, and that the payment to it

of a reasonable and just portion of the St. Louis rates for the terminal services rendered by it is not unlawful, and that it is not a mere plant facility. FURTHER HELD, that the action of defendants in cancelling the division and absorptions with the Manufacturers Railway which have been for many years included in the St. Louis rates, has subjected complainant shippers and a considerable portion of the public of south St. Louis to the payment of unjust and unreasonable transportation charges and to undue discriminations and disadvantage. Question of what are reasonable divisions and the reparation to be awarded reserved for further investigation, (Lane, Comm'r, filed a concurring opinion, Harlan, Comm'r, a dissenting one.) M'f'rs Ry. Co. v. St. L. I. M. & S. Ry. Co., 21 I. C. C. 304.

(b) The Act, limiting its application as it does to common carriers, was passed in full view and recognition of the common law under which the attitude and actions of the person whether natural or artificial determine whether or not he or it is in law a common carrier. Speaking in general terms, a carrier could become a common carrier by offering its services as such to the public upon first complying with the statutory or police requirement demanded of it by charter or otherwise. The test to be applied in determining whether a person is a common carrier, really is whether he holds out either expressly or by a course of conduct that he will as long as he has room to carry for hire the goods of every person indifferently who will bring goods to him to be carried. Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co., 21 I. C. C. 304, 312.

(c) A railroad which holds itself out as a common carrier, files tariffs, makes reports and engages in interstate transportation, is a common carrier subject to the Act. Stonega Coke & Coal Co. v. L. & N. R. R. Co., 23 I. C. C. 17, 2..

(d) If there is a holding out as a common carrier for hire, and if there is an ostensible and actual movement of traffic for the public for hire, the status of a common carrier exists, whether the holding out is by a company or by an individual. But such a holding out and the existence of an actual traffic is not conclusive in all cases. Where the holding out is in furtherance of a plan to secure unlawful advantages and the alleged carrier is able to pick up some traffic that is incidental to that purpose, it must be regarded simply as a cloak or device to effect unlawful results. The Tap-Line Case, 23 I. C. C. 277, 292.

(e) A common carrier is one who holds himself out as ready to engage in transportation for hire as a public employment, and generally the liability of a common carrier does not attach to one who does not so hold himself out. Kansas City v. K. C. V. & T. Ry. Co., 24 I. C. C. 22, 25.

(f) So long as a connecting carrier holds itself out as a common carrier and other carriers make joint rates with it, innocent third parties have a right to assume that the road is what it purports to be and that the published tariffs are lawful. An innocent third party is not concerned as to the legality of the published charge or the legality of a common carrier or published billing station. Cresent Coal & Mining Co. v. C. & E. I. R. R. Co., 24 I. C. C. 149, 156.

(g) The Commission rejects the theory that a railroad is a common carrier only for those who have been accustomed to patronize it. In re Mine Ratings, 25 I. C. C. 286, 294.

(h) Every carrier owes a duty to the entire public, and each owes a particular duty to persons and communities which it directly serves and which are dependent upon it. Arkansas Pass Channel & Dock Co. v. G. H. & S. A. Ry. Co., 27 I. C. C. 403, 414.

(i) Butter, poultry and eggs do not fall within the class of articles which a common carrier may not be forced to receive for transportation. Lake-and-Rail Butter and Egg Rates, 29 I. C. C. 45, 51.

(j) It cannot be said that a transportation company is not a common carrier merely because a considerable portion of its business consists of freight carried for itself, or for the industry with which it is associated. Decatur Navigation Co. v. L. & N. R. R. Co., 31 I. C. C. 281, 285.

(k) Right of public to use road's facilities and to demand service of it is the real criterion determinative of its character. Decatur Navigation Co. v. L. & N. R. R. Co., 31 I. C. C. 281, 285.

(l) A road is held to be a common carrier when it meets the test of its organization for that purpose under competent legislation of the state; when it is so treated by the public authorities of the state: when it is engaged in car-

rying for hire the goods of those who see fit to employ it; when it is authorized to exercise the right of eminent domain by the state of its incorporation. It is also a circumstance to be noticed in determining the true character of the road, that it is treated and dealt with as a common carrier by connecting systems of other carriers. Industrial Railways Case, 32 I. C. C. 129, 131.

(m) If the service is public transportation a stockyard company may be compensated even though it be not a common carrier. Atchinson, Topeka & Santa Fe Ry. Co. v. Kansas City Stock Yards Co., 33 I. C. C., 92, 98.

(n) Express company's water line is a common carrier. Stone's Express v. B. & M. R. R., 33 I. C. C. 638, 641.

(o) In order to constitute a common carrier something more substantial is required than a desire for special rates which may be used at some future time should certain contingencies happen. C. & N. S. S. Co., 47 I. C. C. 365, 371.

(p) A railroad is none the less a common carrier because of the fact that most of its traffic is its own and that only a small part is carried for others. Empire Steel & Iron Co. v. Director General, 56 I. C. C. 158, 162.

(q) The right of the public to use a road's facilities and to demand service of it, rather than the extent of its business, is the real criterion determinative of its character. Tap-Line Cases, 243 U. S. v. Berlin Mills Ry., 63 I. C. C. 313, 318.

(r) The right of the public to use facilities of a railroad determines its status as a common carrier, rather than the extent of its business. Crane Co. v. Central R. Co. of New Jersey, (Pa. 1915), 93, Atl. 1076, 1077.

(s) A common carrier is one who undertakes for hire to carry all persons indifferently who may apply for passage, so long as there is room and there is no legal excuse for refusal. Rathbun v. Ocean Accident & Guarantee Corp., (Ill. 1921), 132 N. E. 754.

(t) It is not essential to constitute a "common carrier" that it carry both passengers and freight or all kinds of freight. Pacific Spruce Corporation v. McCoy, 294 Fed. 711.

ALL OTHER CITATIONS

U. S. v. Union S. & T. Co., 192 Fed. 330, 336, 340; Stonega Coke & Coal Co. v. L. & N. R. R. Co., 23 I. C. C. 17, 23; Hirsch v. New England Nav. Co., 129 App. Div. 178, 181, 113 N. Y. Supp. 395; Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 26 I. C. C. 53, 59; Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co., 24 I. C. C. 55, 74, 75; Flour City S. S. Co. v. L. V. R. R., 24 I. C. C. 179, 185; Memphis Hay & Grain Asso. v. St. L. & S. F. R. R. Co., 24 I. C. C. 609, 615; Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 93, 105; Noel v. Westcott Express Co., 158 N. Y. S. 702; Foster Lumber Co. v. A. T. & S. F. Ry., (Mo. 1917), 194 S. W. 281; Sun Co. v. Director General, as Agent, 68 I. C. C. 11, 14; Divisions received by Brimstone R. R. & Canal Co., 68 I. C. C. 375, 386; Kanawha Black Band Coal Co. v. C. & O. Ry. Co., 78 I. C. C. 429; Pacific Spruce Corporation v. McCoy, Fed. 711.

§4. Refusal to Publish Tariffs.

See Tariffs §1.

IMPORTANT CASES SINCE 1908

(a) Commission cannot recognize as common carriers lines that do not publish tariffs in lawful form or concur property in lawful tariffs of other lines or that do not in all other respects comply with the law. Star Grain & Lumber Co. v. A. T. & S. F. Ry. Co., 17 I. C. C. 338, 343.

(b) The fact that a carrier has no tariffs on file here neither qualifies nor modifies its status as a common carrier of interstate commerce. Its failure to publish its rates and charges is simply a breach of law which must be corrected. California Canneries Co. v. S. P. Co., 51 I. C. C. 500, 503.

ALL OTHER CITATIONS

Mercer Valley R. R. Co. v. P. R. R. Co., 69 I. C. C. 253.

§5. Stock Ownership.

CASES 1887-1908

(a) The Illinois Terminal Railway Company receives an excessively large share in the division of the through rate on goods transported over it to the Illinois Glass Company, which concession is illegal, provided the glass company owns and operates the Illinois Terminal Railway, but a different question may be presented if it appears that the holders of the capital stock of the glass company own the railroad company. Re Division of Joint Rates, 10 I. C. C. 661.

IMPORTANT CASES SINCE 1908

(b) The mere fact that complainant's road is owned by a corporation which also owns the stock of the largest shipper over it, and that it was originally organized and built for the purpose of doing the work of that shipper, is not controlling against its being held a common carrier. Crane R. R. Co. v. P. & R. Ry. Co., 15 I. C. C. 248, 252.

(c) Generally speaking the mere fact of ownership should make no difference in the status of a common carrier as such. Joint Rates with Birmingham Southern R. R., 32 I. C. C. 110, 120.

(d) An investment company controlling through stock ownership a stockyards company not engaged in railroading except as a lessor and an independent railroad operating a junction line is not a common carrier within section 1 of the Interstate Commerce Act, or section 3 of the Elkins Act. U. S. v. Union S. & T. Co., 192 Fed. 330, 342.

§6. Transportation of Private Cars.

See Cars and Car Supply §1; §31; §32; Transportation §2.

IMPORTANT CASES SINCE 1908

(a) No railroad transporting private cars of theatrical companies has been held a private carrier since the Act took effect. Chappelle v. L. & N. R. R. Co., 19 I. C. C. 456.

(b) The Armour Car Lines is a New Jersey corporation that owns, manufactures and maintains refrigerator, tank and box cars, and leases these cars to the railroads or to shippers. It also owns and operates icing stations on various lines of railway, and from these ices and re-ices the cars, when set by the railroads at the icing plant, by filling the bunkers from the top, after which the railroads remove the cars. The railroads pay a certain rate per ton, and charge the shipper according to tariffs on file with the Commission. Finally it furnishes cars for the shipment of perishable fruits, etc., and keeps them iced, the railroads paying for the same. It has no control over motive power or over the movement of the cars that it furnishes. HELD, that it is not a common carrier subject to the Act. Ellis v. I. C. C., 35 Sup. Ct. 646, 237 U. S. 434; 59 L. ed. 1036.

II. DETERMINATION OF STATUS.

§6½. In General.

CASES 1887-1908

(a) The Northern Pacific Railroad Company, notwithstanding certain provisions in its charter, is subject, like all other interstate carriers, to the authority conferred by Congress in the Act. Merchants' Union of Spokane Falls v. N. P. R. Co., 4 I. C. C. 183, 197.

(b) Cabs, baggage wagons and drays may be common carriers. Re Right of R. R. & Tranfer Companies to Exchange Transportation, 12 I. C. C. 39.

(c) A common carrier engaged in the city of Chicago in transferring passengers and baggage between railroad stations and between such stations and hotels and private residences, though performing a service connected with interstate passenger traffic, is nevertheless not subject to the provisions of the Act to regulate commerce. Re Right of Railroad and Tranfer Companies to Exchange Transportation, 12 I. C. C. 39.

(d) While a common carrier engaged in transferring passengers and baggage between the railroad stations of a city and between such stations and hotels and private residences, not being subject to the Act to Regulate Commerce, may doubtless give free transportation to whomsoever it wishes, no common carrier subject to the provisions of that act can lawfully grant free transportation to the officers, agents or employees of the tranfer company. Specific exceptions noted in the act as to "baggage agents" entering trains near large terminals to arrange for baggage transfer. Re Right of Railroad and Transfer Companies to Exchange Transportation, 12 I. C. C. 39.

(e) Petitioner is a common carrier in the City of Chicago in transferring passengers and baggage between railroad stations and between such stations and hotels and private residences, and performs a service connected with interstate passenger traffic, but is nevertheless not a carrier subject to the provisions of the act to regulate commerce. Exchange of Free Transportation 12 I. C. C. 40.

IMPORTANT CASES SINCE 1908

(f) A railroad is none the less a common carrier because of the fact that most of its traffic is its own and that only a small part is carried for others. Empire Steel and Iron Co. v. Director General, 56 I. C. C. 158, 162.

(g) Finding that the Union Stock-

yard in Chicago, Ill., is a common carrier engaged in interstate commerce adhered to, and as the services of unloading and loading are part of the transportation of live stock the collection of separate charges from shippers for unloading or loading in addition to the rates to and from the stockyards found an unlawful and unreasonable practice. Reparation awarded. Live Stock Loading and Unloading Charges, 58 I. C. C. 164, 167.

(h) In the performance of a contract entered into by a railroad company with a circus for hauling its train from place to place, the railway company was not acting as a common carrier. Dierick v. Davis, (Ind. 1922), 137 N. E. 685.

ALL OTHER CITATIONS

Rates on Plaster and Gypsum Rock, 27 I. C. C. 67, 69; In Re Cancellation of Joint Rates on Coal on the C. Z. & G. R. R., 27 I. C. C. 353, 361, 362; In re Irregularities in Mine Ratings, 25 I. C. C. 286, 294; Kansas City, Mo., and Kansas City, Kan. v. K. C. V. & T. Co., 24 I. C. C. 22, 25; Aton Piano Co. v. C. M. & St. P. Ry. Co. (Wis. 1913), 139 N. W. 743, 745; Joint Rates with Birmingham Southern R. R. Co., 32 I. C. C. 110, 120; Curry & Whyte Co. v. D. & L. R. R. Co., 32 I. C. C. 162, 170, 171; Kenna v. Calumet, H. & S. R. R., (Ill. 1918), 120 N. E. 259; California Canneries Co. v. S. P. Co., 51 I. C. C. 500, 503; Owasco River Ry., 53 I. C. C. 104, 111; Diamond Alkali Co. v. F., P. & E. R. R. Co., 53 I. C. C. 548, 554; Jones & Laughlin Steel Co. v. P. & L. E. R. R. Co., 53 I. C. C. 556; Chicago & Calumet River R. R., 55 I. C. C. 194; American Steel & Wire Co. v. N. & S. S. Ry., 55 I. C. C. 353; National Tube Co. v. L. T. R. R., 55 I. C. C. 469, 476; Empire Steel & Iron Co. v. Director General, 56 I. C. C. 158, 188, 190; Lackawanna Steel Co v. S. B. Ry., 56 I. C. C. 684; U. S. v. Brooklyn East. Dist. Terminal 39 Sup. Ct. Rep. 283; Culver & Port Clinton R. R. Co., 58 I. C. C. 402; Oakdale & Gulf Ry. Co., 58 I. C. C. 450; Lake Erie & Fort Wayne R. R. Co., 58 I. C. C. 558; Chicago Short Line Ry. Co., 58 I. C. C. 561; Manufacturers' Junction Ry. Co., 58 I. C. C. 666; Lakeside & Marblehead R. R. Co., 58 I. C. C. 671; Valley R. R. Co., 58 I. C. C. 677; Bay Terminal R. R. Co., 58 I. C. C. 680; State v. Public Service Commission, (Wash. 1921), 203 Pac. 3; Beaver Sand Co. v. Director General, 66 I. C. C. 285; Reduced rates, 1922, 77 I. C. C. 675; Divisions Received by Brimstone R. R. & Canal Co., 68 I. C. C. 375, 386, 387; Kanawha Black Band Coal Co. v. C. & O. Ry. Co., 78 I. C. C. 429.

§7. Question of Fact.

IMPORTANT CASES SINCE 1908

(a) Whether a company or person claiming to be a common carrier is a common carrier at all and for all purposes is a question of fact, and whether the service performed for a particular person is a service of transportation or an industrial service is also a question of fact. The Tap-line Case, 23 I. C. C. 277, 292.

(b) The status under the Act of a carrier by railroad is not determined by the length or width of its railroad. Rates in Chicago Switching District, 34 I. C. C. 234, 238.

§7½. Who Are Common Carriers.

IMPORTANT CASES SINCE 1908

(a) Complainant's railway, operating over an interlacing network of tracks between points within its plant, found to be a plant facility over which defendants can not be required to perform switching service. Whitaker-Glessner Co. v. B. & O. R. R. Co., 63 I. C. C. 47, 57.

(b) Ore Carrying Corporation, a water line operating under a common arrangement with a rail carrier for the continuous carriage of through interstate traffic, found to be a common carrier subject to the act, which may lawfully receive from its trunk-line connection reasonable divisions of joint interstate rates, under appropriate tariffs. Ore Carrying Corporation v. C. R. R. Co. of N. J., 66 I. C. C. 311.

(c) In connection with the transportation of coal from mines between Shinnston and Bingamon Junction, both in West Virginia, to points in other states, the Monongahela Power & Ry. Co., an electric line, held to be a common carrier subject to the act. Hood Coal Co. v. M. V. T. Co., 73 I. C. C. 54.

(d) Complainant, a corporation operating a grain elevator and performing a transportation service, not as an independent entity, but as an agent of a railroad, under contract, which service such railroad holds itself out to perform by the publication of charges in its tariffs, alleges that allowances made to it were unreasonably low. HELD, since complainant has no interest in traffic handled through the elevator, it can not be

considered a shipper or "owner of property transported." It stands in much the same position as an employee of the railroad and can not be considered a common carrier whose compensation is to be derived from divisions of joint rates. Keystone Elevator & Warehouse Co. v. Director General, as Agent, 73 I. C. C. 273.

(e) New York Dock Ry. found to be a common carrier engaged in interstate commerce. It furnishes an important service to the public and is efficiently operated. New York Dock Ry. v. B. & O. R. R. Co., 73 I. C. C. 656, 659.

(f) The interest that a dock company, as lessor and creditor, may have in the prosperity of a railroad, does not, and can not, interfere with the rights to which the railroad is entitled as a common carrier subject to the act. New York Dock Ry. v. B. & O. R. R. Co., 73 I. C. C. 656, 659.

(g) Applying the tests of common carriers announced in Kansas City Stock Yards case, 33 I. C. C., 92, and the Tap Line cases, 234 U. S., 1, the Craig Mountain Ry., found to be a common carrier, which may lawfully participate in joint rates with its trunk-line connections. Craig Mountain Lumber Co. v. G. N. Ry. Co., 77 I. C. C. 156, 158.

(h) Complainant attacked switching and spotting charges of the Pittsburgh & Ohio Valley Ry. at Neville Island, Pa., on shipments to and from its plant in addition to the rates of the trunk lines, and that trunk lines refused to extend the district rates to its plant, as unreasonable, unjustly discriminatory and unduly prejudicial. The Valley besides complainant has two team tracks accessible to the public; handles carload and less carload freight but does not carry passengers, mail or express. Average distance covered by the switching service is 0.66 mile. HELD, the Valley is a common carrier and is entitled to have its charges absorbed by the trunk lines or join in through rates. HELD, further, the demurrage rules applicable should be those of the Valley running from the time of placement at the industry rather than from the time cars are placed on the interchange track with the Valley. Defendants made no atttemnt to justify the increases in the line haul rates since Jan. 1, 1910, resulting from the refusal to absorb. HELD, rates attacked unreasonable to extent they exceeded the application of the Neville Island or Pittsburgh rates from and to plant of complainant, reparation awarded. Carnegie Steel Co. v. Director General, 80 I. C. C. 269.

ALL OTHER CITATIONS

Trackage Charge on Loaded Cars, 60 I. C. C. 134; Griffith v. Jennings, 60 I. C. C. 232, 236; Jones & Laughlin Steel Co. v. Director General, as Agent, 60 I. C. C. 325, 331; Farmers Fuel Co. v. Director General, as Agent, 60 I. C. C. 715, 718; Consolidation Coal Co. v. C. & O. Ry. Co., 60 I. C. C. 763, 768; Tionesta Valley Ry., 62 I. C. C. 473; Genesee & Wyoming R. R. 62 I. C. C. 680; Lake Erie & Fort Wayne R. R. Co., 63 I. C. C. 122, Berlin Mills Ry. Co., 63 I. C. C. 313; New Castle & Ohio River Ry. Co., 63 I. C. C. 305; American Hominy Co., 63 I. C. C. 319; Superior & Southeastern Ry. Co. v. Director General, as Agent, 63 I. C. C. 431; Ohio & Pennsylvania Rates, Fares and Charges, 64 I. C. C. 517, 519; Gulf Ports Terminal Ry. Loan, 65 I. C. C. 421, 423; Beaver Sand Co. v. Director General, as Agent, 66 I. C. C. 285, 287; Massachusetts Oil Refining Co. v. B. & A. R. R. Co., 66 I. C. C. 535, 543; Keokuk & Hamilton Bridge Co. v. W. Ry. Co., 66 I. C. C. 545, 548; Reduced Rates, 1922, 77 I. C. C. 675; Carriage Steel Co. v. Director General, as Agent 80 I. C. C. 269; Inland Ry. Co., 78 I. C. C. 59; Kanawha Black Band Coal Co. v. C. & O. Ry., Co., 78 I. C. C. 429; Hamill Coal & Coke Co. v. W. M. Ry. Co., 81 I. C. C. 72; Upper Merion & Plymouth R. R. Co. v. P. R. R. Co., 81 I. C. C. 191; American Mineral Production Co., 69 I. C. C. 53; Inland Empire Paper Co. v. S. . Ry. Co., 81 I. C. C. 603, 607, 608.

III. OBLIGATIONS.

See Pipe Lines §4; II.

§8. In General.

CASES 1887-1908

(a) Unless the contrary is imposed as conditions in the grant of its charter, the right to construct and operate a railroad is a franchise in its nature exclusive, not held in common with the public, though the grant of the franchise is for the public use; and the tracks of a railroad are not a common highway upon which anyone can enter and use his own cars for transportation purposes against the objection of the company owning the tracks. Worchester Excursion Car Co. v. Pennsylvania R. R. Co., 2 I. C. C. 792, 793.

(b) A carrier must not use its power and the means at its disposal as a carrier to avoid performance of its duty. It must not use them oppressively. It must, as far as possible, deal as between all shippers, including itself as a shipper, in such a way that all shall have proportional benefit wherever demanding its service. Haddock v. D. L. & W. R. Co., 3 I. C. C. 302, 310.

(c) The defendant, the New York, Susquehanna & Western Railroad Company, engaged in the transportation of milk and cream from points in the State of New York through the State of New Jersey to the City of New York, is subject to regulation under the Act to Regulate Commerce in respect of such transportation. Milk Producers' Protective Asso. v. Delaware, L. & W. R. Co., 7 I. C. C. 92.

(d) A railroad company engaged in transporting milk and cream from points in the state of New York, through the state of New Jersey, to the City of New York, is subject to regulation under the Interstate Commerce Act, in respect of such transportation. Milk Producers' Protective Asso. v. Delaware, L. & W. R. Co., 7 I. C. C. 92.

(e) A railroad which lives by virtue of a public grant and the exercise of quasi-public powers is primarily obligated to discharge its functions with an eye to the welfare of the public which it serves and to avoid any policy of operation which, no matter how profitable to the stockholder, may result injuriously to its dependent communities. Car shortage—Insufficient transportation facilities, 12 I. C. C. 561, 567.

IMPORTANT CASES SINCE 1908

(f) Having become a common carrier between certain points, a carrier must accept and perform its common-carrier duties with regard to transportation between other points. S. P. Co., Ownership of Oil Steamers, 34 I. C. C. 77, 79.

(g) Common carriers strictly speaking, not being insurers, but bailees for hire, have statutory as well as common-law obligations for the safety of property committed to their charge. Iowa Railroad Commissioners v. A. T. & S. F. Ry. Co., 36 I. C. C. 79, 84.

(h) A railroad may not render itself incapable of performing its duties to the public or absolve itself from those obligations without the consent of the state. Hocking Domestic Coal Co. v. K. & M. Ry., 44 I. C. C. 392, 400.

(i) The distinction beteween the right that the public has in the property of a railroad company, in connection with a transportation service to be performed, and the control a railroad company has over its property as private property, with respect to those who are not demanding a service of transportation, has not only frequently been pointed out by the courts but has been carefully sustained. The Car Peddling Case, 45 I. C. C. 494, 501.

(j) The necessities and limitations of the various means of transportation or communication must be recognized: and the greatest care must be exercised in applying to one kind of carrier by analogy rules found necessary in connection with a different kind of carrier. Private Wire Contracts, 50 I. C. C. 731, 760.

(k) Operation of common carriers should be regulated in a broad spirit with a view to the welfare of the entire country and not in such a way as to stifle progress. Private Wire Contracts, 50 I. C. C. 731, 761.

(l) Even prior to federal control it was well settled that a carrier was not justified in attempting to restrict its traffic to movement between points on its own line. Obviously under federal control that doctrine obtains new force. It must be extended to its logical and practical limits. Kaw River S. & M. Co. v. A. T. & S. F. Ry., 51 I. C. C. 350, 354.

(m) The business of the carrier is to furnish transportation. Its legal obligations are confined to transportation and the duties incident thereto. It is not obligated to assume risks for the convenience of the consignor which have no direct relationship to its service of transportation. Bills of Lading, 52 I. C. C. 671, 722.

(n) The Mineral Railroad is a common carrier and entitled to joint rates and divisions. It does not necessarily follow that such rates must be ordered established and maintained. Whether this shall be done depends upon such matters as public demand or necessity and whether or not the absence of joint rates is detrimental or obstructive to the public interest and the ends of justice between the parties. Empire Steel & Iron Co. v. Director General, 56 I. C. C. 158, 162.

(o) Where carrier is engaged in two

separate enterprises, the income derived from the operation of buildings should be considered separately from the railroad income. Local Fares on Hudson & Manhattan R. R. Co., 58 I. C. C. 270, 274

(p) The demands upon a carrier which lawfully may be made are limited by its duty. National Industrial Traffic League v. A. & R., 61 I. C. C. 120, 123.

(q) While the extent to which the public uses the facilities of a railroad is not controlling, there must be some appreciable use of the road by the public or else the holding out to carry for all is merely an empty form. Wyandotte Terminal Ry., 62 I. C. C. 1, 5.

(r) On a web of interlacing plant tracks, dominated by shipper, the carriers would not have that control over the instrumentalities of carriage which corresponds with common-carrier liability for loss of or damage to the thing carried. Whitaker-Glessner Co. v. B. & O. R. R. Co., 63 I. C. C. 47, 53.

(s) Common carriers have an affirmative duty to perform impartial service, and cannot lawfully discriminate against and subject a shipper to undue prejudice. Burgess Bros. Co. v. Stewart, 184 N. Y. S. 199.

(t) Common carriers are quasi public functionaries, to which the presumption of law that they have complied with their legal duty in the absence of any proof to the contrary applies. New River Lumber Co. v. Tennessee Ry. Co., (Tenn., 1922), 238 S. W. 867.

(u) The fact that a railroad is a common carrier corporation subject to the act generally does not operate as a bar to its engaging in lawful activities other than common carriage. Certain-Teed Products Corporation v. C. R. I. & P. Ry., 68 I. C. C. 260, 262.

ALL OTHER CITATIONS

St. L. S. & P. R. R. v. P. & P. U. Ry. Co., 26 I. C. C., 226, 238; Rates from Walsenburg Coal Field, 26 I. C. C. 85, 88; Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 93, 108, 102; Huerfano Coal Co. v. C. & S. E. R. R. Co., 28 I. C. C. 502, 505; Johnson v. N. Y. N. H. & H. Ry. Co. (Me. 1913), 88 Atl. 988, 991; The Five Percent Case, 31 I. C. C. 351, 358; Industrial Railway Case, 32 I. C. C. 129, 133; Application S. P. Co. in re Operation S. S. Co., 32 I. C. C. 690, 695; A., T. & S. F. Ry. Co. v. Kansas City Stock Yards Co., 33 I. C. C. 92; S. P. Co. Ownership of Oil Steamers, 34 I. C. C. 77, 79; The Car Peddling Case, 45 I. C. C. 494, 500; Export Freight Free Time, 47 I. C. C. 162, 179, 196; Export Freight Free Time, 47 I. C. C., 162, 196; Foster Lumber Co. v. A., T. & S. F. Ry., (Mo.,1917), 194 S. W. 281, 286; Pacific Fruit and Produce Co. v. Northern Pac. Ry. Co., (Wash. 1920), 186 Pac. 852; Trackage Charge on Loaded Cars, 60 I. C. C., 134; Carnegie Steel Co. v. Director General, as Agent, 80 I. C. C. 269, 275, 276; Kempner v. Director General, 80 I. C. C. 347; Galveston Commercial Asso. v. A. & V. Ry. Co., 77 I. C. C. 388, 393, 397, 407, 410; Davis v. Latham-Bradshaw Cotton Co., (N. C., 1923), 117 S. E. 391; Inland Ry. Co., 78 I. C. C. 59, 64; L. E. & Ft. W. R. R. Co., 78 I. C. C. 475.

IV. ALLOWANCES.

§9. In general.

See Stock Yard Companies.

CASES 1887-1908

(a) A division of a freight rate with another railroad company constitutes a mere subterfuge to give a concession in the rate, and is unlawful, where the railroad company receiving the division of the rate, while owning four or five thousand feet of railway siding adjoining one of several plants belonging to the shipper, does not own any equipment or rolling stock, and is not in any way engaged as a common carrier, but is in fact controlled by the officers of the shipping company who control its earnings and receive the benefit of the division of the rate, thereby enabling it to sell its produce at prices which its competitors cannot meet. Re Transportation of Salt from Hutchinson, 10 I. C. C., 1.

(b) The Chicago, Lake Shore & Eastern R. Co., owned by the United States Steel Corporation, is a terminal road operated between the Illinois Steel Co.'s works, near Chicago, and connecting with roads leading East, West and South. It receives a division of 10 per cent of the rate to the seaboard; 15 per cent to Buffalo and Pittsburgh, and 20 per cent to the Missouri River and beyond, and in some cases obtains special divisions. These divisions are found to be grossly excessive for the service rendered and to afford unlawful preference to the United States Steel Corporation

which owns and controls the Illinois Steel Company. Re Divisions of Joint Rates 10 I. C. C. 385.

(c) The International Harvester Co. owns the capital stock of the Illinois Northern R. Co. and a controlling interest in the Chicago, West Pullman & Southern R. Co., operating as a terminal connecting roads in and about the City of Chicago between the plant of the International Harvester Co. and various other industries and connecting roads leading to the Missouri River and other sections of the country. Until recently, the charge received for services by these terminal roads was a switching charge amounting to from $1.00 to $3.50 per car for the Illinois Northern and $3.00 per car for the Chicago, West Pullman & Southern. These lines now receive in many instances a division of the rate, which on lines reaching the Missouri River is 20 per cent, with the Missouri River division as the maximum. This amounts, on farm machinery, to $12.00 per car of 20,000 pounds as against the former maximum of $3.50 per car. A charge of $3.50 per car by the Illinois Northern and of $3.00 per car by the Chicago, West Pullman & Southern would be reasonable for these switching services, and charges for such services in excess of those sums amount to unlawful preference in favor of the International Harvester Co. Re Division of Joint Rates 10 I. C. C. 385.

(d) The Act to Regulate Commerce prohibits a difference in charges as between shippers "by any special rate, rebate, drawback, or other device" and the granting of any undue preference to any individual or species of traffic "in any respect whatsoever," and the Elkins amendment, requiring the publication of tariffs in all cases, prohibits, under severe penalty, any practice on the part of the carrier "whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs . . . or whereby any other advantage is given or discrimination is practised." The manifest intention of the Act to Regulate Commerce, especially as expressed in the Elkins amendment, is to strike through all pretense, all ingenious device, to the substance of the transaction itself; and where excessive divisions of rates are granted by a carrier to another carrier owned and controlled by a shipper, for the purpose of obtaining the traffic of that shipper, they benefit the shipper and operate as a rebate or other device to cut the tariff charge in violation of the law. Re Divisions of Joint Rates 10 I. C. C. 385.

(e) While there may be great objections to allowing shippers to build and operate railroads over which their traffic moves, such action is not prohibited by the Act to regulate commerce; and the mere fact that the property of a common carrier is owned by the largest individual shipper over it, or that it was originally constructed for the purpose of doing the work of that shipper, furnishes no reason why it cannot make joint rates and agree upon joint divisions with other railroads. Re Division of Joint Rates 10 I. C. C., 385.

(f) An unlawful preference to the United States Steel Corporation, which owns and controls the Illinois Steel Company, is practised under a division of rates whereby the Chicago, Lake Shore and Eastern Railway Company, a terminal road owned by the United States Steel Corporation, and operated between the Illinois Steel Company's works, obtains a grossly excessive division for the service rendered. Re Division of Joint Rates, etc., 10 I. C. C. 385.

(g) An unlawful preference in favor of the International Harvester Company is practised by means of the division of the through rate under which division the Illinois Northern Railroad Company, owned by such Harvester Company, and the Chicago, West Pullman & Southern Railroad Company, controlled by it, receive a percentage of the rate, which amounts to about $12 per car, for services which were formerly performed by these terminal roads as a switching charge and which amounted to a maximum of $3.50 per car, which was reasonable for these services. Re Division of Joint Rates, etc., 10 I. C. C. 385.

(h) An unlawful preference to the United States Steel Corporation, which owns and controls the Illinois Steel Company, is practised under a division of rates whereby the Chicago, Lake Shore & Eastern Railway Company, a terminal road owned by the United States Steel Corporation, and operated between the Illinois Steel Company's works, obtains a grossly excessive division for the service rendered. Re Di-

vision of Joint Rates, etc., 10 I. C. C. 385.

(i) Where excessive divisions of rates are granted by the carrier to another carrier owned and controlled by a shipper, for the purpose of obtaining the traffic of that shipper, they benefit the shipper, and operate as a rebate or other device to cut the tariff charge, in violation of the Act to Regulate Commerce. Re Division of Joint Rates, etc., 10 I. C. C. 385.

(j) The International Harvester Company owns the capital stock of the Illinois Northern R. Co., and a controlling interest of the C. W. P. & S. R. Co., operating as terminal connecting roads in and about the City of Chicago between the plant of the Harvester Company and various other industries and connecting roads leading to the Missouri River and other sections of the country. Until recently, the charge received for services by those terminal roads was a switching charge amounting to from $1.00 to $3.50 per car for the I. N., and $3.00 per car for the C. W. P. & S. These lines now receive in many instances a division of the rate which on lines reaching the Missouri River is 20 per cent, with the Missouri River division as a maximum. This amounts, on farm machinery, to $12.00 per car as against the former maximum of $3.50 per car. HELD, a charge of $3.50 per car by the I. N., and of $3.00 per car by the C. W. P. & S. would be reasonable for these switching services, and charges for such service in excess of those sums amount to unlawful preference in favor of the International Harvester Company. The C. L. S. & E., owned by the United States Steel Corporation, is a terminal road operated between the Illinois Steel Company's works, near Chicago, and connecting with roads leading East, West and South. It receives a division of 10 per cent of the rate to the seaboard; 15 per cent to Buffalo and Pittsburgh, and 20 per cent to the Missouri River and beyond, and in some cases obtains special divisions. These divisions are grossly excessive and afford unlawful preference to the United States Steel Corporation, which owns and controls the Illinois Steel Company. Re Divisions of Joint Rates, etc., 10 I. C. C. 385.

(k) While there may be great objections to allowing shippers to build and operate railroads over which their traffic moves, such action is not prohibited by the Act, and the mere fact that the property of a common carrier is owned by the largest individual shipper over it, or that it was originally constructed for the purpose of doing the work of that shipper, furnishes no reason why it cannot make joint rates and agree upon joint divisions with other railroads. Re Divisions of Joint Rates, ets., 10 I. C. C. 385, 399.

(l) The manifest intention of the Act is to strike through all pretense, all ingenious device, to the substance of the transaction itself and where excessive divisions of rates are granted by a carrier to another carrier owned and controlled by a shipper, they benefit the shipper and operate as a rebate or other device to cut the tariff charge in violation of the law. Re Divisions of Joint Rates, etc., 10 I. C. C. 385, 402.

(m) The Illinois Terminal Railway receives an excessively large share in the division of the through rate on coal transported over it to the Illinois Glass Company, which concession is illegal, provided the glass company owns and operates the Illinois Terminal Railway; but a different question may be presented if it appears that the holders of the capital stock of the glass company own the railroad company. Re Division of Joint Rates, etc., 10 I. C. C. 661.

(n) The Granite City, Alton & Eastern Railroad Company was organized for the purpose of operating several thousand feet of railway used in the business of the St. Louis Syrup and Preserving Company and located on the latter's private grounds at Granite City, Ill. The Granite City company has constructed a short track outside the limits of the grounds of the preserving company, and uses, jointly with other companies, another track about 3,000 feet in length. By means of these tracks the Granite City company connects with other railroad companies, and is paid by the latter divisions of transportation charges on traffic shipped by the preserving company and hauled to such connections by the Granite City company. Assuming that the Granite City company and the Preserving Company are identical in ownership, concerning which a definite finding is not made. HELD, that the payments to the Granite City company constitute rebates

and are illegal. Re Division of Joint Rates, 10 I. C. C. 661.

(o) The Illinois Terminal Railway Company was organized in the interest of the Illinois Glass Company, and uses tracks constructed by the latter on its private grounds at Alton, Ill., for the purpose of connecting its plant with different lines of railway. Re Division of Joint Rates, 10 I. C. C. 661.

(p) The Illinois Terminal Railway Company was organized in the interest of the Illinois Glass Company and uses tracks constructed by the latter on its private grounds at Alton, Ill, for the purpose of connecting its plant with different lines of railway. Facts relating to the construction and operation of the terminal road are stated. HELD, that if the Glass Company owns and operates the Illinois Terminal Railroad, the case is in all respects identical with the facts developed at the Chicago hearing in this investigation (10 I. C. C. Rep. 385) and the conclusions there announced apply here; but if the holders of the capital stock of the Glass Company own the Railroad Company, a different question may be presented. Matter of Division of Joint Rates 10 I. C. C. 661.

(q) The words "common carriers," in the proviso in section 1 of the Act to Regulate Commerce as amended June 29, 1906, that its provision against the issuance of free passes "should not be construed to prohibit the interchange of passes for the officers, agents and employees of common carriers and their families," held to relate only to those subject to the act. Re Right of R. R. and Transfer Companies to Exchange Transportation, 12 I. C. C. 39.

Important Cases Since 1908

(r) Fact that industrial carriers have received low net earnings or operated at deficit is not convincing as bearing upon question of per diem arrangement, for deficiency in earnings may indicate, among other things, poor location, insufficient traffic, uneconomic management, high operating expenses, maladjusted divisions or absorptions, or necessity for track-storage charge such as may be in force upon other lines in district. L. E. & Ft. W. R. R. Co., 78 I. C. C., 475, 490.

ALL OTHER CITATIONS

National Tube Co. v. P. C., C. & St. L. R. R. Co., 61 I. C. C. 590, 591, 599, 600; Illinois Northern Ry., 61 I. C. C. 629, 634, 636; Pullman R. R. Co., 61 I. C. C. 637, 644, 646; Wyandotte Southern Ry. Co., 61 I. C. C. 756; Wyandotte Terminal R. R. Co., 62 I. C. C. 1, 2, 3, 5; Interstate Fares of the C., N. S. & M. R. R., 62 I. C. C. 188, 193; Allegheny & South Side Ry. Co. v. Director General, as Agent, 62 I. C. C. 248, 252; United States Cast Iron Pipe & Foundry Co. v. Director General, as Agent, 62 I. C. C. 339, 343; Benwood & Wheeling Connecting Ry. Co. v. P. C. C. & St. L. R. R. Co., 62 I. C. C. 357; Genesee & Wyoming R. R. Co., 62 I. C. C. 680; Tionesta Valley Railway Co., 62 I. C. C. 473, 474; Sheffield & Tionesta Ry. Co., 62 I. C. C. 710, 712; Trackage Charge on Loaded Cars, 60 I. C. C. 134; Griffith v. Jennings, 60 I. C. C. 232, 236; Jones & Laughlin Steel Co. v. Director General, as Agent, 70 I. C. C. 325, 331; Farmers Fuel Co. v. Director General, as Agent, 60 I. C. C. 715, 718; Consolidation Coal Co. v. C. & O. Ry. Co., 763, 768; Whitaker-Glessner Co. v. B. & O. R. R. Co., 63 I. C. C. 47, 57; Lake Erie & Fort Wayne R. R. Co., 63 I. C. C. 122; Berlin Mills Ry., 63 I. C. C. 313; New Castle & Ohio River Ry. Co., 63 I. C. C. 305; American Hominy Co., 63 I. C. C. 319; Superior & Southeastern Ry. Co. v. Director General, as Agent, 63 I. C. C. 431; Ohio and Pennsylvania Rates, Fares and Charges, 64 I. C. C. 517, 519; Ore Carrying Corporation v. C. R. R. of N. J. 66 I. C. C. 311; Gulf Ports Terminal Ry. Loan, 65 I. C. C. 421, 423; Beaver Sand Co. v. Director General, as Agent, 66 I. C. C. 285, 287; Ore Carrying Corporation v. C. R. R. Co. of N. J., 66 I. C. C. 311; Massachusetts Oil Refining Co. v. B. & A. R. R. Co., 66 I. C. C. 535, 543; Keokuk & Hamilton Bridge Co. v. W. Ry. Co., 66 I. C. C. 545, 548; Sun Co. v. Director General, 68 I. C. C. 11, 14; Wyandotte Terminal R. R. Co., 68 I. C. C. 346; Divisions Received by Brimstone R. R. & Canal Co., 68 I. C. C. 375, 386; Minneapolis & St. Louis R. R. Co. v. P. & P. U. Ry. Co., 68, I. C. C. 412, 417; American Mineral Production Co. v. Director General, as Agent, 69 I. C. C. 53, 56, 57; Aluminum Co. v. M. T. R. R. Co., 68 I. C. C. 119, 123; Mercer Valley R. R. Co. v. P. R. R. Co., 69 I. C. C. 233; Boston Wool Trade Asso. v. Director General, as Agent, 69 I. C. C. 282, 293; Moshassuck Valley R. R. Co. v. N. Y., N. H. & H. R. R. Co., 69 I. C. C. 368; Empress Coal Co. v. O.

W. R. R. & N. Co., 69 I. C. C. 618; Spitzer et al, v. Porto Rican Express Co. (Sup. Ct., 1920), 183 N. Y. S. 19; Divisions Received by Brimstone R. R. & Canal Co., 68 I. C. C. 375, 387; Inland Ry. Co., 78 I. C. C. 59, 64; L. E. & Ft. W. R. R. Co., 78 I. C. C. 475, 488, 490, 493.

COMMUTATION FARES

See Passenger Fares and Facilities §5; §7.

ALL CITATIONS

In Re Mileage, Excursion and Commutation Tickets, 23 I. C. C. 95, 96, 97; The Commutation Rate Case, 27 I. C. C. 549, 552; Bitzer v. W. V. Ry. Co., 24 I. C. C. 255, 257.

COMPARATIVE RATES

See Advanced Rates §5½, §8½, §18 (7); Blanket Rates §18; Branch Lines §2, §18, §22; Classification §3½, §18 IV; Discrimination §4; Divisions §7; Equalization of Rates §3; Evidence §11, §12, §13 (3), (5), (6), §13 (1½); §30; §47; §58; §59; §66; Express Companies §11, §20, §23; Long and Short Hauls §6¼; Penalty Rates; Reasonableness of Rates §7½, §12½; §27½, §27¾, §28; Routing and Misrouting §5; Through Routes and Joint Rates §15.

COMPETITION

See Advanced Rates §5 (7); §7 (4); §7 (5); Allowances §13 (1); Blanket Rates §19; Branch Lines §4; Classification §6; §17; §20; Concentrating Rates and Privileges; Cross Country Competition; Discrimination §3 (1); §8; §8 (2); §8 (4); Equalization of Rates §4; Evidence §10; §14; §14 (1½); Express Companies §21; Long and Short Hauls §4; II; §4¼; §4½; §14 (1½); IV; Motor Truck Competition; Panama Canal Act; Potential Competition; Rail and Water Rates; Railroad Competition; Reasonableness of Rates §8; Water Competition.

COMPLAINT

See Discrimination §18; Long and Short Hauls §11; Procedure Before Commission II; Reparation §21.

COMPRESS COMPANIES AND CHARGES

I. CONTROL AND REGULATION.
II. REASONABLENESS OF CHARGES.
III. RULES AND REGULATIONS.

CROSS REFERENCES

See Allowances §8 (1); Concentrating Rates and Privileges; Facilities and Privileges §3.

I. CONTROL AND REGULATION.

CASES 1887-1908

(a) The question of compression of cotton in transit is not one with which a railroad may deal entirely as it sees fit and without respect to the effect which its practices have upon the transportation of cotton. Either the carrier must publish a rate upon uncompressed cotton and another rate upon compressed cotton and divorce itself entirely from the matter of compression, or else such compression as is given by the railroad becomes subject to the jurisdiction of this Commission. Muskogee Com. Club et al v. Mo., Kans. & Tex. Ry. Co., 12 I. C. C. 312.

(b) Whether the practice of considering compression of cotton in transit an incident of transportation, and therefore a matter wholly within the discretion and control of the carrier as to the instruments employed, neither the grower nor the consumer being directly interested, will not be decided without a general investigation covering the whole field of production and markets, and cannot be determined on an insufficient inquiry at a single point. C. & I. Asso. of Union Springs v. C. of Ga. Ry. Co., 12 I. C. C. 375.

IMPORTANT CASES SINCE 1908

(c) No violation of the statute results from a preference, though found to exist, to a corporation engaged solely in the compression of cotton in which it has no interest. Merchants Cotton Press & Storage Co. v. I. C. R. R. Co., 17 I. C. C. 98, 104.

(d) Compression is a serivce which the carrier procures for its own con-

venience, and when that service is performed in such manner as not to prejudice, or prefer, a particular shipper, or community, the Act does not limit the freedom of the carrier to make contracts in respect thereto. Merchants Cotton Press & Storage Co. v. I. C. R. R. Co., 17 I. C. C. 98, 104.

(e) Section 15 in regard to allowances is not applicable where an allowance is made to a compress company not the owner of the cotton. If a violation of the Act results from more favorable contracts with the warehouse company than to complainants, it must be because of discrimination under section 3. Merchants Cotton Press & Storage Co. v. I. C. R. R. Co., 17 I. C. C. 98, 105.

(f) Compress companies engaged in compressing cotton at a concentration point and compensated therefor by the carriers are amenable to control by the laws of the land. Anderson, Clayton & Co. v. C. R. I & P. Ry. Co., 18 I. C. C. 340, 350.

ALL OTHER CITATIONS

Colorado Alfalfa Meal & Mfg. Co. v. M. P. Ry. Co., 41 I. C. C. 540, 544; New England Plaster, 41 I. C. C. 687, 702.

II. REASONABLENESS OF CHARGES.

See Reasonable Rates.

CASES 1887-1908

(a) The method of compressing cotton for shipment from the southern states is one that is found to be absolutely necessary in the case of long through hauls by rail, or where the cotton is carried by coastwise steamers or by ocean vessels for export, and the difference in the rate of transportation of compressed and uncompressed cotton by rail carriers should be the actual and necessary cost of compressing. New Orleans Cotton Exchange v. I. C. R. R., 2 I. C. C. 777, 790.

(b) The Commission instituted an investigation on its own motion as to alleged unlawful rates and practices in the transportation of cotton by the K. C. M. & B. R. Co. Defendants rates on cotton from Memphis to Atlantic and Gulf ports and various eastern cities are lower than those from intermediate cotton shipping stations; but whether such rates violate the fourth section of the act is not determinable upon the practice of floating cotton, the essential transportation feature is carrying the cotton to a compress, receiving it again in the compressed state, and transporting it to destination at the through rate in force from the point of origin. The practice benefits both the railroad company and the producer, and tends to place noncompetitive points upon an equality with more distant competitive localities from which lower rates are in force. It does not unjustly discriminate against dealers in Memphis, who decline to take advantage of the privilege. The cotton is graded as well as compressed at the point of stoppage. The destination of the cotton is usually changed at the compress point; the identity of the cotton is usually not preserved at the point of grading and compression; and the ownership of the cotton may change at the compress station. The question is whether the shipment is to be considered through and entitled to a through rate, or as local and calling for application of charges in effect to and from the compress point. HELD, that the carrier may, as part of a contract for through shipment, allow the cotton to be stopped off for the purpose of grading and compression; but the privilege enters into and becomes part of the service covered by the rate, and should be specified in the published tariffs. That the determinative feature of a through shipment is the contract, and if the cotton starts and proceeds upon a contract for through shipment, as is shown to be the fact in this case, it may be considered as a through shipment and be given the benefit of a through rate. In the matter of alleged unlawful rates and practices in transportation of cotton by the K. C. M. & B. R. Co., 8 I. C. C. 121.

(c) That cotton is allowed a stop-off privilege for the purpose of grading and compressing forms part of the service covered by the rate, and should be specified in the published tariffs. Re Alleged Unlawful Rates, etc., 8 I. C. C. 121.

(d) In the practice of "floating cotton," the essential transportation feature is carrying the cotton to a compress, receiving it again in the compressed state, and transporting it to destination at the through rate in force from the point of origin. The practice benefits both the railroad company and the producer, and tends to place noncompetitive points upon an equality with more distant competitive localities from which lower rates are in force. It does

not unjustly discriminate against dealers in the city of Memphis, who decline to take advantage of the privilege. The cotton is graded as well as compressed at the point of stoppage. The destination of the cotton is usually changed at the compress point; the identity of a cotton shipment is not preserved at the point of grading and compression; and the ownership of the cotton may change at the compress station. The question is whether the shipment is to be considered through and entitled to a through rate, or as local and calling for application of charges in effect to and from the compress point. HELD, (1) that the carrier may, as part of a contract for through shipment, allow the cotton to be stopped off for the purpose of grading and compression; but the privilege enters into and becomes part of the service covered by the rate, and should be specified in the published tariffs. (2) That the determinative feature of a through shipment is the contract and if the cotton starts and proceeds upon a contract for through shipment, as is shown to be the fact in this case, it may be considered as a through shipment and be given the benefit of the through rate. In the Matter of Alleged Unlawful Rates and Practices in the Transportation of Grain and Grain Products by the Atchison, Topeka & Santa Fe Railway Company and Others, 7 I. C. C. Rep. 240,—cited and distinguished. Unlawful Rates in Trans. Cotton by K. C. M. & B. R. R. 8 I. C. C. 121.

(e) The fact that a compress company at South McAlester has another compress at Fort Smith and threatens, unless the foregoing preference is given to its company at South McAlester, to divert its cotton traffic to another railroad, does not justify discrimination in the rules or practices of defendant, as the competition described is not the character of competition that relieves from the operation of the statute. Muskogee Co. Club et al v. Mo., Kans. & Tex. Ry. Co., 12 I. C. C. 312.

(f) The question of compression of cotton in transit is not one with which a railroad may deal entirely as it sees fit and without respect to the effect which its practices have upon the transportation of cotton. Either the carrier must publish a rate upon uncompressed cotton and another rate upon compressed cotton and divorce itself entirely from the matter of compression or else such compression as is given by the railroad becomes subject to the jurisdiction of the Commission. Muskogee Commercial Club v. M. K. & T. Ry., 12 I. C. C. 312, 318.

(g) Where a railroad company declares a policy which allows compression of cotton in transit at the nearest point, it cannot vary that rule so as to give certain shippers the opportunity to avoid it and thereby receive an advantage which is not given to shippers generally. Muskogee Commercial Club v. M. K. & T. Ry. 12 I. C. C. 312, 318.

(h) Whether the practice of considering compression of cotton in transit an incident of transportation, and therefore a matter wholly within the discretion and control of the carrier as to the instruments employed, neither the grower nor the consumer being directly interested, will not be decided without a general investigation covering the whole field of production and markets, and cannot be determined on an insufficient inquiry at a single point. Commercial & Industrial Ass'n. of Union Springs v. Central of Ga. Ry. Co., 12 I. C. C. 375.

IMPORTANT CASES SINCE 1908

(i) It is manifestly economical from a transportation standpoint to have compression as near the origin of shipment as possible; but in determining the propriety of the practice, the railroad may not deal with it irrespective of its effect upon the transportation of cotton. Rates on Cotton and Cotton Linters, 30 I. C. C. 467, 469.

(j) An allowance for the compression of cotton at the port, authorized in the published tariffs and applied to all shipments alike, even though the compressing is done after the transportation is ended, is not a rebate. Inman, Akers & Inman v. A. C. L. R. R. Co., 32 I. C. C. 146, 147.

(k) Where cotton is compressed at the port, after the transportation is ended, the service is in no sense connected with the transportation or an instrumentality used therein, as provided for in section 15 of the Act; and any allowance made therefor by the carrier is therefore unlawful. Inman, Akers & Inman v. A. C. L. R. R. Co., 32 I. C. C. 146, 148.

(l) No warrant in law for an allowance for compression service rendered

by carrier at port. Inman, Akers & Inman v. A. C. L. R. R. Co., 32 I. C. C. 146, 148.

(m) Where the through rate to desired port includes compression by carrier, such compression should be performed by carrier receiving the cotton at compress point. Mobile Chamber of Commerce v. M. & O. R. R. Co., 32 I. C. C. 272, 276.

(n) Rate from point of origin to compress point should be no more than the reasonable local rate. Mobile Chamber of Commerce v. M. & O. R. R. Co. 32 I. C. C. 272, 276.

(o) It constitutes unjust discrimination, distance considered, to charge higher inbound rates on uncompressed cotton for concentration at Shreveport than to concentration points in eastern Texas. R. R. Comm., of Louisiana v. St. L. S. W. Ry. Co., 34 I. C. C. 472, 480.

(p) Cotton is an agricultural product which cannot be properly prepared for shipment by the grower, this being due to the fact that the machinery necessary for ginning and compression is costly. R. R. Comm. of Louisiana v. C. of G. Ry., 45 I. C. C. 516, 517.

(q) Under present conditions of growing and marketing cotton, concentration is a necessity to the shippers and it can readily be seen that it enables the carriers to transport the crop with the greatest conservation of its equipment, for the l. c. l. movement into the concentration and compression point is short and on the longer haul outbound full carloads are secured. R. R. Comm. of Ala. v. C. of G. Ry., 45 I. C. C. 516, 519.

(r) Charges applicable on shipments of cotton which shipper directed compression in transit at a point off the initial carrier's rails, because of an embargo, found unreasonable to extent they exceeded lower charges from more distant points of origin with carrier's privilege of compression at points on its own line. which lower charges were subsequently established from points of origin here involved. Reparation awarded. Tarver, Steele & Co. v. Director General, as Agent, 60 I. C. C. 666.

(s) Concentration is demanded by the commercial necessities incident to the marketing of cotton. If there is to be economical concentration, each compress point must draw cotton from all directions within a certain radius. Transit facilitates concentration and if limited so that cotton can be concentrated only from points lying in a certain direction from the compress point, the economical concentration of cotton is disturbed. When the through rate is protected against the combination on the concentrating or compress point, there is a concession in rates, and this concession controls the points from which the concentrating point can draw its cotton. Thomas Cotton Co. v. I. C. R. R. Co., 63 I. C. C. 89, 92.

(t) It there is to be transit on cotton at all, and transit has been in effect for so long and has become so much a part of the transportation of cotton as to be as inherently fixed as a part of the tariffs as the rates themselves, it must be unlimited as to points of destination to which shipments can be made from the concentration point, if there is to be economical concentration. Thomas Cotton Co. v. I. C. R. R. Co., 63 I. C. C. 89, 92.

(u) In connection with any restatement of transit rules on cotton, the territory from which any compress point may concentrate should be limited by prescribing a certain maximum distance from the concentration point beyond which transit would not apply on back-haul movements from the concentration point to destination. Within the radius so prescribed a scale of distance rates should then be applied for any back-haul movement involved. Thomas Cotton Co. v. I. C. R. R., 63 I. C. C. 89, 92.

(v) The mere fact that an originating carrier participates in joint rates in connection with which compression is allowed at other points off its line does not make it guilty of undue prejudice against plants on its own line. Compression of Cotton at Cushing, Okla., 77 I. C. C., 184, 188.

(w) Where the terms "compressed cotton, any quantity," and "uncompressed cotton, any quantity" are used in a tariff sheet without further amplifying words, the contemporaneous, practical construction placed on said terms by the railroad company, through its agents in charge and the shippers, as to baled cotton, delivered to the railroad company, in an uncompressed state with the understanding that it was to be compressed, and then from the place of initial delivery transported to the place

of original consignment when there was no other promulgated tariff rate between the designated points concerning cotton shipments, is competent for consideration in determining the meaning of such terms. C. R. I. & P. Ry. Co. v. Dodson & Williams, 25 Okla. 822, 829, 94 P. 673, 107 P. 921.

(x) If there is a recognized custom or usage with reference to the payment by a railway company of the charges for compressing cotton, such charges being covered or included in the rate for transporting by the carrier of the compressed cotton, there being a question as to the particular meaning of the words 'uncompressed cotton, any quantity," and "uncompressed cotton, any quantity," such custom is permissable to be proved as a matter of explanation of the meaning of these words as such in the tariff sheet. C. R. I. & P. Ry. Co. v. Dodson & Williams, 25 Okla. 822, 832, 94 P. 673, 107 P. 921.

(y) Complainant attacked defendants refusal during the period Nov. 1 1918, to Jan. 22, 1919, to absorb out of the through rates the full compress charge of compress companies on various shipments of cotton originating on the defendant carrier's lines and moving to interstate destinations, thereby compelling complainants to make payments to such compress companies in addition to the transportation charges. as unreasonable and unduly preferential, Damage under section 3 of the act is not established and the allegation of undue prejudice need not be considered. Defendant carriers are non federal controlled lines, and the cotton originating on their lines was compressed at Weleetka, and reshipped to interstate destinations. Defendant carriers tariffs authorized compression and concentration services at Weleetka. The tariffs carried a restriction that the compress charge shall not exceed 10c, while Leland's tariff further provided that when exceeding that sum the excess will be in addition to the through rates. In the spring of 1918 the compress companies notified the carriers and shippers that. effective Sept. 1, 1918, their compress charges would be increased to 15c, and in conjunction with the shippers made efforts to induce the carriers to amend their tariffs to provide for the absorption of that charge out of the through rate. On Nov. 1, 1918 the tariffs of all lines participating in the movement of cotton were amended to provide for the absorption of the entire 15c charge. Apparently, readjustments upon the approved basis were made on cotton traffic generally with the exception of the shipments here involved. Upon the facts shown it appears that the rates have generally included the entire compress charge. The conclusion is warranted that the rates are in reality based on the inclusion of a reasonable charge for that service. HELD, defendants failure to absorb the 15c compress charge unreasonable, reparation awarded. Anderson Clayton & Co. v. Fort Smith & Western Railroad, 68 I. C C. 299.

(z) Complainant attacked rates charged on 4,809 bales of cotton shipped between August 21, 1918, and Feb. 18, 1919, from various points in Louisiana to Opelousas, La., for concentration and compression, and reshipped to various interstate destinations on the Pacific and Gulf coasts, as unjust and unreasonable in that the inbound and outbound rates in effect June 24, 1918, were each increased 15c per 100 pounds resulting in a double increase not contemplated by G. O. 28. Complaint was amended to attack as unreasonable defendants failure, prior to April 1, 1919, to provide transit arrangements at Opelousas. Charged on inbound shipments the local intrastate rates. Transit arrangements were in effect at Opelousas when destination was New Orleans. Transit arrangements first became applicable on interstate traffic generally on April 1. 1919, on request of complainant. Similar transit arrangements were provided during the period of movement on shipments over the N. O. T. & M. from Louisiana points to Opelousas for compression and reshipment to interstate destinations. A joint domestic commodity rate of $4.40 was in effect from the points of origin of the uncompressed cotton to San Francisco, a joint export commodity rate of $1.40 to Tacoma and Seattle, and a joint export rate of 47c to Galveston and Houston. If the transit rules had been complied with these rates could have been used. G. O. 28 provided that there would be one increase of 15c per 100 pounds, but under the manner of handling by shipper this rule was not applied for the reason that defendant properly considered the shipments inbound and outbound as separate and distinct. There

was no local consumption of cotton at Opelousas and all cotton shipped into that point was for concentration, compression and reshipment. Complainants introduced no evidence which shows that the rates attacked were unreasonable per se. HELD charges attacked nor failure of defendant to provide transit arrangement not unreasonable, complaint dismissed. Armand L. Dejean v. Director General 68 I. C. C. 611.

(aa) Compression: Following Anderson, Clayton & Co., 68 I. C. C. 299, failure of carriers to absorb out of the applicable rates the entire compress charge on various shipments of cotton forwarded from points in Tennessee and Mississippi to interstate destinations, found unreasonable as compared with subsequent provision for such entire absorption. Memphis Freight Bureau v. Director General, as Agent, 74 I. C. C. 588.

(bb) Rates on cotton, uncompressed, any quantity, found not unreasonable or unduly prejudicial as compared with rates on cotton compressed in transit at expense of carrier. More cars are required to handle uncompressed than compressed cotton, and service rendered by carrier on the former costs more than on the latter. Reduction of rates on uncompressed cotton to level of those on cotton compressed in transit would result in increased movement of the uncompressed commodity, requiring additional cars and resulting in congestion at the ports during the cotton shipping season. Galveston Commercial Asso. v. A. & V. Ry. Co., 77 I. C. C. 388, 407, 410.

(cc) Rates on cotton, any quantity, compressed in transit or prior to shipment from group points in Oklahoma to Galveston, Houston and Texas City, Tex. for local delivery, found unreasonable to extent they exceed rates 5 cents lower than the corresponding export rates, but not unduly prejudicial as compared with substantially equal rates from the same points of origin to New Orleans, La. Galveston Commercial Asso. v. A. & V. Ry. Co., 77 I. C. C. 388, 393, 397.

(dd) Application for establishment of basis of rates which will permit shipper of uncompressed cotton to elect point in transit where such shipments may be compressed at expense of shipper, denied. If shipper were allowed to choose the point at which shipments should be compressed in transit there would be no certain limitation as to the distances carriers would be required to haul uncompressed cotton. Conservation of equipment and economy of transportation, the real purposes of compression in transit, might thus be defeated. Galveston Commercial Asso. v. A. & V. Ry. Co., 77 I. C. C. 406, 407.

(ee) Rate on cotton, compressed in transit, from Blytheville, Ark., to Galveston, Tex., found unreasonable as compared with rates from same origin territory in Arkansas to New Orleans, La., and to extent it exceeded rate via another route, which latter rate was subsequently established over routes of movement. Reparation awarded. Kempner v. Director General, as Agent, 80 I. C. C. 347.

(ff) Where, under rates filed with and approved by the Interstate Commerce Commission, shipments of cotton originating on the carrier's line were permitted to be forwarded to a concentration point and there unloaded, and later reshipped at a through rate, HELD, that shipments of cotton which in fact started at various points other than those on the carrier's line, but which had been shipped to those points and from there rebilled in the same cars, with seals unbroken, to the point of concentration, did not "originate" on the carrier's line within the meaning of the statute and were not entitled to the reshipment privileges and reduced charges. Davis v. Latham-Bradshaw Cotton Co., (N. C., 1923.), 117 S. E. 391.

ALL OTHER CITATIONS

Anderson, Clayton & Co. v. C. R. I. & P. Ry. Co., 18 I. C. C. 340, 350; Merchants Cotton Press & Storage Co. v. I. C. R. R. Co., 17 I. C. C. 98, 104, 106; Geismar & Heyman v. I. C. R. R. Co., Unrep. Op. A-609; Eastbound Transcontinental Cotton Rates, 34 I. C. C. 248, 252; Cotton Concentration at Weleetka, Okla., 39 I. C. C., 181; Montgomery Cotton Exchange v. L. & N. R. R. Co., 43 I. C. C. 197; N. O. Cotton Exchange v. L. & N. R. R. 46 I. C. C. 712, 721; Tarver, Steele & Co. v. Director General, as Agent, 60 I. C. C. 666, 668; Memphis Freight Bureau v. Director General, as Agent, 61 I. C. C. 125; Lee Prendergrass Cotton Co. v. Director General, 68 I. C. C. 637; Elimination of Transit Privileges on Export Cotton, 73 I. C. C. 299; Spinnler & Co. v. Director General, as

Agent, 73 I. C. C. 611; Memphis Freight Bureau v. Director General, as Agent, 74 I. C. C. 588; Compression of Cotton, 77 I. C. C. 184, 188; Memphis Freight Bureau v. M. P. R. R. Co., 80 I. C. C. 88, 90, 91, 96.

III. RULES AND REGULATIONS.

See Rules and Regulations.

CASES 1887-1908

(a) That a compress company at South McAlester has another compress at Fort Smith and threatens, unless the foregoing preference is given to its compress at South McAlester, to divert its cotton traffic to another railroad, does not justify discrimination in the rules or practices of defendant, as the competition described is not the character of competition that relieves from the operation of the statute. Muskogee Commercial Club v. M. K. & T. Ry. Co., 12 I. C. C. 312.

(b) A rule for compression of cotton in transit, which allows uncompressed cotton, on demand of shippers, to be taken out of Muskogee, Ind. T., and points north, including the Tulsa division, for compression at South McAlester, Ind. T., but does not allow uncompressed cotton to be taken out of or through South McAlester for compression at Muskogee, which practice involves the hauling of a large portion of the cotton in the territory tributary to Mukogee to S. McAlester, where it is compressed, reloaded and hauled back through Muskogee to eastern terminus, involving an extra service of 124 miles for which the carrier receives no compensation,—held to result in undue prejudice against Muskogee. Muskogee Commercial Club v. M. K. & T. Ry. Co., 12 I. C. C. 312.

(c) It appears that defendant's rule for compression of cotton in transit allows uncompressed cotton, on demand of shippers, to be taken out of Muskogee, Ind. T., and points north, including the Tulsa division, for compression at South McAlester, Ind. T., but does not allow uncompressed cotton to be taken out of or through South McAlester for compression at Muskogee. A large portion of the cotton grown in the territory tributary to Muskogee is sold in the East, and is always compressed before being loaded for the long haul. Under the practice of compressing at South McAlester uncompressed cotton originating at Muskogee and points north is hauled by defendant to South McAlester, unloaded at the compress, compressed, reloaded and then hauled back over the same line of railroad, passing again through Muskogee to defendant's eastern terminus, involving an extra service of 124 miles for which defendant receives no compensation. HELD, upon the foregoing facts, that defendant's said rule for compression of cotton results in undue prejudice against Muskogee, and that defendant should grant all the privileges to one compression point herein considered that it grants to the other. Muskogee Com. Club, et al. v. Mo. Kan. & Tex Ry. Co., 12 I. C. C. 312.

(d) Where a railroad company declares a policy which allows compression of cotton in transit at the nearest point it cannot vary that rule so as to give certain shippers the opportunity to avoid it and thereby receive an advantage which is not given to shippers generally. Muskogee Com. Club, et al. v. Mo. Kan. & Tex. Ry. Co., 12 I. C. C. 312.

(e) Complainant attacked as unjustly discriminatory refusal of defendant to allow compression of cotton, shipped over its road, at compress of complainant at Union Springs, Ala., while permitting this practice at other points in contiguous territory. HELD, whether the practice of considering compression of cotton in transit an incident of transportation, and therefore a matter wholly within the discretion and control of the carrier as to the instruments employed, neither the grower nor consumer being directly interested, will not be decided without a general investigation covering the whole field of production and markets, and can not be determined on an insufficient inquiry at a single point, complaint dismissed. Commercial and Industrial Asso. v. C. of Ga. Ry., 12 I. C. C. 375.

(f) Complainant attacked practice of defendant of hauling flat or uncompressed cotton through and out of Muskogee, Okla., to South McAlester, for compression at that point, while refusing at the same time to haul flat cotton through and out of South McAlester for compression at Muskogee, was unduly discrimatory. It appears that defendant's rule for compression of cotton in transit allowed uncompressed cotton, on demand of shippers, to be taken out of Muskogee, and points north for compression at South McAlester but does not allow uncompressed cotton to be

taken out of or through South McAlester for compression at Muskogee. A large portion of the cotton grown in the territory tributary to Muskogee is sold in the east, and is always compressed before being loaded for the long haul. Under the practice of compressing at South McAlester uncompressed cotton originating at Muskogee and points north is hauled by defendant to South McAlester, unloaded at that compress, compressed, reloaded, and then hauled back over the same line of railroad, passing again through Muskogee to defendant's eastern terminus, involving an extra service of 124 miles for which defendant receives no compensation. HELD, defendant's rule for compression of cotton results in undue prejudice against Muskogee and defendant should grant all the privileges to one compression point herein considered that it grants to the other. Muskogee Commercial Club v. M. K. & T. Ry., 12 I. C. C. 312.

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(g) Where cotton is not shipped from point of origin under a contract for through shipment to final destination, but where the transportation charges are assessed to the compress point, and from the compress point to final destination, and subsequently adjusted to the basis of the through rate from point of origin to final destination, with carriers' right of compression in transit, a rule which requires compression at the compress of one who is the owner of, or interested in, cotton grown in that district and compressed at the same point, is not free from unjust discrimination or undue preference. Concentration of Cotton, 26 I. C. C. 585, 592.

(h) The ownership of, or interest in, the cotton on the part of the one who is employed by the carrier to perform compression is a very important consideration, and one which may involve all the elements of unjust discrimination. Concentration of Cotton, 26 I. C. C. 585, 592.

(i) There can be no question that as a purely transportation question, it is economical to compress the cotton as near as possible to the point at which it is orignally delivered to the carrier. If the shipments moved on original contracts of carriage from points of origin to final destinations and the carrier performed itself all the compression on its line, there could be no objection to the location of its compresses at such points as it might select with a view to economize in transportation and conservation of equipment. It would then be a matter of little concern to the shipper whether the compression was performed at one point or another. Under similar conditions of shipment the situation would be much the same if all the compression were performed by commercial compresses owned and operated by those who had no interest whatever in the cotton. Concentration of Cotton, 26 I. C. C. 585, 592.

(j) Where rates provide carriers' right of compression in transit, the carrier pays for compression, and one who is employed to perform compression becomes agent of carrier and as such necessarily gains knowledge as to business of competitors, probably in contravention of section 15 of the Act. Concentration of Cotton, 26 I. C. C. 585, 592.

(k) Free from conditions or practices which transgress or trespass upon the provisions or prohibitions of the law, a carrier may employ as its agent, but such arrangement must also avoid, and be free from unjust discrimination and undue preference. The Commission will look with disfavor upon, and will scrutinize with extreme care, any arrangement established, or sought to be established by any carrier, which provides for compression at a compress that is owned or operated by one who has any interest in cotton handled by that compress. Concentration of Cotton, 26 I. C. C. 585, 594.

(l) The propriety of the rule requiring compression to 15 pounds per cubic foot established as to sheared wool; but rule is unreasonable to extent that it requires pulled wool to be compressed to more than 12 pounds per cubic foot; and rule which proposes to permit shipment of Utah and Nevada wool without compression to any definite density is unduly prejudicial to shippers in California.. Wool for California, 41 I. C. C. 314, 316.

(m) Practice of the M. P. and of the Cotton Belt, in imposing a greater charge for delivery of cotton at compresses located on the Union Ry. in Memphis, than the corresponding charge for delivery at East St. Louis, Ill., found to subject Memphis to undue disadvantage. Memphis Southwestern Investigation, 55 I. C. C. 515, 550, 575.

(n) Transit provisions on cotton in effect at other compress points on lines

of defendants, under which transit is available on shipments involving a back haul from the transit point, while at the same time confining transit applicable at points here involved to movements in line from point of original shipment, found to result in undue prejudice. Thomas Cotton Co. v. I. C. R. R. Co., 63 I. C. C. 89.

(o) In connection with any restatement of transit rules on cotton, the territory from which any compress point may concentrate should be limited by prescribing a certain maximum distance from the concentration point beyond which transit would not apply on back-haul movements from the concentration point of destination. Within a radius so prescribed a scale of distance rates should then be applied for any back-haul movement involved. Thomas Cotton Co. v. I. C. R. R. Co., 63 I. C. C. 89, 92.

(p) Respondents proposed to prohibit transit privileges on cotton, including recompression or high density compression, at the ports of Galveston, Houston, Texas City, and Velasco, Tex., and to limit the application of the export rates on cotton moving under through export bills of lading to traffic moving direct to ship sides at those ports. The domestic rates on cotton to Galveston and Texas City are somewhat lower than the export rates, but when the switching and other charges which are absorbed out of the export rates are added to the domestic rates the resulting charges are about equal. The charge for high compression is 75c per bale. The ocean rate on high density cotton, generally speaking is 15c per 100 pounds less than on standard compressed cotton. A greater tonnage of high density cotton can be loaded on the vessel in the space assigned to a shipper, thus conserving ocean equipment, and as the average bale weighs about 530 pounds the shipper makes a direct money saving of about 4.5c per bale. Under present conditions, when a carload of cotton arrives at Galveston or Texas City, it is held until the ship is ready for loading, whereupon it is delivered to a track at the wharf designated by the steamship company and unloaded by truck to a space on the wharf designated by him, which may be anywhere from 10 to 200 feet from the car. When it is compressed to high density at a ship side compress the space is simply designated as at the compress, and no additional service is performed by the rail carrier. It is not shown that under present conditions high density compression at the ports results in the failure of shipments to meet connections with sailings. The exercise of the privilege of high density compression under a through bill of lading clearly does not constitute conversion. HELD, suspended schedule not jusified. Elimination of transit privilege on export cotton at Texas Gulf ports, 73 I. C. C. 299.

(q) Proposal to prohibit recompression or high-density compression at Texas ports, and limit export rates on cotton moving under through bills of lading to traffic delivered direct to ship side, found not justified. Apprehension that carriers might be required to establish similar arrangements at interior points is not well founded; risk of loss while traffic is in possession of the compress is no reason for withdrawing the privilege; it is not shown that the privilege results in failure to meet connections with sailings; exercise thereof does not constitute conversion, as there is no difficulty in identifying shipments in and out of compress; and it seems improper of line-haul carrier's attempting to dictate what privileges should be given the traffic after they have completed their part of the transportation service by unloading the traffic on the wharf. Elimination of Transit Privileges on Export Cotton, 73 I. C. C. 299.

(r) Arrangements for concentration and compression of cotton are usually restricted to compresses on the line of the originating carrier. At least two compresses are made available for each point of origin and in case of emergency an additional compress may be designated by the carrier. Compression of Cotton, 77 I. C. C. 185.

(s) "Flat" cotton is cotton offered for transportation uncompressed, to be delivered at destination uncompressed. Galveston Commercial Asso. v. A. & V. Ry. Co., 77 I. C. C. 388, 391.

(t) Proposal to restrict joint rates on cotton, cotton linters, and regins from applying on shipments originating on the L. & N. destined to northern, eastern, or Carolina points, when accorded transit for account of lines other than the L. & N., and to restrict to routes over which the L. & N. obtains its long haul the application of joint rates to northern and eastern destinations, found not justified. Proposed restrictions would re-

suit in preventing L. & N. cotton from having access to Carolina markets and would force its sale in eastern markets, and would close many rail-and-water routes over which joint rates from L. & N. points now apply. Transit and Routing on Cotton and Cotton Linters, 77 I. C. C. 724.

(u) In 73 I. C. C. 299, the Commission found that the schedules which proposed to prohibit transit privileges, including recompression or high density compression, at Texas ports, and limiting the application of the export rates on cotton moving under through export bills of lading to traffic delivered direct to ship side, had not been justified. Rehearing had. It appears that certain parties have agreed that the process of compression at Galveston takes place under the instructions of the steamship agents and after the property passes from the possession of the wharf company, but the testimony with respect to this question does not warrant making any modifications in the original report. HELD, original findings affirmed. Elimination of transit privileges on export cotton at Texas Gulf ports, 80 I. C. C. 235.

(v) Where cotton was shipped in plantation bales at a published tariff rate, reduced because of the carrier's right to compress in transit, and such rate included in the compression charge, and the tariff made the shipment subject to the printed form of the uniform bill of lading, and did not confer on shipper the right to designate the plant to compress his cotton, the fact that the shipper wrote on the face of the bill of lading, "To be compressed at Cleveland Compress Company, Houston, Texas," was not such stopping or holding of the property in transit upon the request of the shipper "entitled to make such request" as to relieve the carrier from liability for destruction of the cotton at the designated compress plant. D'Utassy v. Southern Pacific Co., 161 N. Y. S. 222.

ALL OTHER CITATIONS

Louisiana Cotton, 46 I. C. C. 451; New Orleans Cotton Exchange v. L. & N. R. R. Co., 46 I. C. C. 712, 727; Schaff v. Kennedy (Tex. 1920), 220 S. W. 223; Tarver Steel & Co. v. Director General, as Agent, 60 I. C. C. 666; Elimination of Transit Privileges on Export Cotton, 73 I. C. C. 299.

CONCENTRATING RATES AND PRIVILEGES

See Compress Companies and Charges; Facilities and Privileges §4; Penalty Charges; Through Routes and Joint Rates §18; Transit.

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(a) "Concentrated" cotton moves to compress from designated points under local bill of lading. When ready for shipment, warehouse receipt is delivered to carrier, new bill of lading issued, and cotton is sent forward at through rate in effect from point of origin to new destination and refund made to shipper of local charge for original movement. Lesser-Goldman Co. v. St. L. I. M. & S. Ry. Co., 27 I. C. C. 496, 497.

(b) It constitutes unjust discrimination, distance considered to charge higher inbound rates on uncompressed cotton for concentrating at Shreveport than to concentration points in eastern Texas. R. R. Comm. of Lousianna v. St. L. S. W. Ry. Co., 34 I. C. C. 472, 480.

(c) While a rule permitting the concentration at the point of shipment of numerous small shipments belonging to different shippers into one large shipment for transportation to one consignee by a steamship line may or may not be proper, there appears to be no jusification for applying a special rate on small shipments which are aggregated at destination after the transportation service has been completed. In other words, if small shipments by different shippers move independently from New York to Galveston, then it seems clearly discriminatory to subsequently apply a rate to such shipments lower than the rate which other shippers of smaller packages are charged. The conclusion is that this aggregating rule is discriminatory and unlawful in so far as it conditions the application of the rate on the ownership of the constituent shipment, and that it is also discriminatory and unlawful in so far as it applies on shipments other than those aggregated prior to transportation. S. P. Co. Ownership of Atlantic S. S. Lines, 43 I. C. C. 168, 178.

(d) Uniformity is desirable wherever possible in cotton concentration rates and rules. Lousianna Cotton, 46 I. C. C. 451, 459.

(e) It appears that the general basis for fixing the transportation charges in connection with concentration services is the application of the through rate from point of origin to destination. This

is accomplished by payment of the local rate to the compress point and, when the cotton moves out, refund of all the inbound charge if the rate from the compress point is the same as from the point of origin, or of a portion where the rate from the compress point is lower. In instances where concentration at particular compress points involves out-of-line or back hauls, a charge in addition to the through rate from point of origin to final destination is made. Natchez Chamber of Commerce v. St. L. I. M. & St. Ry. Co., 58 I. C. C. 149, 150.

(f) The commission is not authorized under the Interstate Commerce Act to approve the maintenance of the existing consolidation and in connection therewith to prescribe terms as to the manner in which loss and damage claims shall be handled as a condition of the continuance of the consolidation. Nor is the Commission authorized to require the resumption of operation by the constituent companies. The Commission is merely empowered to approve and authorize the existing consolidation. Consolidation of express companies, 59 I. C. C. 459, 468.

(g) Respondents, S. P., and others proposed to cancel the privilege of second concentration at New Orleans, La., on cotton originating at stations on, or moving in connection with the G. C. & S. F., M. K. & T., I. & G. N., and T. & B. V. The proposed cancellation will result in substantial increases in rates on cotton from Oklahoma and Texas to various destinations and concentrated a second time at New Orleans. Rates to be charged after cancellation would be the New Orleans combination. Respondents concede that New Orleans ought to be accorded liberal concentration privileges similar to those permitted at Texas cities. HELD, proposed cancellations not justified. Concentration of Cotton at New Orleans, 83 I. C. C. 18.

(h) Privileges like concentration of cotton are purely local to the railroad on which the concentration or transit point is located. Concentration of cotton at New Orleeans, 83 I. C. C. 18, 20.

(i) S. A. L., respondent, proposed to restrict the transit arrangements now accorded cotton, cotton linters or regins at Atlanta, Athens, Elberton and Winder, Ga., so that they will not apply on shipments originating on the A. & V., L. & N., I. C., Y. & M. V., and Southern. Respondent, since 1903, has published in its cotton transit tariffs a rule which permits the concentration at Atlanta of cotton originating south and west of that place when destined to southeastern, Carolina, or eastern mill points. The proposed schedules will compel shippers from this territory who desire to avail themselves of transit at Atlanta to pay combination rates to and from Atlanta on shipments destined to mill points beyond. The only reason offered by respondent in justification of the proposed schedules is the fact that the L. & N., and other lines have served notice upon it that they will no longer participate in the joint rates if transit is allowed at Atlanta. They perform no greater service on shipments accorded transit than they do on those which move over the same routes to the same destinations and are not transited. The conclusion is inescapable that these carriers are attempting to force respondent to abandon transit arrangements at Atlanta and that they will, if successful, largely control the movement and market of cotton originating on their lines. HELD, present joint rate with transit not unreasonable; respondent has not justified cancellation of transit at points mentioned; L. & N., A. & V., I. C., Y. & M. V., and Southern are not justified in refusing to participate in such joint rates when shipments are stopped at Atlanta, Athens, Elberton and Winder for concentration. Transit privileges on cotton, 83 I. C. C. 60.

ALL OTHER CITATIONS

Red River Oil Co. v. T. & P. Ry. Co., 23 I. C. C. 438, 447; Southern Illinois Millers' Ass'n. v. L. & N. R. R. Co., 23 I. C. C. 673, 677; Anderson, Clayton & Co. v. C. R. I. & P. Ry. Co., 18 I. C. C. 340, 350; Kiser Co. v. C. of Ky. Ry. Co., 17 I. C. C. 430, 439; Railroad Commission of Wisconsin v. C. & N. W. Ry. Co., 16 I. C. C. 85, 90; Concentration of Cotton at Points in Arkansas, 29 I. C. C. 106; Rates on Cotton and Cotton Linters, 30 I. C. C. 467; 469, 470; Cornie Stave Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A456; American Round Bale Press Co. v. A. T. & S. F. Ry. Co., 32 I. C. C. 458, 461; Concentration of Cotton at Alexandria, La., 34 I. C. C. 163; Regulations as to storage of Dairy Products, 35 I. C. C. 469, 471; Woldert Grocery Co. v. I. & G. N. Ry. Co., Unrep. Op. 2112; City of Memphis v. C. R. I. & P. Ry. Co., 39 I. C. C. 256, 271, 272; N. O. Cotton Ex. v. L. & N. R. R., 46 I. C. 712, 721; Business

Men's League of H. v. St. L. I. M. & S. Ry., 48 I. C. C. 490; Memphis Freight Bureau v. St. L. & S. F. R. R., 50 I. C. C. 345; Harriss, Irby & Vose v. G., H. & S. A. Ry. Co., 53 I. C. C. 433; Memphis Southwestern Investigation, 55 I. C. C. 515, 548, 574, 575; Natchez Chamber of Commerce v. St. L. I. M. & S. Ry. Co., 58 I. C. C. 148, 153, 156; Millsaps Cotton Co. v. Director General, 62 I. C. C. 26; T. W. Keesee & Co. v. M. P., 62 I. C. C. 303; Rumble & Wensel Co. v. Director General, as Agent, 62 I. C. C. 110; Wolfe & Co. v. Director General, as Agent, 83 I. C. C. 301.

CONCURRENCES

See Tap Lines §10; Tariffs §10; Through Routes and Joint Rates §2; §20½.

CONDITIONAL RATE

See Released Rates.

ALL CITATIONS

Scully Syrup Co. v. A. G. S. R. R. Co., 43 I. C. C. 567, 568.

CONFISCATION OF FUEL

See Cars and Car Supply §29½; Transportation §3½.

CONFLICT IN RATES

See Bills of Lading §9; §9 (3); Routing and Misrouting §3, §3½; Tariffs §11; Through Routes and Joint Rates §18; §21.

CONFLICTING PROVISIONS

See Bills of Lading §9; Routing and Misrouting §3½.

CONGESTION OF TRAFFIC

See Demurrage §14½; Embargoes.

CONNECTING CARRIERS

See Divisions; Loss and Damage §14; Routing and Misrouting; Switching; Switch Tracks and Switching §7; Through Routes and Joint Rates.

CONSIGNEE

See Demurrage §4; Discrimination §6; Transportation §6; §7½.

CONSOLIDATION OF CARRIERS

CASES 1887-1908

(a) State may prevent consolidation of competing railroads.—A provision of a State Constitution that no railroad shall consolidate its capital stock, franchises, or property, or pool its earnings in whole or in part, with any other railroad owning a parallel or competing line, or acquire by purchase, lease, or otherwise any parallel or competing line, or operate the same, is not in conflict with the power of Congress to regulate interstate commerce. Louisville & Nashville R. R. Co. v. Commonwealth of Kentucky, 7 I. C. C. App. L.

(b) Prohibition of railroad consolidation not unlawful.—The prohibition by a state of the consolidation of parallel and competing lines of railroad is not an interference with the power of Congress over interstate commerce. The court says: It has never been supposed that the dominant power of Congress over interstate commerce took from the States the power of legislation with respect to the instruments of such commerce so far as the legislation was within its ordinary police powers. Nearly all the railways in the country have been constructed under State authority and it cannot be supposed that they intended to abandon their power over them as soon as they were finished. The power to impose such regulations upon their operation as a sound regard for the interests of the public may seem to render desirable. In the division of authority with respect to interstate railways, Congress reserves to itself the superior right to control their commerce and forbid interference therewith, while with the States remains the power to create and regulate the instruments of such commerce so far as necessary to the conservation of the public interests. Louisville & Nashville R. R. Co. v. Commonwealth of Kentucky, et al., 7 I. C. C. App LVII.

(c) State may prohibit consolidation of competing railroad.—The prohibition by a State of the consolidation of parallel and competing lines of railroad is not an interference with the power of Congress over interstate commerce. The court says: All police regulation of interstate railways interferes in-

directly more or less with commerce between the States in the fact that they impose a burden upon the instruments of commerce and add something to the cost of transportation by the expense incurred in conforming to such regulations. These are, however, like the taxes imposed upon railways and their rolling stock, which are more or less, according to the policy of the State within which the roads are operated, but are still within the competency of the legislature to impose. There are certain intimations in some of our opinions which might perhaps lead to an inference that the police power cannot be exercised over a subject confined exclusively to Congress by the Federal Constitution. But while this is true with respect to the commerce itself, it is not true with respect to the instruments of such commerce. If it be assumed that the States have no right to forbid the consolidation of competing lines because the whole subject is within the control of Congress, it would necessarily follow that Congress would have the power to authorize such consolidation in defiance of State legislation,—a proposition which only needs to be stated to demonstrate its unsoundness. Louisville & Nashville Ry. Co. v. Commonwealth of Kentucky, 7 I. C. C. App. LXIX.

(ca) The absorption of a competing line of railway by another in alleged violation of the statutes of a state is a matter within the control of the courts and can be considered by the Commission only in its ultimate results of inducing unreasonable rates. Warren Mfg. Co. v. Southern Ry. 12 I. C. C. 381.

IMPORTANT CASES SINCE 1908

(d) The Commission was requested to approve and authorize the consolidation of the express transportation business and the property devoted to that business of the different separate express companies into the American Railway Express Company. At the beginning of the period of Federal Control there were seven express companies operating over the railroads of the United States, the Adams, American, Wells Fargo, Southern, Great Northern, Western and Northern Express Companies. After the government assumed control and operation of the railroads the Director General of Railroads declined to carry out the separate contracts between the railroads and express companies under which the express business had been conducted, but advised the express companies that if they would form a single corporation he would make a contract with that corporation to conduct the business as his agent. This corporation was formed and a contract entered into with the Director General by which it was provided that the express companies would cause to be organized to carry on the express transportation business for the Director General. Thereupon the American Railway Express Company was organized under the laws of Deleware and, under a contract with the Director General, took over the express business for the Director General and acted as his agent. From the time the Railway Express Company began doing business until the early part of 1919 it made settlement of claims which had accrued against all the predecessor companies, and it still continues the adjustment of the claims which accrued against the American and Wells Fargo Express Companies. In the early part of 1919, the Adams and Southern express companies withdrew from the former arrangement, and since have themselves conducted the adjustment of claims filed against them. The record indicates that not only have these two companies disregarded their moral obligation with respect to many claims but that apparently they have endeavored by a studied plan to avoid even their strict liability. The consolidation having been accomplished there is today no actual competition between express companies. Even prior to federal control and the existing consolidation, there was practically no competition so far as express transportation, rates and charges were concerned, express rates being made on the block system prescribed by the Commission and applying alike to all express companies. The economies and elimination of wasteful service resulting from the consolidation would appear to be more than sufficient to offset any advantages to the public growing out of the separate operation of the four companies, even if, on a denial of this application, they should resume operations as such, as to which there appears to be some doubt. As to the rates and practices of the consolidated company, the Commission may regulate and control them to the same extent as if there were separate operation. HELD, the public interest will be promoted by the consolidation. Consolidation of express companies, 59 I. C. C. 459.

(e) It is not necessary as a condition

precedent to approval and authorization that the Commission ascertain the value of the properties consolidated. Consoldation of express companies, 59 I. C. C. 459, 464.

(f) The provisions of the Interstate Commerce Act with respect to prospective consolidation of rail carriers contemplate that competition shall be preserved but do not require that competition shall be inaugurated or increased. Consolidation of express companies, 59 I. C. C. 459, 464.

(g) The Commission is not authorized under the Interstate Commerce Act to approve the maintenance of the existing consolidation and in connection therewith to prescribe terms as to the manner in which loss and damage claims shall be handled as a condition of the continuance of the consolidation. Nor is the Commission authorized to require the resumption of operation by the constituent companies. The Commission is merely empowered to approve and authorize the existing consolidation. Consolidation of express companies, 59 I. C. C. 459, 468.

(h) Commission not persuaded that the approval of the consolidation of the express companies into the American Ry. Express Co. should be conditioned so as to require the constituent companies to provide for handling of claims and service of legal process in the jurisdictions where they formerly operated and to revive claims which may have been barred by the two-year-and-one-day limitation with respect to filing suit. Consolidation of Express Companies, 59 I. C. C. 459, 468.

(i) The Commission may regulate and control the rates and practices of a consolidated company to the same extent as if the constituent companies were operated separately. Consolidation of Express Companies, 59 I. C. C. 459, 468.

(j) The Transportation Act of 1920 deals with the consolidation of railways into systems by the amendment of section 5 paragraph 4 of the Act to Regulate Commerce, of 1887. The new rules seek to fix rates, not for any single carrier, but for the carriers by natural groups. By far the larger proportion of the traffic of the United States is carried by so called strong or prosperous roads. But it is equally true that a large amount of mileage is in the hands of corporations which, in a financial sense, may be denominated chronically weak. Regardless of the sources of this disability, these weak lines are as essential to the welfare of the communities they serve as are the strong lines to their patrons. It is the theory of this legislation that the railways must be considered as a whole, group by group, fixing by means of the new statutory rule of rate making, a general level of return adequate to maintain them all at a proper pitch of efficiency. The Senate bill sought to reduce the carrier corporations to a common denominator of earning power in terms of valuation by compulsory consolidation. It was intended to compel the stronger roads to merge their identity with the weaker ones for the common good of the country as a whole. But the motive for consolidation should not be permitted to bring about indiscriminate mergers, regardless of natural relationships of the carriers either to one another, or to the needs of their respective territories. It was in order that there might be consonance between such mergers as took place and the public welfare, rather than mere immediate profit to those concerned might result, that the formal proceedings were enacted into law. As to procedure, the statute contains three requirements which must be observed. The first is that competition, presumably in service, shall be preserved; the second is that existing routes and channels of commerce shall not be disturbed; and the third, subject it will be noted, to the foregoing requirements, is that the financial aspects of such mergers shall be kept in view. The calendar year of 1917 has been chosen for the purpose, largely because the results for that period most closely approximate the statute of an operating income amounting to 5·5 per cent of the investment in road and equipment. The aggregate mileage of class 1 roads, those having an operating revenue of $1,000,000, herein consolidated in 1917 was 220,000 miles. There thus remains the not inconsiderable aggregate of 39,000 miles of lines, consisting of the so-called short lines, the remaining class 1 roads, and those within classes 11 and 111. No attempt has been made to trace the natural relationships of these minor properties, and probably it is not necessary at this time. But the fact of their existence and of, in many cases, their grave necessities may not be ignored. A comprehensive plan of railroad consolidation

would include their allocation in due course; but the data are not at present available. It is held to be more important to create self-sustaining systems as to earnings derived from as large a proportion as possible of the area of the several great subdivisions of the country, rather than to attempt to put these properties together in such an exact way that they shall all have approximately equal mileage or equal gross or net earnings within each group. Niether mileage nor volume of business is the real test of ability to exist under the statute. If quality can be conferred by means of better developed traffic relationships, and if natural alignment and relationships can be adhered to, it is believed that the situation so far as the act is concerned will be satisfactorily met. The dynamic aspect of consolidation must also be kept in mind. The purpose being to promote a more evenly balanced competition, especially by means of equalization of opportunity in originating traffic as well as in its interchange and delivery, it is conceivable that congestion may be in a measure relieved by this plan. The growth of business in future years must accrue largely to the existing stems. Sound public policy demands that this growth should be so distributed as to avoid blockades and embargoes on the strong roads, while the weak ones coincidentally are drifting towards starvation. To insure a larger proportion of the increment to the weaker roads, by rendering them more capable of efficient service, is the idea. The purpose of the legislation being not to guarantee an income but to afford an equality of opportunity to earn it, was intended to be promoted by this means. All of these considerations join in commending a division of the country for purposes of consolidation primarily into the great subdivisions of trunk line territory, southeastern territory, that is to say, south of the Potomac and Ohio Rivers and east of the Mississippi; and western territory lying beyond the Mississippi. Furthermore, local peculiarities and the marked individuality of certain areas seem to make it desirable to set off certain subdistricts within these great primary districts. Thus New England and Chesapeake Bay or Hampton Roads territory, and a sector between St. Louis-Kansas City and the Gulf are set out by themselves and separately discussed. Such a general division of the territory of the United States conforms practically to the widest range thus far covered by any existing railroads or systems. Viewing the matter broadly, it seems not unlikely that any system ranging far and wide beyond the natural territorial divisions above described will either be lacking in breadth and stability of location, or will exceed the ability of a single management efficiently to handle. The new statutory rule of rate making and first decision rendered thereunder by the Commission—Ex Parte 74—also render it imperative in planning for comprehensive consolidation not to transgress the boundaries of these traditional territorial subdivisions. The purpose of the law being to fix reasonable rates not for individual roads but for entire groups, renders it essential that grouping adopted for this purpose conform to that which is adopted in effecting the consolidations. Otherwise confusion in the administration of the new law would be bound to result. The desirability is obvious of disturbing or disrupting existing corporations and relationships as little as possible. Precision must at all times be tempered by practicability; and, as in the limitation of rate areas or classification territory, an occasional lapse from system is deemed preferable to corporate or traffic dismemberment. The preparation of a comprehensive consolidation plan necessarily upon occasion involves a disruption as well as putting together of relationships. Obviously, such dismemberment should be rigidly minimized; and no proposal for so doing is made unless the evidence in its favor is most convincing. This tentative plan for consolidation proceeds upon the assumption that the distinction between so-called weak and strong roads, financially, is at present highly uncertain; and that it will require a period of experience under the new rates and under the new division of through rates as well as under the slowly readjusted commercial and industrial conditions after the war, in order to establish the relative earning power and credit of each. A period of trial is often necessary, both to reveal elements of strength and of weakness. Substantial equilibrium seems unlikely to be attained for a considerable period of time. The assumption is made that the purpose of this act being to rehabilitate the carriers through a new definition of reasonable rates, these entire groups of roads may be expected to prosper, to a degree as yet not ascertained, but nonetheless to a substantial amount. Whether this re-

habilitation will ultimately warrant the grouping herein tentatively proposed the future alone can decide. But necessarily the first step must be to provide for proper grouping in order to promote the best operating and traffic results. The responsibility for the subsequent financial success of the undertakings must then rest upon the exercise of the new rate making powers, conferred upon the Commission by the act. A peculiar difficulty in effecting strong with weak roads and of reconciling such merger with existing operating and traffic relationships, arises from the tendency of the weak roads to link up in series and to form thereby through routes extending sometimes clear across the country. Such routes were peculiarly the offenders in the old days of rate cutting. Their present day bid for traffic is not infrequently based upon particular attention to dispatch or certainty of prompt delivery. This competition in service is naturally expensive and tends still further to attenuate their net earnings. Furthermore, these smaller subnormal properties oftentimes serve as the natural arms or extensions of the larger companies, which by reason of a paucity of feeders, are forced to rely upon such association. Several assumptions akin to the foregoing one are made in the following plan. The first is that for a number of roads a substantial readjustment of capitalization must occur as a prerequisite for consolidation. Roads once weak have become strong, not only capable of supporting themselves but of projecting their vigor into other properties with which they may be associated. It is likewise presupposed throughout this report that all of the new powers conferred upon the Commission by the Transportation Act, 1920, will be upheld constitutionally. Such a complete reversal of public policy must lead to protracted litigation; but regardless of the final outcome no course in connection with this report is possible save to hold that the will of Congress as expressed in the Transportation Act is governing and supreme. Not even judicial decisions under the Sherman act or the commodity clause of the Act to Regulate Commerce are held to constitute a bar to the free allocation of these properties to the new systems provided by this plan. All of the roads concerned in such proceedings are therefore treated with entire freedom, assuming that the final decision as to the propriety of such placement will rest in future not with the courts but with the Commission. Another far reaching assumption is vital to the success of this plan. This has to do with the operation of terminals at great centers. Whatever the cause for the existing situation, a practically universal demand of shippers is that they be able freely to exercise their routing rights by the provision of open terminals, both at the point of shipment and at destination. The right of route across country is impaired if only possible delivery is at an inconvenient point. To put together railway lines on the map without having a constant regard to the possibility of free delivery or receipt at either end would indeed be futile. As to the particular means of this accomplishment—free and untrammeled utilization of terminals—there may well be difference of opinion. But, whatever the means adopted to this end, it is submitted that a proper adjustment of the various terminal situations,always of course with due compensation, is an important adjunct to any comprehensive consolidation plan. No recommendation, therefore, as to particular terminal remedies is offered in this report. Consolidation can never be effectively brought about without the adoption of a comprehensive policy as to terminal ownership, operation, or both. It is herein assumed that free access will be somehow provided, either under the present emergency powers as contained in section 1, paragraph 15, or by the adoption under a consolidation plan of the permanent arrangements in all of the important centers. The important point, whatever the means adopted to this end, is that there should be unified operation and entirely free access to all participants alike. Another great principle constantly kept in mind in connection with consolidation and having substantial effect upon it is the encouragement of alternate routes and gateways, in order to relieve present or prospective congestion at the great railway meeting points. There is always a certain proportion of business which by careful attention to the matter might be consolidated and shipped by an alternate route which should avoid the great center. The preparation of such a plan of consolidation thus affords a unique opportunity for the evolution of a comprehensive plan for the development of national resources. Too often in the past purely temporary or personal considerations of advantage or profit have determined the location of

our American railways. The administrative control of the terms on which the carrier companies may be allowed to ally themselves in the future may, if wisely administered, contribute to diminish economic waste and to promote commercial development. But such wise administration demands a comprehensive plan adopted in advance, and it is evidently the purpose of the act to draw up this plan, not alone for attainment of the immediate rate-making but also with a view to the larger purpose of a right direction of our economic resources as a nation in the years to come. TRUNK LINE TERRITORY. The creation of independent self sufficient systems in trunk line territory which shall compete with one another on more nearly equal terms than at present is simplified by the fact that the traffic is predominantly east and west along parallel lines. But it is complicated by the disparity in size and competing strength of the various properties, as well as by the fact that a considerable number of the railroads consist of disjointed links lying east or west of the Niagara frontier or else divided at the head of Lake Erie. The rugged Allegheny territory, with its north and south valleys and ridges, in any event leaves but a few available east and west passageways which are capable of utilization. There are five east and west trunk line stems. First, the New York Central route by way of the Hudson and the Mohawk Valley, thence north and south of Lake Erie. The second, the Pennsylvania system. The third, the Erie. Fourth, B. & O. Fifth consisting of combination of lines east and west of Buffalo. West of Buffalo the Nickel Plate, east of Buffalo, the Lackawanna. There can be little doubt as to the justification for systems as separate combinations, based upon the first three, New York Central, Pennsylvania and B. & O. Nor can there be any doubt of the existence of the two other primary through routes. The prime division then as to trunk line consolidation has to do with the fate of the Erie stem and that of Lackawanna-Nickel Plate. They ought to constitute the trunks of independent self sufficient systems. It would contribute to stability were they to do so. It is next in order to consider the constitution of these five proposed groups in detail, having in mind size, financial strength and comprehensive possession of the trunk line territory. By all three of these tests, the New York Central and the Pennsylvania have substanially fulfilled their destiny within the confines of this region. It will be found that certain lines may be abstracted or, at all events, given joint usage by the other groups, without injury to them commensurate with the advantages which would accrue to the trunk line territory as a whole from equalization of competitive strength. The Pennsylvania system is at present richly represented by mileage throughout trunk line territory. But it is in volume of traffic handled that it stands forth pre-eminent among its neighbors, not excepting the New York Central. It is proposed that the line of the Norfolk & Western be extended independently from Columbus to Lake Erie. This is part of a definite policy to create a group of independent lake to tide properties, cutting in their courses all of the five trunk lines and thereby contributing to a greater freedom of movement. Next in order of importance is the Baltimore & Ohio. This property has less than one-half of the mileage of the Pennsylvania. It is attenuated both east and west. And in order to strengthen it financially and as a competitive factor throughout trunk line territory it needs upbuilding at each of its extremities. The last of these objects is met by the inclusion of the Cincinnati, Indianapolis & Western Railroad, and the Chicago, Indianapolis & Louisville, known as the Monon. On the east, interchange and tonnage substantiate the claim of the B. & O., that it should be merged with the Reading. But it is equally true that the public interest will be subserved only by the assurance of free utilization of the Reading and Central of New Jersey rails by the other surrounding railroads, especially the New York Central. The significant point is that both the New York Central and the B. & O., have an interest in the Central of New Jersey property; and, whichever one takes it, protection for the through route of the other should be afforded. Incidently, provision would have to be made for some joint use of the valuable terminals of the Jersey Central at Jersey City, although the New York Central's West Shore yards certainly give it already more elbow room than the other roads enjoy. The terminal situation constitutes the other claim of the B. & O., to the Reading and Jersey Central. The B. & O. has a substantial investment in terminals on Staten Island and a large and constantly growing vol-

ume of traffic into New York. Shall the Western Maryland be included in the B. & O.? The Western Maryland would appear more satisfactorily to serve the public interest as a western outlet for a through route from Lake Erie via Pittsburgh. The Western Maryland is primarily a soft coal road, with an eye to a trunk line future. And the New York Central with its heavy Pennsylvania coal investments is a direct competitor in the one respect as well as the other. The real question of the Western Maryland reduces itself to choice in disposition between the B. & O. and Nickle Plate. It fails entirely to fit in with the Erie. It is important that the Western Maryland be not pocketed at Baltimore against free movement to the northeast. The recommendation to exclude the Western Maryland from Baltimore & Ohio control is final. A natural extension of the B. &. O. would be the inclusion of the Pere Marquette. But after due consideration, it has appeared best to constitute an independent group of all Michigan properties rather than to tie them up one by one with the five trunk line systems, permitting each one a line to the northwest by itself. The B. & O. has no need of the Pere Marquette, if such action is taken. It does not seek preferred treatment in the peninsula, but should be protected against a closure of these ferry routes if the available lines are parceled to others. The Erie is the fourth stem upon which it is attempted to construct a reasonably comprehensive trunk line system. As an instrument for transportation it now possesses many admirable qualities. The problem for the Erie is two-fold; to readjust its capital to its physical investment; and to develop feeders and necessary entrances to new territory. To extend and round it out, and, particularily, to let it in steel and coal territory, is the important need. The following additions are proposed; On the east, the Delaware & Hudson affords an outlet to northern New England. N. Y. O. & W. is controlled by the New Haven but it has never been serviceable or profitable in any substantial way to its purchaser. A more satisfactory use of the O. & W. would seem to be its consolidation with the Erie-D. & H. system, for such merger would considerably amplify the Erie terminals at New York, under the contract for the use of the West Shore yards at Weehawken. The Erie is also strengthened by consolidation with the Lehigh Valley. This adds an important coal traffic; and the many ramifications through New York and Pennsylvania would materially contribute to a strong trunk line. Extension to St. Louis is afforded through merger with the eastern half of the Wabash. This gives access to western connections, the western half of the Wabash going to afford an entrance to the Union Pacific into St. Louis. It is proposed to strengthen the Erie finanically and to give it first class access to Pittsburgh by assignment of the Pittsburgh, Bessemer & Lake Erie to this system. This latter road is owned by the United States Steel Corporation. If the commodities clause excludes railroads from the conduct of industry the Congress ought logically and fairly to exclude manufacturing industry from participation in conducting railroads. If legislation be necessary to bring about this result, it should be had in the interest of stability and rehabilitation of the American railway net. The Erie system, obviously, should be admitted by means of trackage to the great railroad centers of Indianapolis and Columbus. No choice is made, however, as to the particular lines to be employed for this purpose. It is important that the Erie have more soft coal tonnage. It should be merged with the Pittsburgh, Shawmut & Northern and the Pittsburgh & Shawmut. The Erie's crying need for company fuel commends this disposition, despite the physical obstacles to be overcome, as well as the necessitous conditions of these little properties. They contribute coal even if they fail to add revenue. The main stem of the fifth trunk line is found in the New York, Chicago & St. Louis, which parallels the Lake Shore from Buffalo to Chicago. The Nickle Plate at present has neither a line of its own to St. Louis nor extension to the Atlantic Seaboard. The Lackawanna is absolutely a first class trunk line with every possible facility for safety and dispatch. Apparently the natural relationship between these two properties has induced consideration not infrequently of absorption of the Nickle Plate by the Lackawanna. There can be little question that with the growth of future years this low grade direct line through the heart of the trunk line territory will be needed in the public interest. The pre-eminent financial strength of the Lackawanna would appear naturally to be the most serviceably employed in the creation of a new system, just where it is most likely to be of advantage in the course of time.

The natural extension to St. Louis of the Nickle Plate stem, is the Toledo, St. Louis & Western, otherwise known as the Clover Leaf. Its strength arises in part because of the fact that it cuts across every east and west line of importance in central freight association territory. Adequate feeders at the western end are also provided by adding the Lake Erie & Western lines. Columbus is reached over the Toledo & Ohio Central and east thereof over trackage on same road to Zanesville & Western, to connection with Wheeling & Lake Erie. Northern Ohio and Akron, Canton & Youngstown will be connected Thus tied in at both ends to the proposed Nickel Plate-Lackawanna system, it appears that their inclusion therein is open to little objection. The Lackawanna-Nickle Plate must have access to soft coal territory and to the great iron and steel district around Pittsburgh. This is done by the inclusion of the Wheeling & Lake Erie, the Pittsburgh & West Virginia and the Western Maryland. The importance to the port of Baltimore of this new through route is obvious. The Buffalo, Rochester & Pittsburgh from the north by trackage rights over the B. & O. into Pittsburgh, would also materially contribute to strengthen the Lackawana system. In Michigan there remains the Pere Marquette, the Grand Trunk and the Ann Arbor. The plan is to treat these lines in Michigan as a unit putting them all together into a regional group, which shall offer its facilities freely on equal terms of neutrality to all comers and which shall specialize its services within itself. The ferry routes across Michigan to the northwest bear certain resemblances, potentially to the different Canadian routes from New England. Each is operated at a disadvantage against standard all rail lines and yet each is important, especially in times of congestion, and each exercises a certain check upon the rate situation as determined by the standard routes. It is recommended that all of these roads be consolidated in a single group under the leadership of the Pere Marquette. As to the Detroit & Mackinac, it is a natural supplement to the Pere Marquette. The Detroit & Toledo short line builds in very well with this proposed Michigan system. The need of an independent railroad for a soft coal fuel line is obvious. To this end it is recommended that the Detroit, Toledo & Ironton road be incorporated with the Pere Marquette. To little properties, the Lehigh & New England and the Lehigh & Hudson are mere bridges to connect New England with all of the trunk lines by an up river cross country route. The Pennsylvania might profitably use the L. & N. E., as a back entrance into New England, unless it were to be merged with the New England roads as a group for a fuel line to Harrisburg. Such is my recommendation. As for the L. & H., it is believed that it may safely remain as at present, as a joint bridge line for common use by all the trunk lines. It might perhaps be owned by some one of them, but its rails should be open to all alike on equal terms. THE NEW ENGLAND REGION. The transportation problem of New England as respects consolidation is unique. It is an economic unit on the outskirts of the central commercial territory of the United States. Its transportation problem is to foster its manufactures in three ways; First by provision for the cheapest inbound carriage of raw materials, coal, cotton, iron and steel; secondly, by insuring cheap transportation for foodstuffs and other necessities of common life from the remote centers of their production; and thirdly, to make certain that the freight rates on its finished products, outbound shall keep them in the various markets throughout the heart of the United States, in the face of constantly rising local competition thereabouts. Financially, of course, the results obtained from inbound and outbound tonnage are not as widely different, owing to the fact that most of the traffic into New England consists of bulky, low grade business, mostly raw materials. Whereas the traffic delivered is constituted mainly of high grade merchandise or manufactures, on which a relatively high freight rate is paid. It is this return current of high grade tonnage upon which the entire power of New England to trade with its western connections depends. It is a valuable business, much coveted in exchange; and the prime element in constituting a New England group of railroads, independent of trunk line affiliation is the maintenance of its ability as a distinctive group of carriers to distribute this tonnage among all western connections, in such a manner as to assure both preferred service and a fair proportion of the through rate. It is apparent that the Canadian routes are

important not as a main resource, but rather by reason of their potential usefullness ,either in time of congestion or as a check upon undue rate advances by the standard routes. Consolidation of the New Haven with the B. & O. amplified system as proposed in this report, deserves the most serious consideration. This is the most attractive one following out the principle of trunk line consolidation. What shall be done with the Boston & Maine, Maine Central and the Bangor & Aroostook? Under a proposed trunk line system the Boston & Maine would be consolidated with the Erie system; the Maine Central and Bangor & Aroostook consolidated with the New York Central. It is my own choice for northern New England if a trunk line plan is to be adopted at all. The alternative consolidation plan for New England proposes to create a single comprehensive system out of its existing carriers, preserving only such domestic competition among them as shall satisfy the demands of the statute. The underlying theory is that the New England carriers are closely interlocked with one another by historical, financial, and commercial considerations, based upon geography; and that their joint rehabilitation may be best brought about by concerted action, not only as respects relations with trunk lines or foreign railroad connections, but also as respects their relationship with the New England public. Certain advantages of a group treatment of New England are manifest. They may best be considered, first, as concerns foreign relations, that is to say, dealing with carriers outside New England, and secondly as to problem of domestic concern. As to the former, the outstanding advantage is the preservation of the existing freedom of interchange with connections with every part of the country. This entire freedom of routing is a boon, and the competition in service which attends upon it is of prime importance. Another advantage of the New England plan is that it affords a consolidated power in dealing with all trunk line connections as to divisions of through rates. Nothing would contribute more to bringing about a division of through rates on an equitable basis than a wholesome respect among the trunk lines for the consolidated power of a New England group, free to divert its immense and lucrative traffic through any of its numerous gateways. With a well balanced trunk line competition among the five systems, the advantage attendant upon consolidation is obvious. Another possible advantage of a regional New England consolidation has to do with the fuel conditions territorially. An outstanding disability of these railroads is their remoteness from a soft-coal fuel supply for company use. Normally, southern and western New England is almost entirely dependent for its company fuel upon all rail carriers. There appears to be a normal and economic tendency to substitute all rail for a broken rail and water service. The two most accessible sources of soft coal are the Clearfield region north and northeast of Pittsburgh and the Fairmount and Connellsville district mainly due south of Pittsburgh. The Clearfield region is tapped by the Pennsylvania, the New York Central or the B. R. & P. These roads could handle the coal direct or through the Lehigh & New England, and the Lehigh & Hudson. The latter road is to be owned by all carriers as a bridge line and the east end of the N. & N. E., should be owned by the New Haven. Domestic operation and traffic also merit consideration. It is important that there be a consistent administration of the different gateways. Congestion locally has been all too frequent. It is submitted that the location of New England in a transportation pocket with few outlets, requires a greater degree of unified administration than is possible under existing conditions. A closer correlation between the railroads and all other forms of local transportation is desirable. A consistent development of means for local interchange would seem to be favored by regarding all New England as, in a sense, a great terminal. A final advantage of the group plan is that it would promote a higher sense of local interest and of responsibility financial as well as commercial. One is forced to the conclusion that the rehabilitation of the New England railroads must take place through a mustering of all of the financial resources of the region, public as well as private. The industrial preservation of New England demands it. CHESAPEAKE REGION (Lake to Tide, soft coal.) Three railroads based upon Hampton Roads in the lower Chesapeake Bay, although in part in trunk line territory, and to some degree participating competitively in trunk line business, merit consideration by themselves. The three roads compre-

hended are the Chesapeake & Ohio, the Norfolk & Western and the Virginian. Although only about 38 per cent of the total common and preferred stock of the Norfolk & Western is held by the Pennsylvania, the road is to all intents and purposes a Pennsylvania property. It appears that as to comprehensiveness the three properties in this group differ from one another in degrees. The C. & O. has succeeded independently in constituting itself a lake to the tide soft coal property. The N. & W. has not progressed more than two thirds of the way to Lake Erie water front, and the Virginian is still entirely a tidewater affair. The technique of coal road operation especially sets off these properties from those of the trunk lines. The coal is produced from numerous mines in these limited areas and is gradually collected by an elaborated operation of trunk lines into through trains which move either to tidewater, to the great lakes at Toledo or to central distributing points, like Cincinnati, Chicago, or Columbus. From these centers the coal is transported to numerous destinations in the middle west and northwest. The gathering of this fuel from the mines, its transportation in solid trains to the central distributing points, and its subsequent delivery at these points—either to vessels for water transportation or, in relatively small quantities, to various connections—constitutes a complete transportation operation. To add a great volume of traffic would complicate the situation. No attempt should be made to create general trunk lines out of these roads; but they should be treated, nevertheless, as national assets, having in view their general usefullness to the entire country and to all of the other railroads. The surplus coal production above the needs for consumption east and west—for export, or for the central west—should be free to find its way more readily in every direction. This need is accenuated by the difference in quality and usage above mentioned. A greater need of movement in both directions, and a freer flow of coal to all possible markets seems desirable. Entire freedom of flow will be produced only by the utmost efficiency of the instruments of transportation. This efficiency calls for close coordination between barge or vessel movement and car movement. It presupposes the free movement in unbroken train units from the mine to tide or lake as the case may be. The docks should be owned and operated by the originating railroad. Movement is interrupted by any shift of operating control en route; and particularly is it important that every railroad serving these coal fields should have outlets over its own rails east and west to lake or tide. The prime purpose of the accompanying recommendations is to accomplish this end, although the acuteness of need varies as between the several properties. The Virginian Railway, serving only the smokeless fields, with a market exclusively at tide, most urgently needs extension to the great lakes. The plan most seriously considered, and herewith recommended, is of consolidation with the Toledo & Ohio Central and the Kanawha & Michigan. The completion of the Virginian line through to Toledo over the rails of the above named carriers is physicially a simple matter. The net result of such construction and trackage would be to render the Virginian Railway a lake to tide property, capable thereafter of offering its surplus smokeless coal as freely in western markets as in the east. The need of extension of the Norfolk & Western to the Lake Erie water front is somewhat less apparent than that of the Virginian. But the growing volume of westbound business and the desirability of independent operation, from dock to dock by one management lead to the recommendation that this railroad also should be given an outlet to the lakes independent of the Pennsylvania lines. The western division of the Toledo & Ohio Central, which passes through Columbus, offers an alternative for a lake line to the N. & W. It would unquestionably enable the N. & W. better to cope with the immense coal requirements of the northwest in future years. The grand strategy of the Hampton Roads properties, as above outlined, might still be attained by one modification as to detail. Were the Virginian and the N. & W. to be consolidated not only might a single outlet to Lake Erie be developed for both, but also a number of operating economies might be effected. Were these two to be combined, the two lines of the T. & O. C. might be worked for the joint benefit of them both as thus consolidated. By extending the two lines, which now fall short of completion, through to Lake Erie, every trunk line is afforded a direct connection and an opportunity to participate on more nearly equal terms than

at present in any movement east and west from these particular lines. To afford such direct connection with the main stem of every trunk line is the underlying principle of these recommendations. THE SOUTHEASTERN REGION. Southeastern territory, south of the Ohio and Potomac rivers and east of the Mississippi, contrasts sharply as respects transportation conditions both with trunk lines and with the west. Population is sparse, and traffic is both light and to a considerable degree, seasonal in character. There is relatively little local business. Much of the traffic is for a long haul, either of raw products —cotton, lumber or garden truck—northbound; or foodstuffs and manufactures in the opposite direction. Formerly there was widespread water competition; but, except for the extended coast line service, this has now become relatively insignificant. The numerous rivers and the encircling seaboard have, however, profoundly affected the historical development of its transportation system, from which there has resulted many of the existing corporate relationships. Most of the railways have been constructed not so much in, as into the interior of this region. A bird's eye view of southeastern territory shows that it is divided geographically down the middle from northeast to southwest, parallel with the coast, by the Allegheny mountain range. From Atlanta south, there is no discernable separation into east and west; but from Atlanta north, the railways of this territory have first gradually extended themselves more or less parallel with this mountain barrier. On the east there resulted three distinct systems; namely, the Southern Railway, the Atlantic Coast Line, and the Seaboard Air Line. In the west, transportation was provided primarily by the Illinois Central and the Louisville & Nashville. On the Mississippi side the preponderance of traffic is southbound, but along the eastern continental shelf both bulk and value of tonnage are greater toward the north. Twenty-five years ago one might consistently have divided the south into two sub-districts for purposes of railroad consolidation. But the events of the succeeding decades have profoundly modified these conditions. Through routes from New Orleans to the Potomac gateways trend northeasterly; and similar through routes, especially for the carriage of Florida products and lumber trend northwesterly from Jacksonville to St. Louis. Each half of the south, east and west, is therefore today much more closely bound to the other by the ties of trade than a generation ago. A complete identity of interest between the eastern and the western halves of the south is not quite so apparent with the next great existing combination, that of the Louisville and Nashville, and the Atlantic Coast Line. Since this time these two properties have evolved, not so much as allies, as integral parts of one and the same great system. It is clear that for this second great existing combination, as well as for the Southern Railway, it must be regarded as having established its fight to unity as it stands. The remaining large systems in the southeast are those of the Illinois Central and the Seaboard Air Line Railway. The eastern and the western halves of this region are indissolubly bound together by the diagonal route, which meet and cross one another at Atlanta. A great parallelogram is depicted with Richmond, St. Louis, New Orleans, and Jacksonville at the four corners—Cincinnati and Louisville being midway of the northern side. Three at least of the four southern systems pretty completely cross this territory completely, either from Richmond toward New Orleans or from Jacksonville to the northwest through Atlanta. Between almost all of the stragetic points there are two fairly evenly balanced systems except as against the Illinois Central main line from Chicago to New Orleans. The nearest direct competitor—the Mobile & Ohio to the rival port of Mobile, is hardly integral in the Southern Railway as an interior system. A matter of fundamental importance concerning not alone the southeastern states, but the entire middle west, is the future development of the seaports on the Atlantic and in the Gulf of Mexico. But a great and growing interest among manufacturers and in the Mississippi Valley is manifested in the possible movement of their products southward rather than due east to the sea. It is not abnormal for such manufactures to move out of Michgan by way of New York, but there ought to be substantial equality of opportunity to ship the product through New Orleans; and this is particularly the case from points farther south like Chattanooga, Tenn. Every encourage-

ment should be offered to fill these return southbound empties with exports thereby encouraging the development of the new routes and seaports in this entire southeastern territory. As long as the superior trunk line facilities and the lake competition obtain the southern ports are bound to operate under a handicap. But the growing importance of the Panama canal will doubtless lessen this in future. The Southern Railway system as at present constituted has so admirably restrained itself against overexpansion, so thoroughly consolidated its hold upon the field within which it is best fitted to serve, and has so far contributed to the upbuilding of the south, incidentally increasing its own revenues thereby, that it will be little disturbed by this general plan for railway consolidation. The Southern Railway, owning the Mobile & Ohio, would apparently welcome its transfer and utilization through other connections. But until postive advantages may be discovered, not as yet revealed by investigation, there seems no course open other than to recommend its continuance at present. The main line of the Georgia Southern & Florida from Macon to Jacksonville has been so improved physically that the policy has been pursued by the Southern Railway of gradually diverting all of its traffic to and from Jacksonville via this line. The New Orleans Great Northern Ry. operates an independent property almost 300 miles in length, extending up to Jackson, Miss. It links up with the Alabama & Vicksburg and both seem foreordained for inclusion in the Southern Ry. The Louisville & Nashville and Atlantic Coast Line constitute a second system throughout the south which admirably matches the Southern Ry. It differs from the Southern principally through its network of lines in southern Georgia and Florida. The Atlanta, Birmingham & Atlantic Ry. is the largest single property in the southern states which is still independent of the great systems. This railroad is an outgrowth of a terminal enterprise at Atlanta, and the only way to save the situation was to construct a railroad to serve the terminal. It is the location of the A. B. & A. as a direct line and bridge for the L. & N.-A. C. L. system which constitutes the principal source of its value. All of the fruits and vegetables from mine roads in Florida, destined for western points through the Atlanta gateway, are routed this way. The conclusion is that merger of the A. B. & A. with exception of the branch to Thomasville which is serviceable to the S. A. L., in the L. & N.-A. C. L., is desirable in the public interest. Another supplementation is by means of the line of the Georgia & Florida Ry. This little road from Augusta southwest to Madison, Fla., is one of the smaller properties which ought to be incorporated in the stronger systems. Its particular value is in connection with a through route between Florida and Cincinnati by the C. C. & O. gateway. The Norfolk Southern should be consolidated with one of the stronger systems. This runs through the middle of North Carolina with its base on Hampton Roads. It should be merged with the L. & N.-A. C. L. The Winston-Salem branch of the Norfolk and Western should be merged with the Atlantic Coast Line system. The continued independence of the Seaboard Air Line merits attentive consideration. Its financial condition does not permit it to support further additions which are not at least of equal contributing strength. At present the road is unduly spread out and its various arms are disconnected. These arms extend somewhat entreatingly toward a connection with the Illinois Central. A combination of the two properties gives general comprehensiveness to the combined group, quite analogous to the reach and scope of the other two great systems. The S. A. L., is not at present a preferred connection of either the Illinois Central or the Central Georgia. Nor would such a merger contribute to the distribution of coal, since both the Illinois Central in Alabama and Tennessee and the entire Seaboard system are lacking in coal development. For these and other reasons the alternative is elected of retaining the independence of the S. A. L. as a fourth system in the southeast. Given a coal supply from the north by participation in the affairs of the Clinchfield property and the Seaboard may well establish itself finally as a great railroad. The Georgia Southern and Florida Ry. operates about 400 miles of line in southern Georgia and northern Florida. It is controlled at present by the Southern. It would accord apparently with the announced policy of the Southern to abstain from local development in Florida to withdraw from a part of this investment. The Southern Ry. is

most profitably utilizing the main line of this railroad. But the southern branch from Valdosta, Ga., to Palatka quite appropriately fits into the Florida network of lines in the Seaboard system. It is further recommended that the Durham branch of the Norfolk & Western extending from Lynchburg south be merged in the Seaboard Air Line system. The net result as to the Virginia gateways would be to give access for the Southern Ry. to all of them except Roanoke and Petersburg; to give the Atlantic Coast Line access to every Virginia gateway except Lynchburg, and to let the Seaboard into all of them except Roanoke. Coincidentally all these southern systems would be afforded satisfactory interchange points with all three of the principal routes to the west. The A. C. L. would perhaps be favored because the Roanoke gateway would afford a through route to the east by way of the Norfolk & Western to Hagerstown. But this advantage is a necessary feature of the situation. The Illinois Central occupies a unique position among the carriers of the country. Traversing one of the most fertile regions on the earth, confronted by no physical obstacles of grade or alignment and rigidly confining its activities to the cultivation of its native territory it has prospered accordingly. It is evident what one has to do here with a system which is industriously pursuing its own best ends and contributing thereby to the upbuilding of the country. Neither from an operating, traffic or financial standpoint does there appear to be a necessity for disturbance of the existing situation. Such modification as is suggested is merely in detail. It must remain as a trunk line to the Gulf. It is recommended that no change take place in so far as the stem from Chicago to Council Bluffs is concerned. The Memphis-Birmingham division of the St. Louis-San Francisco is one of the great arteries of commerce in the south. The recommendation is that it be assigned to the Illinois Central. The Illinois Central has so far built the Yazoo & Mississippi Valley road into its system that to recommend any transfer would be manifestly prejudicial to the parent system. The only other addition to the I. C. system is the Tennessee Central, affording entrance into Nashville, and the Gulf & Ship Island, which more naturally attaches to this system than any other. The Carolina, Clinchfield & Ohio R. R., although operating only 291 miles is so situated stragetically in its relation to the southeastern territory and particularly to the coal supply, that its disposition under a national consolidation plan merits careful consideration. It is at once a bridge line and also an indispensable fuel line for the south. It is essential in many ways to the successful operation of a number of adjoining systems. The second dominant feature of the Clinchfield property is its relation to the coal supply of the southern states. The coal measures of the territory of eastern Kentucky, western Virginia and northeastern Tennessee constitute the supply primarily for the entire southeastern territory. The incorporation of the Clinchfield with the Southern would not put an end to competition. Analysis of the traffic interchange between the Clinchfield and the three principal systems operating in the Carolinas confirms the impression as to the great and increasing preponderance of business with the Southern. In conclusion, it is clear that while originally the Seaboard stood closest to the Clinchfield enterprise, the role of next friend has been most successfully assumed by the Southern. The Southern Ry. has assuredly built itself into the enterprise. The Florida East Coast Ry. is plotted to all these southeastern railways because of the fact that it is a bridge line, operating in a territory which assuredly will not support, at least for many years to come, another competing line. It would be a manifest injustice and a hardship to other railroads to tie this property up to any single system. It is recommended therefore, that the Florida East Coast Ry. remain independent, or else that some plan be evolved which shall guarantee by joint control equal and impartial treatment for the Southern Ry., the L. & N.-A. C. L., and Seaboard Air Line. THE WESTERN TRANSCONTINENTAL REGION. The grand strategy for transcontinental traffic in western territory necessarily depends upon the supply of available through routes connecting either Chicago or St. Louis with the Pacific coast. In the northern group there are three lines: The Great Northern, the Northern Pacific, and the Chicago, Milwaukee & St. Paul. The middle group consists of the Union Pacific, and Denver and Rio Grande. Southern railroads are the Santa Fe and the Southern Pacific. The western trans-

continental problem thus resolves itself into such an arrangement of these seven existent stems as shall best preserve a well balanced competition within each of the three territorial groups, and which again, in an even broader way, shall promote a normal rivalry as between group and group, covering the entire transcontinental field from Canada to Mexico. The east and west plan lines naturally end at important centers like Omaha and Denver. And, to a considerable degree, the situation at St. Paul-Minneapolis is the same. More through lines, in short, enter each of these cities from the east than there are available through lines leaving them toward the west. The neck of the bottle, in other words, becomes progressively narrower. This circumstance greatly complicates the stragetic analysis, for it forces a choice as to stem connections among a much greater number of available roads towards the east than the seven possible gateways which penetrate the Rocky Mountains. Whether actually separated or not as distinct corporations, the difference between the ordinary railroad and the mere bridge line is basic and determinant. Inasmuch as the Santa Fe, the St. Paul, and the Hill lines have all elected to conduct transcontinental business competitively, under unified ownership clear through from the Pacific coast into Chicago, it seems imperitive that the same scope should be given to all the rest. The Union Pacific Railroad is the key log to the transcontinental jam—it is the clue to the plot. It is at once the oldest and shortest, logically the most perfect and financially the strongest, among all the transcontinental stems. Until the completion of the Western Pacific from Ogden westward, the Union Pacific was a veritable monopoly, the only through route directly to San Francisco. The U. P. has attained an inordinate strength and a dominant position, as practically the only first class direct through route. And yet there is available for competition with it another new bridge line, the Western Pacific, which, while physically prepared to function, has broken down because of the lack of interchange, connection, and support at both ends. The first essential choice to be made therefore is of such a merger for the Western Pacific—and with it also, of course, the Denver & Rio Grande—as shall enable them to be matched against this dominant key line, the Union Pacific Railroad. Regardless of source, however, the fact remains that to successfully rival the Union Pacific will call for an army of operating and financial resources which it will be extremely troublesome to find. The difficulty of matching the Union Pacific by a rival direct route is not confined alone to the carriage of the burden of the Western Pacific. This bridge line is pivotal to the situation. It is manifestly a precarious bridge, with absolutely no friendly footing at the western bridgehead. But that is not all. The Denver & Rio Grande is most equally a bridge line, essential to the constitution of any direct through route by way of Salt Lake City. It is in a pathetic and parlous state. There are but two railroads in western territory which by reason of their geographical location, their traffic interchange, and their inherent financial strength are adequate to undertake the effective utilization and development of the Western Pacific-D. & R. G. bridge. The first of these is the Chicago Burlington & Quincy; the other is the Sante Fe. Over a series of parallel lines closely bound together, the Burlington runs directly west to the base of the mountains both at Denver and at Cheyenne. It is self-sufficient, having amply strengthened itself by the provision of coal lines the entire length of Illinois. Its financial strength finds no counterpart anywhere except the Union Pacific. Evidently the Burlington must be still further strengthened by some alliance with another strong railroad. All the relationships which our subsequent examination reveals, points to the Northern Pacific as the most obvious side partner with which to undertake a difficult joint enterprise, the support of the Western Pacific bridge line. It will be shown that an effective counterpart for the Union Pacific can be produced only by some such alliance between a middle transcontinental road and one lying in the north. The location of the Denver & Rio Grande is such, and the Sante Fe so approaches it, that this property to the Sante Fe would be a feeder, more than a mere bridge. To the Burlington, both the D. & R. G. and the W. P. would be merely the means to an end. To the Sante Fe, one of them—the former—would be a thing in itself. For these reasons, the Santa Fe is better fitted to assume the new obligation of the Western Pacific bridge line than the Burlington. There is the same objection to Santa Fe control of the Western Pacific, that is to

say, of two gateways into California, as there is to the single control by the Southern Pacific of both these gateways. Seeking to produce evenly matched conditions, therefore, the Burlington-Western Pacific is much more closely parallel to a Union Pacific-Central Pacific system than any combination built upon the Santa Fe could possibly be. It is just as essential that the Western Pacific be administered free from Santa Fe control, as that the Central Pacific be divorced from the Southern Pacific. Not to do so would far more than counterbalance the Panama handicap. It would then so far press the advantage against the other railroad connections into Ogden from the east as to jeopardize their future. Subsequent financial analysis clearly establishes such a diversity as to earning power, feeders, and general conditions between the three lines west of St. Paul, that a much better balance can be brought about by pitting the two weaker companies against the Northern Pacific than by leaving all three of them to compete with one another. The plan proceeds therefore upon the basis of two through northwestern transcontinental systems. It subsequently appears that for decisive reasons the Union Pacific and the Chicago & Northwestern should be merged in a very strong combination, running due west from Chicago, and no other relationship for a direct eastern stem for the Union Pacific conforms to the statute as to preservation of existing trade routes. But this arrangement obviously intertwines the northwestern transcontinental sector with the middle group of through lines. The Union Pacific-Chicago & Northwestern combination is left in possession of lines, not only due west to San Francisco, but up into the territory northwest of Chicago as far as the head of Lake Superior. This system also penetrates by way of the Oregon Short Line into the northwest, into Washington and Oregon alike. To balance up conditions, it is imperative that an equally strong and an equally comprehensive system be set up against it, having as wide a range on the Pacific coast. This is another reason for the Burlington-Western Pacific combination, also because remaining intact as a system, including the river line to St. Paul, it creates a worthy competitor as to reach and power. Only by way of the Burlington and the Northern Pacific, the two strongest roads through St. Paul, is Seattle reached by a line able to cope on even terms with the Oregon Short Line. The simplest solution for the northwest therefore, apparently forced by the express terms of the statute and in order to minimize existing corporate disruption, is to elect the alternate of two rather than three transcontinental systems through the twin cities. And this choice involves a divorce of the Great Northern from the Northern Pacific; and the alliance of one or the other to the St. Paul system. The Northern Pacific is amply provided with branches at the western end, just where the St. Paul is notoriously weak. And, conversely, the wealth of branches throughout the territory northwest of Chicago admirably supplements the Northern Pacific in reaching traffic originating territory. All these considerations, of economical operation, conservation of investment for future use, and grouping as to branches and feeders, commend this union. The union of the Northern Pacific and the St. Paul is open, however, to one fundamental objection. It runs directly counter to the terms of the statute as to the preservation of competition. It is believed that the objection springing from the almost complete obliteration of competition by merger is conclusive in and of itself. Almost every advantage except that of economy and efficiency from joint operation attaches to a consolidation of the St. Paul with the Great Northern. The two lines instead of being locally competitive, and keenly so, are in several ways supplementary. The Great Northern is materially more developed at the west end than the St. Paul, and its numerous feeders through North Dakota add, rather than duplicate, the St. Paul lines. This merger has certain decided advantages as to terminals over the St. Paul-Northern Pacific combination. The fundamental test of financial stability, namely, margin of safety above fixed charges, commends the Great Northern-St. Paul combination. This combination needs certain additions in order to balance competition throughout the northwest more fairly with the Northern Pacific-Burlington combination It must be protected as to access into Portland, Ore. The Spokane, Portland & Seattle admits the St. Paul automatically under the proposed merger to Portland territory. And the continuance of the joint line owned by the N. P. between Seattle and Portland would assure competition south of Seattle. North of Seattle, the alliance admits the St. Paul

over the Great Northern lines into Vancouver. Similarly the rights of the Great Northern in the Deschutes River Canyon, and down the Willamette Valley should be assured equally with the St. Paul. Thus, it appears that each company would profit greatly by the partnership and would be able to cope more successfully with the old and firmly entrenched Northern Pacific line in this district. The Union Pacific is unique among transcontinental lines in having so far refrained from entrance into Chicago over its own rails. The outstanding facts as to interchange is with the Chicago & Northwestern, as it, excepting the St. Paul, exchanged more cars than all of the other lines put together. An equally potent factor which accounts for the preference to the Northwestern over the St. Paul, doubtless, is the heavy traffic from the east by way of the Vanderbilt lines which the Northwestern is able to offer in exchange. Its terminals at Chicago and its eastern affiliations render it beyond all question the natural eastern connection for this system. This alliance conforms in another respect to the requirements of the act. The statute directs that strong and weak properties shall be combined. The Northwestern, always considered a strong road because of its honest and conservative financing, has suffered nevertheless, along with other properties, similarly circumstanced, by reason of war conditions. The two properties are part and parcel of the best direct transcontinental route at present. But it should be operated as one property from end to end, permitting the earnings on the long haul to balance up against the heavy expenses at either end, but notably at Chicago. Incidently, of course, the Chicago, St. Paul, Minneapolis & Omaha, controlled by the Northwestern system since 1883, and built into it fundamentally, should be merged corporately with the other two. Comprehensive development of the Union Pacific system calls for adequate entrance into St. Louis. The lines most favorably placed for this purpose are those of the Wabash system, west of the Mississippi river. It is obvious again that a natural current of traffic here exists—a closer relation, in fact, than is indicated with any other of the great systems. The proposed dismemberment of the Wabash affords an opportunity to build in these lines with, it is believed, constructive effect. The Wabash trackage over the Missouri, Kansas & Texas to Hannibal affords an eastern connection to the proposed Erie system, and constitutes another route from the West avoiding the congestion both at Chicago and St. Louis. Yet another essential complementary line in the new Union Pacific system is abstracted from the Chicago Great Western. The line from Des Moines to Kansas City is superfluous for the Burlington and distinctly adds to the effectiveness of the Union Pacific system. It is recommended therefore that this division of the C. G. W. be thus transferred; and that trackage rights up to Marshalltown, Iowa, be given, in order to cut off the corner of the route to Chicago. This would have an added advantage, as the C. G. W. has a poor station and location at Marshalltown. The station of the Northwestern could profitably serve for both systems. The possible transfer of the Central Pacific from the control of the Southern Pacific is one of the greatest single issues calling for determination under this plan. The Central Pacific is dependent upon the Southern for a sole access to San Francisco, other than by the Oakland ferry service. Yet further interrelation arises at the terminals themselves in San Francisco. These all belong to the Southern Pacific. The Central Pacific has no terminals, while at Oakland the reverse is true, the main terminals belonging to the Central Pacific. And then, the Central Pacific owns the original line from Roseville, Calif., to the Oregon boundary. Even today the Southern Pacific has no line of its own up the Sacramento valley beyond Tehama. The economic advantage of ownership and operation of a line from the middle west clear through to San Francisco, absolutely independent of all other routes, is so evident technically as to suffice in itself for such recommendation in this plan. The entire transcontinental rate adjustment is affected by the circumstance that the Southern Pacific and other transcontinental lines, wholly or in part operated by water, compete most effectively at the Atlantic Seaboard. But the effectiveness decreases as the distance inland becomes greater. This circumstance accounts for the blanket rate on transcontinental business for the United States east of Chicago. It is evident that progressively with increase in the distance from the seaboard, the force of Southern Pacific competition for its Sunset route declines, until a dead center is reached at which traffic presumably might move

directly all rail via Ogden, or else back to the seaboard and by vessel round to New Orleans. Both because of operating ability and strength of financial motive, what happened practically was that competition was open and keen between the all rail, the Central Pacific route, and the Sunset route, throughout the territory in which the Sunset route was more or less handicapped by reason of the expense of the back haul to the seaboard. But actually a dead line existed, somewhere between Chicago and Pittsburgh, the location varying according to the nature of the traffic; and the S. P. did not solicit or prefer to haul via Ogden any traffic having origin or destination east thereof. The fact that all through business depended finally upon the good will of the S. P. manifested in rates, facilities, dispatch, and all of the other concomitants, gave that company a decisive influence ultimately in the carrying out of its plans. Competition in transportation with the outside world is and always has been the supreme need of California. Theoretically the California shipper has a right to route his freight; but the S. P., controlling at present all of the local lines, is too powerful to risk affronting. To confer a real freedom upon the California shipper, as well as thorough-going rivalry in service everywhere, would certainly be an unmixed advantage. On the ground that a more nearly universal and thorough ingoing instead of half-hearted and tepid competition may be promoted for the California slope, the dissolution is herewith recommended This entire plan purports to bring about a more evenly balanced competition. An endeavor is being made to match two great transcontinental systems with one another in order to keep each one on its toes and provide service for the public. Along with the Central Pacific lines there are a considerable number of isolated branches. Those which appear to belong to the Central Pacific are as follows: Placerville, Ione, Valley Springs, Raymond, Madera, and Oakdale. The Southern Pacific will have the following lines: Through to Tehama and on to Portland, with existing trackage to Seattle, together with the spur from Wed. It will have running rights from Brighton, near Sacramento, to Lathrop, Niles, Redwood and Oakland, thus completing a through line the length of California and into San Francisco. Co-operative utilization under a pooling arrangement for the two lines down the San Joaquin valley. The S. P. should give full privileges to the C. P. from Redwood into the San Francisco terminals, together with a grant of equal running rights over the Benica cut off line from Sacramento to Oakland. In this cut off the Western Pacific should also participate. What shall become of the S. P. line in Oregon? Further time for comparison of data is necessary. Panama competition will certainly increase, and the roundabout transcontinental routes can hardly be expected to hold their own unless afforded every encouragement. To take away the Portland traffic also, or even a goodly share of it, in addition to the loss of such part of the C. P. traffic as will be diverted by the new arrangement, would be manifestly unfair. It is finally recommended that these Oregon lines remain in the possession of the Southern Pacific-Rock Island system. The broadest national interests invite attention to the course of future construction in the great undeveloped triangle, with the western base on Portland-Sacramento and its apex at Salt Lake City. The program ultimately necessary for the completion of an entire interior line of communication should be the reconstruction of the Nevada-California-Oregon Ry. from Reno, Nev., north, acquired by the Western Pacific, bringing it to standard gauge and then competing it to a connection from the North with the DesSchutes lines. Thus would be provided a military detour route which might be of great importance in time of need. Ultimately, of course, it is to be hoped that the great systems reaching the coast in Washington and California shall be linked up by north and south connecting lines. It would appear that an equipoise would best be promoted by continuation of the existing trackage rights to the Oregon Short Line into Seattle, coupling this with such an adjustment of rates as to discourage roundabout hauling. The activities of the U. P. in the northwest ought not fairly to be circumscribed short of the same competitive opportunities which attach to the N. P. It would doubtless contribute to more effective operation of the U. P. as well as promote competition, were full and equal trackage rights to be accorded by the Colorado & Southern from Orin Junction, Wyo., to Cheyenne. Duplication of the line is apparently unnecessary. To the same end there ought to be trackage on the Burlington line from Pratt, the end of a U. P. stub, also up to Orin Junction. At

present the Burlington route to the Pacific coast by way of the Denver & Rio Grande at Pueblo, is most indirect. The bulwark of the Rocky Mountains behind Denver is bound to be overcome before long by the construction of a penetrating direct line toward Salt Lake City. It is probably in order to supply this need that the Denver and Salt Lake City project has been so persistent, in the face of seemingly insuperable obstacles. It is said to be feasible to leave the D. & S. L. at McCoy and to reach the D. & R. G. at Dotsero. The remainder of the D. & R. G. on the Salt Lake City is almost all water grade and could readily be fitted to carry the Burlington load of traffic. The question of terminals at San Francisco and of California feeders for the W. P. is a complicated one. Feeders doubtless will come in time. But obviously a line to the coast is of no use without adequate approaches to the water front at once. The joint use of essential facilities ought to be upheld and developed. The outstanding characteristic of the Burlington-Northern Pacific system is the lack of connection between the twin cities and the Missouri River gateways. For this purpose it is recommended that the C. G. W. be merged with this group. The Chicago Great Western is by far the shortest line between Omaha and St. Paul; and between Kansas City and St. Paul it stands second on the list; whereas the Burlington is one of the most roundabout in each instance. The Minneapolis and St. Louis Ry. may also find a fitting employment in completing the supplementary lines in the Burlington system. The line of the M. & St. L., west through South Dakota, being connected up along the Missouri River valley with the not distant N. P. lines might afford another short cut across country toward Chicago, thus avoiding congestion at the twin cities. The missing link for such a route is supplied by the Rock Island lines in Minnesota and South Dakota. Probably more tonnage originates at Great Falls, Mont., industrial districts than from the whole stretch of local points west of Billings. Trackage should be granted the Northen Pacific over one of the approaches to this district. It is incumbent to strengthen the St. Paul-Great Northern by every possible means. One of these is the possible addition of the financial strength of the Soo Line. The excellent freight terminals of the Soo, considerably exceeding its present needs at Chicago, together with its superior facilities at the twin cities, constitute still further elements of strength. The Wisconsin & Northern, Duluth, South Shore & Atlantic and the Copper Range ought to be included. Also the Spokane International. The final recommendation is, however, that the Soo Line remain independent. The Duluth & Iron Range, Duluth, Mesaba & Northern should be allotted to the Great Northern-St. Paul. Strength for the St. Paul will undoubtedly flow from the recent acquisition of the Chicago, Terre Haute & Southeastern railroad. It is further recommended that the eastern division of the Chicago & Eastern Illinois be allotted to the St. Paul. The Chicago, Milwaukee & Gary Road is a belt line around Chicago and should not be awarded to one line exclusively. The St. Paul-Great Northern ought surely to have an independent access to St. Louis the most feasible connection seems to be to take the line of the M. & St. L., from Mason City, Iowa, south to Albia. From this point Wabash trackage with the U. P. would carry the line to Moberly, Mo. Thus would be provided a route to match the Burlington river line via Dubuque. The independence and prestige of the St. Paul system might well be promoted by taking over the Burlington line from Shoshoni, Wyo., up to Laurel, Mont., or at all events, trackage rights might be given thereon. Entrance of the St. Paul to Portland would be over the Spokane, Portland & Seattle. Merger of the Chicago, Rock Island and Pacific and the Southern Pacific to constitute a thorough transcontinental system via the southern gateway is unreservedly recommended. Such a combination matches almost point by point with the Santa Fe. The connecting link is the El Paso & Southwestern. A prime requisite for logically rounding out the Rock Island-Southern Pacific system is the provision of a line up the Mississippi Valley from Memphis to St. Louis and thence on to the north. To meet the situation an exchange with the St. Louis Southwestern is proposed. This, it is believed, permits of a satisfaction of the Rock Island need and will not prejudicially affect the resultant Frisco system. Supplementation of the Rock Island system by a line up the Mississippi Valley north of St. Louis is as important as entrance to St. Louis from the south. The river line of the Burlington at least as far as Keokuk should be merged with the Rock Island, and that such use as the Burlington de-

sires to make of it shall be had by means of trackage. The Vicksburg, Shreveport and Pacific road should be included in the Rock Island, also the Midland Valley. San Antonio & Arkansas Pass, Texas-Mexican Ry., Texas Midland, San Diego & Arizona, Arizona & New Mexico, the Houston & Brazos Valley and Franklin & Abbeville, San Antonio, Uvalde & Gulf, may be reserved for final decision. Some disposition should be made of the North-Western Pacific, the line from San Francisco between the ocean and the Coast Range. It is now controlled equally by the Santa Fe and the Southern Pacific. The physical condition inclines to the belief it should remain as at present. The Atchison, Topeka & Santa Fe stands as one of the most compact, complete and financially well balanced railroads in the United States. It is a monument to the sagacity of its late distinguished president and his fellow managers of the enterprise. A combination of courage and intelligence has produced a railroad which at present reaches almost every point it should, and which has such connections hither and thither as to consolidate its strength at all strategic points. The Santa Fe is inherently strong enough to be trusted to continue alone, even although surrounded by much stronger transcontinental systems. It is a prime example of the principle of net mileage, that is to say, mileage which counts, is of much more value than a mere heterogeneous aggregation of more or less ill-connected parts. The Santa Fe should have entrance to St. Louis. It will probably prefer to build anew, following in general the location of the Wabash. The Santa Fe should be admitted to New Orleans. The Gulf Coast Line from De Quincy east should be merged with the Santa Fe. The Colorado & Southern and its extension, the Fort Worth & Denver City is another one of those hybrid properties which it is extremely difficult to allocate. This could be incorporated in the Santa Fe. On the whole, there remains for the Colorado & Southern only the possibility of its transference from the Burlington to that of the Missouri Pacific. The underlying reason, based upon the broadest reasons for so doing, is that this strategic line would be thereby neutralized, in effect, as between the two middle group systems. The Santa Fe should have the Kansas branch of the M. P. from Atchson to Lenora, Kas., the north and south branch from Concordia to Hastings is allocated to the Rock Island. The Santa Fe branch from Dallas to Paris, Tex., is given to the Frisco. The Forth Worth & Rio Grande is assigned to the Santa Fe.

SOUTHWESTERN GULF REGION. The railroads operating in the great sector of southwestern territory lying between the Mississippi river and the main line of the Santa Fe and the Southern Pacific-Rock Island transcontinental systems, are possessed of a sufficient individuality to require that they be treated as an independent group. This region is bounded on the north by the Missouri River between St. Louis and Kansas City and upon the south by the Gulf and the Mexican frontier. The great railway systems avoid this highland territory, except for certain bridge lines. From Kansas City and St. Louis there radiates certain systems which either split into two distinct halves east and west of the Ozark Mountains, or else confine their activities entirely to one or the other flank of these highlands. In the former group is the Frisco system mainly lying west and north; and the Missouri Pacific widely extended on both sides, with certain bridge lines thrown across. The Missouri, Kansas & Texas spreads out to the west and south from Kansas City down to Texas; the Kansas City Southern an air line straight south to the Gulf from Kansas City; the St. Louis Southwestern skirts the Ozarks down the Mississippi Valley, only swinging west well south of Little Rock, Ark., where open country occurs. There remains for consideration only the Texas & Pacific, the international Great Northern, the Kansas City, Mexico & Orient, the Louisiana Railway & Navigation Co., and the Gulf Coast Lines. They are nearly all dependent, not alone upon business in and out of these Missouri River gateways, but upon their relation to the Gulf ports. They have had in the past a certain interest in transcontinental traffic, but only in so far as the Southern Pacific utilized them as a connection through to the Missouri River gateways. Traffic conditions throughout the southwestern gulf region are fairly uniform. Naturally there are no manufacturers, and the carriage outward consists of the products of the territory. Inbound, there is, of course, the lesser volume of manufactures and supplies which are consumed by the population. But the principal earnings of all these roads arise from the carriage of grain, shading off into the carriage of cotton and lumber from the southern and southeastern portions,

the carriage of petroleum in large volume from the recently developed oil fields, and the handling of coal in considerable volume from the measures which quite generally underlie a part of the region. Only by holding them all together, abandoning where absolutely necessary lines which may be dispensed with, can a constructive policy be pursued to the end. Again, one is driven to the conclusion that a general rearrangement of these roads, segregating them into two competing systems in order to conform to the requirements of the act, is the proper course to pursue. A marked characteristic of the Southwestern Gulf territory is the very large amount of mileage which still remains in independent hands. Another general feature is that there are too many railroads to be supported by the available traffic. This is partly due to the well known activities of the railway promotor, which has found this territory the last and a most inviting field for the practice of his art. There are more railways in fact than the country can probably support for many years ahead. This condition is more true in this region than anywhere else in the United States, and it is a considerable source of embarassment. One hesitates to recommend the downright abandonment of a railroad line once constructed. New capital, where imperatively needed by large systems having branches in Texas has necessarily been raised through the issue of their own collateral trust securities, based upon the deposit of Texas line bonds. Concomitantly this financial segregation has left a considerable number of these supplementary Texas lines in very bad case financially. It is evident that with the exception of the Texas lines of the Kansas City Southern the subsidiaries in Texas are all notably weak. Whether this is wholly due to the local traffic conditions, or arises in part from prorating and accounting methods, it is difficult to determine. The Gulf-Southern roads are properly called upon to perform an important function for the nation as a whole through engaging in long haul business to and from the Gulf ports to the Missouri river gateways. They are necessary outlets for the entire country west of the Mississippi River. The construction of the Panama Canal and our recently developed mercantile marine interests are bound to emphasize still further the import and export feature of the Southwestern-Gulf traffic.

The two widespread systems in this Gulf region are the Frisco and the Missouri Pacific. These pretty well match one another in general scope throughout a considerable territory. Having adopted the foregoing program for the Southwestern-Gulf systems, it is next in order to decide whether or not these systems, resident southwest of Kansas and St. Louis, had best stop short at those strategic points or be extended into Chicago. Chicago and St. Louis particularily are keen rivals for business, and it will contibute to national development that they should continue to be so throughout as wide a territory as possible, rather than that private domains should be marked off here and there as appurtenant to each great city. Such being the case, it will unquestionably contribute to holding the Chicago market on a parity with those of the Missouri River cities if the railroads of this region operate their own trains into Chicago and have a substantial investment to support. Through billing and quick delivery, with a number of other favoring concomitants would be much more likely to prevail than if Chicago were compelled to do business in Oklahoma, Kansas, or Texas, both at longer range and without distinct railroads friends at court. The conclusion then, is that the two southwestern systems should include stems into Chicago, comprehended by consolidation within their own groups. The St. Louis-San Francisco systems, operating 5,252 miles of first main track, ramifies throughout the southwest. The strongest portion of it is the old Kansas City, Fort Scott & Memphis line, which passes by way of Fort Scott, Kas., and Springfield, Mo., from the Missouri river gateways down toward the southeast. Obviously the Frisco should not be weakened, but ought rather to be upbuilt by the elimination of its weaker units and the incorporation of lines which add earning power, or which effect the completion of through routes or long hauls. This line is incomplete as to ownership between Paris and Dallas, Tex. This stretch is owned by the Gulf, Colorado & Santa Fe—the Texas unit of the Santa Fe system. The Frisco, especially, should not be left dependent upon the use of a branch line of another system. It is recommended, therefore, that this branch be transferred to the Frisco system. It might well be changed for the Fort Worth and Rio Grande which runs from Fort Worth southwest. The transfer would put the

latter into a system tied in at both ends of the line instead of attached at one end as at present. The Kansas City, Clinton & Springfield Ry., 162 miles long, closely parallels the entire local division of the Frisco between Kansas City and Springfield. It looks like another one of those little properties in this territory which contributes nothing except local service to the community. This case is submitted for consideration as to abandonment, unless the road can indeed be carried along purely as a local enterprise through the support and interest of the towns affected. The Missouri, Kansas & Texas operates 3,863 miles of track. The lines owned ramify widely through the territory directly south of Kansas City, trending southwesterly across Kansas, Oklahoma and Texas. Until drastically reorganized the Katy is little suited to add financial strength to any system. But, nevertheless, the southern portion of its system especially supplements and re-enforces the Frisco lines north of Texas. On the whole, it is the judgment of those best qualified to decide, that the Katy should be merged with the Frisco system rather than the Missouri Pacific. It is therefore recommended that the Katy be merged with the Frisco, subject perhaps, to negotiation with the Missouri Pacific concerning some of the minor exchanges. The line from Fort Scott to Oklahoma City and branch to Tulsa and Muskogee should be transferred to the Missouri Pacific. The St. Louis Southwestern Ry. is to be utilized under this plan to provide a Frisco competitive service across Arkansas to match the old Iron Mountain route. It is the strongest financially of all these southwestern properties. Useless duplication of the Frisco should be avoided, while, at the same time, the Rock Island can be provided with a necessary line, by division of the Cotton Belt at Brinkley, Ark. It is recommended that the lines north of Brinkley go to the Rock Island system. A prime requisite for an effective Southwestern-Gulf system is the provision of through routes to the sea; and these ought to be afforded both to New Orleans and Galveston. As to New Orleans a route is afforded by the inclusion of the Louisiana Railway & Navigation Co., from Shreveport to New Orleans. the route from Kansas City to New Orleans of the Frisco system will still be quite indirect from Shreveport north. It is recommended therefore that trackage be provided, first over the Texas & Pacific from Shreveport to Texarkana, and from that point on over the Kansas City Southern to Hartford Junction, where the main line of the Frisco is once more reached. A second through route to the Gulf must reach Galveston as well as New Orleans. The best way apparently is by trackage over the Trinity & Brazos Valley. A considerable railroad is the Kansas City, Mexico & Orient. It is a local line from Wichita southwest across the arid plains of Texas almost to the Mexican border. The road as a whole could not be placed effectively in either one of the two great systems proposed for this region. But to split it up north and south of Altus, Okla., permits the southern half across Texas to be added to the Frisco system where it has no line; and the northern half may be utilized by the Missouri Pacific system to give it a road across western Oklahoma, without which it would have no representation in the district. The Frisco system as compared with the Missouri Pacific is peculiarly lacking in mileage in northern Louisiana. It is recommended that the Vicksburg, Shreveport & Pacific be added to the Frisco combination. The best railroad for affording an entry into Chicago for the Frisco system is believed to be the Chicago & Alton Ry. It can not add financial strength, but its rails afford an admirable connection both for Kansas City and St. Louis to Chicago. It is well fitted to serve the Frisco system. It not only gives a short line from St. Louis to Chicago, but it also affords a better line to the Frisco between Kansas City and St. Louis. It is recommended, however, in view of the proposed merger of the Katy and Alton that the Hannibal division be included at least as far as Higbee, Mo., the junction of the Hannibal division with the Alton. The Katy line from Booneville into St. Louis should be transferred to the Missouri Pacific system. This would give them a double track, with a lower grade in fact than they now have along the south bank of the river. It should also be noted in connection with the Katy line from Moberly to Hannibal that it may well go to the Union Pacific-Northwestern system along with the Wabash, west of the Mississippi. The Missouri Pacific system, assumes the shape of a wide open fan ranging widely all over the territory between Pueblo, Colo., on the west and the mouth of the Mississippi River. It is substantially larger, already, as a

nucleus for the second great competing southwestern system, to match against the Frisco. As a result of its reorganization, there is a greater degree of unity in the geographic layout than is evinced by the Frisco. A weakness of the Missouri Pacific system is the sharp separation on the two flanks of the Ozarks between the western and southern halves These are at present united only by two long bridge lines running northwest to southeast over the Ozark uplands or along the valley of the Arkansas river. As against this route the Kansas City Southern goes straight as an arrow from Kansas City down the eastern boundary of Kansas, Oklahoma and Texas, to the Gulf. Nothing could be shorter than this competitive route, which, of course, got most of the long haul lucrative traffic. It is recommended that the Kansas City Southern be included in the Missouri Pacific system. It is recommended that the Kansas, Oklahoma & Gulf be included in the M. P. This is a line directly matching and paralleling the Katy between Muskogee and Denison, Tex., and would open up at once also another through route between Kansas City and Galveston. The Louisiana & Arkansas should be merged with the Missouri Pacific. This extends from Alexandria, La., northwest to Hope, Ark. The Kansas branch of the Missouri Pacific west of Kansas City should remain where it is. The main river line up to Omaha should be left undisturbed. The status of the M. P. line into Colorado is somewhat disquieting. Conceiveably this line might go to the Burlington system in order to give it something to match with the Kansas mileage of its great competitor. This suggestion is made only tentatively, subject to confirmation upon further inquiry. The disposition of the Colorado & Southern Ry., with its Texas line, known as the Fort Worth & Denver City, is a matter of peculiar difficulty, owing to the fact that these lines are concerned both in transcontinental business and also engage in through carriage to the Gulf of Mexico. Their national function is to afford a short and direct line from Galveston through to the far northwest by way of Denver. The final choice, must be made between transfer of this important bridge line either to the Santa Fe, to the Rock Island, or to the Missouri Pacific. But one point that is definitely settled is that this portion of the Colorado & Southern system should not remain in the control of the Burlington. It appears that the claim of the Missouri Pacific is substantiated. The Missouri Pacific system as thus amplified has a certain interest in the Gulf Coast Lines. It is recommended that the southern half from Beaumont on, be assigned to this system. From De Quincy east, the Gulf Coast lines go to the Santa Fe for an entrance into New Orleans. The need for a Chicago line for the Missouri Pacific having been demonstrated, it is recommended that the western half of the Chicago & Eastern Illinois be incorporated in this system. RECAPITULATION. The objects sought in the foregoing plan are as follows: An inherently natural geographic scope for each system; a sound operating adaption of each unit to its surroundings, due consideration being given to the nature of its traffic; administrative practicability, that is to say, a size under each particular set of circumstances, commensurate with human capacity in management; an ever present competition between rival roads, in order to insure the continuance of an alert and accelerated service to the public, assuming that the foregoing physical arrangements have already provided economical carriage by each competitor; and such an equalization of earning capacity between these competitors, as to perpetuate such rivalry in service on an even-handed and wholesome basis. A total of 21 systems has resulted from the foregoing proposals, made serially in detail. These are as follows: Five systems within the trunk line region; two lake to tide soft coal systems in the Chesapeake Bay region; in the southeast, four systems; five transcontinental systems west of the Mississippi, two running southwest toward the Gulf ports. In addition, New England lines, southern Michigan peninsula and down east coast of Florida. In the main everything is based, centrally, upon Chicago and St. Louis as far as the main stems are concerned. The objective of conformity to the statute as respects competition, it will be observed, is sought wherever possible by having each considerable city all over the United States tapped by at least two railways; all of the great competitive routes, hither and thither, are so arranged that there is a matching for competitive purposes everywhere. It is inevitable that as competition becomes keener, the greater the commercial importance of the city. But scale as a remedy for the existing sit-

the progression under a well ordered system seems to be more nearly an expression of the natural geographical fitness of that center, rather than because of a fortuitous or artificial, and to that degree, less deserved advantage. The principle that earning capacity in terms of valuation constituted the ultimate test of the feasibility of any proposed grouping of railroads, in contradistinction to any attempt to bring about an absolute equalization in size among these projective competitive units, was avowedly adopted at the outset. The last step in financial analysis is theoretically necessary and in a measure practicable. The systems herein proposed are intended to be matched one against another to the end that the net operating income in percentage of investment shall be the same for all. Where one line owns and it can be made serviceable to others, even though they be direct competitors, it is believed that useless duplication of facilities is thereby avoided to common advantage. The defects and shortcomings of this comprehensive scheme are manifold and in many cases self evident. No illusion need be entertained in this regard. The outcome is avowedly almost everywhere a compromise, a choice between evils. All of the warring and conflicting interests; all of the hopes, aspirations, fears, and prejudices have come home to roost in the course of its preparation. An extra amount of friendliness and cooperation has been encountered. But, as is inherent and natural under the circumstances, much of this assistance has necessarily been circumscribed by the particular interest of the participants; and a governmental plan, in contradistinction to one projected for private profit or interest, may not content itself with caring even for most of the properties. It must of necessity recognize the right and the interest of every last one of them. It is this requirement of university which so often compels the halfway expedient, the compromise, the solution which falls so far short of the ideal. And then again, there are the class interests which deserve recognition. Administrative influences impel one, in certain directions; the bankers would have some matters otherwise; the representatives of the employes entertain quite positive views, it may be; and all of the shippers organizations have to be satisfied. But despite these divergent interests, the desirability, nay more, the downright necessity for the furtherance of consolidation on a large uation is almost universally conceded.

CONSOLIDATION OF RAILROADS. We find for the purposes of this tentative plan that the railway properties of the continental United States may be consolidated under the statute into the following systems: SYSTEM NO. 1—NEW YORK CENTRAL: New York Central; Pittsburgh & Lake Erie; Rutland; Michigan Central; Chicago, Kalamazoo & Saginaw; Cleveland, Cincinnati, Chicago & St. Louis; Cincinnati Northern; Western Maryland; Fonda, Johnstown & Gloversville ;Lake Erie & Pittsburgh; Central Indiana; Pittsburgh, Chartiers & Youghiogheny; Monongahela; Boston & Maine; Maine Central; Bangor & Aroostook. And all railway properties controlled by the above carriers through lease, stock ownership, or otherwise, except: Lake Erie & Western and Toledo & Ohio Central (both now controlled by New York Central); Zanesville & Western and Kanawha & Michigan (both now controlled by Toledo & Ohio Central) · Indiana Harbor Belt, now controlled by New York Central, 30 per cent; Michigan Central, 30 per cent; Chicago & North Western, 20 per cent; Chicago, Milwaukee & St. Paul, 20 per cent. Note:—Prof. Ripley recommends the inclusion of the Western Maryland in system No. 5, Nickel Plate-Lehigh Valley. Prof. Ripley makes no specific assignment of the Fonda, Johnstown & Gloversville. The Lake Erie & Pittsburgh; Central Indiana; Pittsburgh, Chartiers & Younghiogheny; and Monongahela may be incorporated in either system No. 1 or No. 2. Prof. Ripley makes no specific assignment of these four roads, which are controlled jointly in the interest of the New York Central and the Pennsylvania. The Boston & Maine, Maine Central, and Bangor & Aroostook may be included in system No. 7, New England, or system No. 7a, New England-Great Lakes. Prof. Ripley rejects the trunk line treatment of the New England roads, but we present this alternative with a view to developing the situation upon hearing. The Lake Erie & Western may be included in system No. 5, Nickel Plate-Lehigh Valley. The Toledo & Ohio Central, Zanesville & Western, and Kanawha & Michigan may be included in system No. 9, Norfolk & Western. The Indiana Harbor Belt is reserved for consideration in connection with terminal situations. SYSTEM NO. 2—PENNSYLVANIA. Pennsylvania; West Jersey & Seashore; Long Island; Baltimore, Chesapeake & Atlantic; Cumberland Valley;

Maryland, Delaware & Virginia; New York, Philadelphia & Norfolk; Pittsburgh, Cincinnati, Chicago & St. Louis; Waynesburg & Washington; Grand Rapids & Indiana; Cincinnati, Lebanon & Northern; Ohio River & Western: Louisville Bridge & Terminal; Wheeling Terminal; Toledo, Peoria & Western; Lorain, Ashland & Southern; Lake Erie & Pittsburgh; Central Indiana; Pittsburgh, Chartiers & Younghiogheny; Monongahela. And all other railway properties controlled by any of the above carriers under lease, stock ownership, or otherwise, except the Norfolk & Western and railway properties controlled by it, which may be included in system No. 9, Norfolk & Western. Notes:—The Lorain, Ashland & Southern may be included in system No. 4, Erie, which owns one-half the stock, the Pennsylvania owning the other half. The Lake Erie & Pittsburgh; Central Indiana; Pittsburgh, Chartiers & Younghiogheny; and Monongahela may be included in system No. 1, New York Central, which controls one-half the stock, the Pennsylvania controlling the other half. SYSTEM NO. 3—BALTIMORE & OHIO. Baltimore & Ohio; Sandy Valley & Elkhorn; Staten Island Rapid Transit; Reading system, comprising the Philadelphia & Reading, Central Railroad of New Jersey, and various others. Cincinnati, Indianapolis & Western; Chicago, Indianapolis & Louisville; New York, New Haven & Hartford; Central New England; Lehigh & New England; Lehigh & Hudson. Notes:—The Baltimore & Ohio Chicago Terminal is reserved for consideration in connection with terminal situations. The New York, New Haven & Hartford; Central New England; Lehigh & New England; and Lehigh & Hudson may be included in system No. 7, New England, or system No. 7a, New England-Great Lakes. SYSTEM NO. 4—ERIE. Erie; Chicago & Erie; New Jersey & New York; New York, Susquehanna & Western; Delaware & Hudson; Delaware, Lackawanna & Western; Ulster & Delaware; Bessemer & Lake Erie; Buffalo & Susquehanna; Pittsburgh & Shawmut; Pittsburgh, Shawmut & Northern; Lorain, Ashland & Southern; Wabash lines east of the Missouri river. Notes:—Prof. Ripley recommends including the Lehigh Valley in this system; but in this tentative plan that carrier is proposed as a main stem for system No. 5, Nickel Plate-Lehigh Valley. The Delaware & Hudson, Delaware, Lackawanna & Western, Ulster & Delaware, Pittsburgh & Shawmut, and Pittsburgh, Shawmut & Northern may be included in system No. 7a, New England-Great Lakes. The Bessemer & Lake Erie may be included in system No. 5, Nickel Plate-Lehigh Valley. The Lorain, Ashland & Southern may be included in system No. 2, Pennsylvania. SYSTEM NO. 5—NICKEL PLATE-LEHIGH VALLEY. Lehigh Valley; New York, Chicago & St. Louis; Toledo, St. Louis & Western; Detroit & Toledo Shore Line; Lake Erie & Western; Wheeling & Lake Erie; Pittsburgh & West Virginia; Bessemer & Lake Erie. Notes:—Prof. Ripley recommends the Lackawanna as main stem in this system. In this tentative plan it is replaced and made available for either system No. 7a, New England-Great Lakes, or system No. 4, Erie. He also includes the Buffalo, Rochester & Pittsburgh and Wheeling & Lake Erie in this system. The Bessemer & Lake Erie may be included in system No. 4, Erie. SYSTEM NO. 6—PERE MARQUETTE. Pere Marquette; Detroit & Mackinac; Ann Arbor; Detroit, Toledo & Ironton; Boyne City, Gaylord & Alpena. Note:—The last named road is a Class-II road not specifically covered by Prof. Ripley's report. SYSTEM NO. 7—NEW ENGLAND. New York, New Haven & Hartford; New York, Ontario & Western; Central New England; Boston & Maine; Maine Central; Bangor & Aroostook; Lehigh & Hudson River; Lehigh & New England. Notes:—Prof. Ripley recommends inclusion of the New York, Ontario & Western in system No. 4, Erie. The Lehigh & Hudson River is not included in any system under Prof. Ripley's report, but is left as a "bridge line." SYSTEM NO. 7A.—NEW ENGLAND-GREAT LAKES. Same as system No. 7 with addition of the following, which otherwise with the exception of the Buffalo, Rochester & Pittsburgh may be included in system No. 4, Erie. That carrier may be included in system No. 5, Nickel Plate-Lehigh Valley. Delaware & Hudson; Ulster & Delaware; Delaware, Lackawanna & Western; Buffalo, Rochester & Pittsburgh; Pittsburgh & Shawmut; Pittsburgh, Shawmut & Northern. Note:—The addition of these lines has not been recommended by Prof. Ripley. SYSTEM NO. 8 — CHESAPEAKE & OHIO. Chesapeake & Ohio; Hocking Valley; Virginian. Note:—Prof. Ripley recommends consolidation of the Virginian with the Norfolk & Western, Toledo & Ohio Central, and Kanawha & Michigan, in order to afford a western outlet for coal originating on the Vir-

ginian. This apparently would involve upgrade eastbound haul of westbound coal to the vicinity of Roanoke, unless there be new construction near Gauley Bridge, W. Va. The Virginian's present outlet to the west is via Deepwater, W. Va., and the Chesapeake & Ohio. SYSTEM NO. 9—NORFOLK & WESTERN. Norfolk & Western; Toledo & Ohio Central; Zanesville & Western; Kanawha & Michigan; Kanawha & West Virginia. Note:—From the Norfolk & Western is excepted the branch from Roanoke to Winston Salem, which may be included in system No. 11, Atlantic Coast Line. Louisville & Nashville and the branch from Lynchburg to Durham which may be included in system No. 12, Illinois Central-Seaboard. SYSTEM NO. 10—SOUTHERN—Southern; Alabama Great Northern; Georgia, Southern & Florida; Mobile & Ohio; Southern Railway in Mississippi; Northern Alabama; Cincinnati, New Orleans & Texas Pacific; New Orleans Great Northern; Alabama & Vicksburg. Note:—Prof. Ripley recommends inclusion of the Georgia Southern & Florida branch from Valdosta, Ga., to Palatka, Fla., in the Seaboard system. SYSTEM NO. 11.—ATLANTIC COAST LINE-LOUISVILLE & NASHVILLE. Atlantic Coast Line; Atlantic & West Point; Charleston & Western Carolina; Louisville & Nashville; Nashville, Chattanooga & St. Louis; Louisville, Henderson & St. Louis; Western Railway of Alabama; Richmond, Fredericksburg & Potomac; Norfolk Southern; Atlanta, Birmingham & Atlantic; Winston-Salem Southbound; Roanoke to Winston-Salem branch of Norfolk & Western; Florida East Coast; Carolina, Clinchfield & Ohio Georgia & Florida; Gulf, Mobile & Northern; Mississippi Central. Notes:—Prof. Ripley recommends that the Richmond, Fredericksburg & Potomac and Florida East Coast retain their present status without inclusion in any system. The Carolina, Clinchfield & Ohio may be included in system No. 12, Illinois Central-Seaboard. Prof. Ripley recommends inclusion in system No. 10, Southern. The Gulf, Mobile & Northern and Mississippi Central are not specifically included in any system under Prof. Ripley's report. SYSTEM NO. 12.—ILLINOIS CENTRAL SEABOARD. Illinois Central; Yazoo & Mississippi Valley; Central of Georgia; Seaboard Air Line; Lynchburg, Va., to Durham, N. C., branch of Norfolk & Western; Gulf & Ship Island; Tennessee Central; Carolina, Clinchfield & Ohio. Notes:—Prof. Ripley recommends that a separate system be built around the Seaboard Air Line. The Gulf & Ship Island is not included in any system by Prof. Ripley. The Carolina, Clinchfield & Ohio may be included in system No. 11, Atlantic Coast Line-Louisville & Nashville. SYSTEM NO. 13 — UNION PACIFIC NORTH WESTERN. Union Pacific; St. Joseph & Grand Island; Oregon Short Line; Oregon-Washington Railroad & Navigation Company; Los Angeles & Salt Lake; Chicago & North Western; Chicago, St. Paul, Minneapolis & Omaha, Lake Superior & Ishpeming; Wabash lines west of the Missouri River. Notes:—Prof. Ripley recommends inclusion of the Central Pacific in this system. The Lake Superior & Ishpeming is not specifically included in any system by Prof. Ripley. SYSTEM NO. 14.—BURLINGTON-NORTHERN PACIFIC. Chicago, Burlington & Quincy; Northern Pacific; Chicago Great Western; Minneapolis & St. Louis; Spokane, Portland & Seattle. Notes:—From the Chicago, Burlington & Quincy are excepted the Colorado & Southern and Fort Worth & Denver City, which may be included in system No. 16, Santa Fe. Prof. Ripley recommends that they be included in system No. 19, Chicago-Missouri Pacific. Prof. Ripley recommends extension of this system to the Pacific coast by including the Denver & Rio Grande and the Western Pacific. He also recommends redistribution of portions of the Minneapolis & St. Louis and Chicago Great Western. The Spokane, Portland & Seattle may be included in system No. 15, Milwaukee-Great Northern. SYSTEM NO. 15—MILWAUKEE-GREAT NORTHERN. Chicago, Milwaukee & St. Paul; Great Northern; Chicago, Terre Haute & Southeastern; Duluth & Iron Range; Duluth, Missabe & Northern; Green Bay Western; Spokane, Portland & Seattle; Butte, Anaconda & Pacific. Notes:—The Green Bay & Western and Butte, Anaconda & Pacific are not included in any system under Prof. Ripley's report. The Spokane, Portland & Seattle may be included in system No. 14, Burlington-Northern Pacific. Prof. Ripley recommends that the eastern half of the Chicago & Eastern Illinois be included in this system. SYSTEM NO. 16.—SANTA FE. Atchison, Topeka & Santa Fe; Gulf, Colorado & Santa Fe; Colorado & Southern; Fort Worth & Denver City; Denver & Rio Grande; Western Pacific; Utah Railway;

Northwestern Pacific; Nevada Northern. Notes:—Prof. Ripley recommends inclusion of the Colorado & Southern and the Fort Worth & Denver City in the Missouri Pacific system. He also recommends inclusion of a part of the Gulf Coast Lines in the above system. Prof. Ripley recommends that the Northwestern Pacific retain its present status. The Nevada Northern is not specifically included in any system by Prof. Ripley. It may be included in system No. 17, Southern Pacific-Rock Island. SYSTEM NO. 17—SOUTHERN PACIFIC-ROCK ISLAND. Southern Pacific Company; Nevada Northern; Chicago, Rock Island & Pacific; Chicago, Rock Island & Gulf; Arizona & New Mexico; El Paso & Southwestern; San Antonio & Aransas Pass; Trinity & Brazos Valley; Midland Valley; Vicksburg, Shreveport & Pacific; Chicago, Peoria & St. Louis. Notes:—The Nevada Northern may be included in system No. 16, Santa Fe. The Arizona & New Mexico and Chicago, Peoria & St. Louis are not specifically included in any system by Prof. Ripley. The Trinity & Brazos Valley may be included in system No. 18, Frisco-Katy-Cotton Belt. So recommended by Prof. Ripley. Prof. Ripley recommends redistribution of portions of the carriers included by us in this system. SYSTEM NO. 18—FRISCO-KATY COTTON BELT. St. Louis-San Francisco; St. Louis Southwestern; Louisiana Railway & Navigation Company; Chicago & Alton; Missouri, Kansas & Texas; Trinity & Brazos Valley; San Antonio, Uvalde & Gulf. Notes:—The Trinity & Brazos Valley may be included in system No. 17, Southern Pacific-Rock Island. Prof. Ripley recommends inclusion of the San Antonio, Uvalde & Gulf in either system No. 17, Southern Pacific-Rock Island, or in a Southwestern-Gulf system. Prof. Ripley recommends redistribution of portions of the carriers included by us in this system. SYSTEM NO. 19.—CHICAGO-MISSOURI PACIFIC. Chicago & Eastern Illinois; Missouri Pacific; Kansas City Southern; Kansas City, Mexico & Orient; Kansas, Oklahoma & Gulf; Texas & Pacific; Fort Smith & Western; Louisiana & Arkansas; Gulf Coast Lines; International & Great Northern. Note:—Prof. Ripley recommends redistribution of portions of the carriers included by us in this system. Certain lines such as the Minneapolis, St. Paul & Sault Ste. Marie and the Central Vermont, which are controlled by Canadian carriers, have not been specifically included in this tentative plan because these lines form parts of through transcontinental Canadian systems in active competition with systems above set forth. The carriers included in this tentative plan comprise most of the class-I steam railroads but very few of those in class II and class III. Those not so included, whether industrial common carriers, terminal carriers, interurban electric railways operated as a part of general steam railroad systems of transportation or engaged in the general transportation of freight, "short lines," or others, will be considered at the hearings to be hereafter assigned so that in the plan to be ultimately adopted provision can be made for their inclusion in the systems. We have not specifically mentioned water carriers. Where these carriers are now controlled by carriers by rail they will be considered as being included tentatively in the systems in which the controlling rail carrier has been included. Consolidation of Railroads 63 I. C. C. 455.

(k) Contention that merger of electric railways, originally performing purely intrastate and city street-car service, into an operating company now performing an interstate interurban business, does not change their original status. HELD, Whatever may have been the original service afforded by the respective railways at the time of the merger, the consolidated company now is carrying on much more than a street railway business and in its interurban operations it now assumes the status of an electric railway and as such is engaged in interstate transportation. Ohio and Pennsylvania Rates, Fares and Charges. 64 I. C. C. 517, 524.

(l) In section 5 of the Interstate Commerce Act Congress provided a complete scheme of regulation of contracts or other arrangements whereby one common carrier subject to the act might secure control of another such carrier, either by consolidation into one corporation, or in some manner not involving such consolidation, or by entering into any agreement for the pooling of freight or earnings with a competing railroad. Lease of Valley Terminal Ry., 65 I. C. C. 105.

CONSPIRACY

See Crimes §24½; Evidence §10.

CONSTITUTIONAL LAW

See Act to Regulate Commerce I; Commodities Clause I; Crimes §1; Interstate Commerce §4; §5; Long and Short Hauls §1; §3; Loss and Damage §1; Pipe Lines §2; Special Contracts §1.

(a) It does not appear that there has been any such confiscation as amounts to a taking of property without due process of law, because the income of a railroad at the rate of fare fixed by the statute will pay only 1½ per cent on the original cost of the road. Dow v. Beidelman (U. S. Sup. Ct.), 2 I. C. R. 56.

CONSTRUCTION

See Allowances §6; Bills Lading III; Crimes §2; Demurrage §12; Express Companies §13; Loss and Damage §2; Reconsignment §5; Tariffs IV.

CONSTRUCTION OF INTERSTATE COMMERCE ACT

See Act to Regulate Commerce II.

CONSTRUCTION OF RATES

See Application of Rates; Bills of Lading III; Commodity Rates II; Crimes §2; Demurrage §12; Export Rates and Facilities §2; Reconsignment §5; Refrigeration §6; Released Rates II; Tariffs IV.

CONSTRUCTION OF TARIFFS

See Tariffs IV.

CONSTRUCTION OF TRAFFIC

See Tariffs IV.

CONTRACTS

See Cars and Car Supply IV; Exclusive Contracts; Special Contracts; Tariffs IV.

CONTROL AND REGULATION

See Absorption of Charges III; Accounting I; Adjacent Foreign Country I; Advanced Rates I; Alaska §1; Allowances I; Baggage Transfer I; Bills of Lading I; Blanket Rates I; Branch Lines III; Bridge Tolls III; Cars and Car Supply I; Compress Companies and Charges I; Demurrage I; Differentials I; Discrimination I; Divisions I; Electric Lines I; Equalization of Rates I; Export Rates and Facilities I; Express Companies I; Finance Dockets I; Foreign Commerce I; Interstate Commerce II; Lighterage I; Long and Short Hauls I; Overcharges I; Passenger Fares and Facilities I; Pipe Lines I; Proportional Rates V; Reasonableness of Rates I; Reduced Rates I; Refrigeration I; Released Rates I; Routing and Misrouting I; Sleeping Car Companies I; Special Contracts; Storage I; Substitution of Tonnage I; Switch Tracks and Switching I; Tap Lines I; Tariffs I; Telephone and Telegraph Companies III; Terminal Facilities I; Through Routes and Joint Rates I; Track Storage I; Transportation III; Undercharges I; Water Carriers I; Weights and Weighing I.

COOPERAGE

See Allowances §8 (2); Facilities and Privileges §5.

CORRESPONDENCE

See Interstate Commerce Commission §6¾.

COUNTER CLAIMS

See Loss and Damage §17½.

COURTS

I. ACTIONS.
- § 1. In general.
- § 1a. Contempt of court.
- § 2. Defenses.
- § 3. Mandamus.
- § 4. New trial.
- § 5. Suits by or against Commission.

II. APPEAL.
- § 6. In general.

III. UNITED STATES COURTS.
- § 6½. Jurisdiction in general.
- § 7. Concurrent jurisdiction.
- § 8. Exclusive jurisdiction.

§ 9. Original jurisdiction.
§9a. Commerce court.
IV. UNITED STATES SUPREME COURT.
§10. In general.
V. STATE COURTS.
§11. In general.
VI. PRACTICE AND EVIDENCE.
§12. In general.
§12½. Parties.
§13. Pleading.
§14. Injunctions.
§15. Limitation of actions.
§16. War legislation and venue.
§16a. Enforcement of Commission's Orders.
§17. Election of remedies.

CROSS REFERENCES

See Actions at Law; Allowances §14½; Cars and Car Supply §33; Commerce Court; Discrimination §16; Freight Charges; Interstate Commerce Commission II; §2; §3; VII; §17; Loss and Damage; Reparation §23; Special Contracts IV; Tariffs §20; Undercharges §1½; War Legislation.

1. ACTIONS.

See Actions at Law; Discrimination §16. Reparation §23.

§1. In general.

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(a) A claim for pecuniary damages entitles the plaintiff to a jury trial and the Interstate Commerce Commission will not consider it. Peck v. East Tennessee, V. & G. R. Co., 1 I. C. R. 775; Council v. Western & A. R. Co., 1 I. C. R. 638; Riddle v. New York, L. E. & W. R. R. Co., 1 I. C. R. 787.

(b) A claim for pecuniary damages entitles the defendant to a jury trial, and the Interstate Commerce Commission will not consider it. Peck v. East Tennessee, V. & G. R. Co., 1 I. C. R. 775; Council v. Western & A. R. Co., 1 I. C. R. 292, 355, 638; Riddle v. New York, L. E. & W. R. Co., 1 I. C. R. 787.

(c) In the absence of any legislative regulation upon the subject, the courts must decide for the company, as they do for private persons, when controversies arise, what rates are reasonable. Dow v. Beidelman (U. S. Sup. Ct.), 2 I. C. R. 56.

(d) A corporation created and existing solely under the laws of a State in which it has its principal office and place of business cannot be said to be an inhabitant of another state so that it can be sued there in the federal court, although it does business there through agents. Connor v. Vicksburg & M. R. Co. (C. C. E. D. Mo.), 2 I. C. R. 177.

(e) A corporation is an inhabitant of the state that created it, or of the state where it keeps its records and principal office, and where its chief officers reside or may most usually be found. Connor v. Vicksburg & Meridian R. R. Co., 2 I. C. R. 177.

(f) The fact that a railroad corporation keeps an office and an agent for the purpose of making freight contracts in a federal judicial district outside of the state which chartered it and in which are its road and chief office, will not make it an inhabitant of such district so as to give the Federal courts of that district jurisdiction of actions against it in which jurisdiction is not founded only on the fact of diverse citizenship. Connor v. Vicksburg & Meridian R. R. Co., 2 I. C. R. 177.

(g) An inquiry by the courts into the reasonableness of rates established by state authority for railroad transportation is not prevented by the fact that the legislature has pursued the forms of law in prescribing a schedule of rates; but the question is open and must be decided in each case whether the rates prescribed are within the limits of legislative power, or are mere proceedings which, if not restrained, will work a confiscation of property. Chicago & N. W. R. Co. v. Dey (C. C. S. D. Iowa), 2 I. C. R. 325.

(h) A communication signed by the secretary of the board of railroad commissioners, stating that the time for the taking effect of the schedule of rates had been extended, sent to the complainant railroad company in reply to a telegram sent by it to the board, officially requesting such extensions, is to be considered as the official act of the board. Chicago & Northwestern R. Co. v. Dey, 2 I. C. R. 325.

(i) The courts have no power to interfere with rates for railroad transportation, fixed by a state, when such rates will give some compensation, however small, to the owners of railroad property; but it is their duty to interfere when the rates prescribed will not pay any

compensation to the owners; i. e., some dividend to stock holders after payment of fixed charges and cost of service. Chicago & Northwestern R. Co. v. Dey, 2 I. C. R. 325.

(j) An inquiry by the courts into the reasonableness of rates established by state authority for railroad transportation is not prevented by the fact that the legislature has pursued the forms of law in prescribing a schedule of rates; but the question is open and must be decided in each case whether the rates prescribed are within the limits of legislative power, or are mere proceedings which, if not restrained, will work a confiscation of property. Chicago & Northwestern R. Co. v. Dey, 2 I. C. R. 325.

(k) That the state board of railroad commissioners have advertised in papers that a schedule of rates prepared by them will be put in force on a named day gives equity jurisdiction to restrain the enforcement of the schedule, before the expiration of the time, to prevent a multiplicity of suits. Chicago & N. W. R. Co. v. Dey (C. C. D. Iowa), 2 I. C. R. 325.

(l) On submission of a controversy without action, under N. C. Code, §567, a complete and concise statement of all the facts necessary to the solution of the controversy is required on appeal; and a statement referring to exhibits which are not annexed, and which leaves to either party to add to the facts in the case agreed, is wholly inadmissible. Richmond & D. R. Co. v. Reidsville (N. C.), 2 I. C. R. 416.

(mn) The court will not interfere or grant any relief to a railroad company against rates fixed by commissioners, upon a complaint made as to one of several rates only, or where the freight and passenger rates established by the commissioners are not assailed as an entirety. Pensacola & A. R. Co. v. State (Fla.), 2 I. C. R. 522.

(o) Where a tariff of freight and passenger rates has been established by the railroad commissioners, and the railroad company and the commissioners differ as to whether such rates, considered as a whole, will prove remunerative to the company, and there is room for a difference of intelligent opinion on the question, the courts cannot interfere or substitute their judgment for that of the commissioners, but the tariffs as fixed by the commissioners must, in so far as the courts are concerned, be left to the test of experiment. Pensacola & A. R. Co. v. State (Fla.), 2 I. C. R. 522.

(p) The courts have no power to make freight or passenger tariffs. Pensacola & Atlantic R. Co. v. State of Florida, 2 I. C. R. 522.

(q) So long as public officers confine themselves to such duties as are confided to them by law, the court will not interfere to see whether they are acting wisely or judiciously. Western U. Teleg. Co. v. New York (C. C. S. D. N. Y.) 2 I. C. R. 533.

(r) Whether the difference in rates for transportation for local traffic and through traffic is reasonable or unreasonable is a question of fact for the jury. United States v. Tozer (D. C. E. D. Mo.) 597, aff'g Same v. Same. 2 I. C. R. 540.

(s) A court of equity has no power, either at common law, or under the Interstate Commerce Act, to compel a railroad company to enter into a contract with another company for a joint through rate or joint through routing of freight and passengers. Little Rock & Memphis R. Co. v. St. Louis, I. M. & S. R. Co., 2 I. C. R. 763.

(t) Section 1 of the Fourteenth Amendment to the Constitution, declaring that no state shall "deny to any person within its jurisdiction the equal protection of the laws," does not prohibit a state from imposing such conditions upon foreign corporations as it may choose, as a condition of their admission within its limits. Norfolk & W. R. Co. v. Commonwealth of Pa., 3 I. C. R. 178.

(u) Corporations are not citizens within the meaning of clause 1, sec. 2, of art. IV., of the U. S. Constitution, declaring that "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." Norfolk & W. R. Co. v. Commonwealth of Pa., 3 I. C. R. 178.

(v) A witness is protected by the constitutional provision from being compelled to disclose the circumstances of his offense, or the sources from which or the means by which evidence of its commission, or of his connection with it, may be obtained or made effectual for his conviction. Counselman v. Hitchcock (U. S. Sup. Ct.) 3 Inters. Com. Rep. 3 I. C. R. 816; Reversing Re Counselman, 3 I. C. R. 326; and also Overruling Re Peasley, 3 I. C. R. 333.

(w) A rule of court requiring a copy of each pleading to be filed with it, and

allowing therefor a fee of 10 cents per hundred words, and directing the same to be taxed with the costs, does not apply to a petition which consists of many counts precisely alike with the exception of dates, etc., as to which a copy of one count with a reference to the others will suffice so as to allow the taxing of costs for a copy of the whole pleading. Cook & Wheeler v. Chicago, R. I. & P. R. Co., 3 I. C. R. 383.

(x) A rule of practice allowing costs at a certain rate per folio for all copies of pleadings filed does not authorize such charge for copies of pleadings consisting of many counts which are all alike except as to names, dates, and figures, where the purpose of this rule would have been fully subserved by a copy of one count, with a mere reference to the others. Cook v. Chicago, R. I. P. R. Co. (Iowa), 3 I. C. R. 383.

(y) An order made by a referee, that on account of defendant's refusing to produce books and papers the petition be taken as true, except so far as its averments were modified by the evidence introduced on the trial, cannot be assigned as error, where there is no disputed question of fact in the case, and the evidence of plaintiff's witnesses establishes the facts pleaded in the petition without conflict. Cook v. Chicago, R. I. & P. R. Co. (Iowa), 3 I. C. R. 383.

(z) A federal court will discharge from custody on habeas corpus a person imprisoned in violation of the United States Constitution. Re White v. 3 I. C. R. 531.

(aa) The enforcing of an order of railroad commissioners requiring a railroad company to conform to their schedule of rates is a matter of public right for which an action may be maintained in behalf of the state. Campbell v. Chicago, Milwaukee & St. P. R. Co., 4 I. C. R. 203.

(bb) A claim for the refunding to a shipper of an overcharge, made in a petition to railroad commissioners for the enforcement of their order as to rates, is waived on appeal if the refund is not asked in the appellate court. Campbell v. Chicago, M. & St. P. R. Co. (Iowa) 4 I. C. R. 203.

(cc) The judiciary can only inquire whether the means devised by Congress in the execution of a power granted are forbidden by the Constitution. Interstate Commerce Commission v. Brimson, 4 I. C. R. 545.

(dd) A schedule of rates made by railroad commissioners, being challenged as a whole, the court must either condemn or sustain it as a whole, and cannot rearrange it or prepare a new schedule. Reagan v. Farmers' Loan & T. Co. (U. S. Sup. Ct.), 4 I. C. R. 560.

(ee) Although the formation of a tariff of charges for transportation by a common carrier is a legislative or ministerial rather than a judicial function, the court may decide whether or not such rates are unjust and unreasonable and such as to work a practical destruction to rights of property, and if found so it may restrain their operation. Reagan v. Farmers Loan & Trust Co., 4 I. C. R. 560.

(ff) A tariff of railroad rates fixed by a commission which will so diminish the earnings of a road that they will not be able to pay one half the interest on its bonded debt above the operating expenses, is unjust and unreasonable, where without waste or mismanagement in construction or operation, the road has cost far more than the amount of stock and bonds outstanding, which represent money expended in its construction, and the rates have been voluntarily decreased by the company within ten years more than 50 per cent, while under these rates the stock, representing two fifths of the value of the road, has never received a dividend, and for the last three years the earnings above operating expenses have been insufficient to pay the bonded debt. Reagan v. Farmers Loan & Trust Co., 4 I. C. R. 560.

(gg) Congress has not adopted the common law of England as a national municipal law. The enforcement of the common law by the courts of the United States has in every instance been as the municipal law of the state in which the subject-matter was affected. Swift v. Philadelphia & R. R. Co. (C. C. N. D. Ill.), 4 I. C. R. 633.

(hh) A schedule of rates cannot be excluded from evidence under the Illinois statutes, when accompanied by a regular certificate of the commissioners as to its publication, on the ground that it never took effect because never published as required by statutes, since the statutes make the schedule and accompanying certificate prima facie evidence that the schedule offered is a schedule of the commissioners. Chicago, B. & Q. R. Co. v. Jones (Ill.), 4 I. C. R. 683.

(ii) Making a schedule compiled by commissioners prima facie evidence that the rates therein fixed are reasonable maximum rates of charges for railroad carriage does not infringe upon the right of trial by jury. Chicago, B. & Q. R. Co. v. Jones (Ill.), 4 I. C. R. 683.

(jj) Proof of demand and insistence, under effective penalty or threat that railroad employes quit their service, and of consequent injury to the transportation of the mails or interstate commerce, imposes the burden upon those making such demand or insistence, of showing lawful authority conferred by the men themselves, and good faith in its execution. Re Charge to Grand Jury (No. 2) (D. C. N. D. Ill.), 4 I. C. R. 781.

(kk) The principles of the common law apply to controversies in the Federal courts in matters of national control, so far as they are applicable to the subject matter. Murray v. Chicago & N. W. R. Co., (C. C. N. D. Iowa), 4 I. C. R. 806.

(ll) Parol testimony is not admissible to impeach the validity of an act which by the record is shown to have been duly and legally passed. Ames v. Union Pacific R. Co., 4 I. C. R. 835.

(mm) In Nebraska a statute duly authenticated cannot be overturned by extrinsic evidence, if the journals of the two houses show that everything was done which the constitution requires should be done and recorded in the due passage of the act. Ames v. Union P. R. Co. (C. C. D. Neb.), 4 I. C. R. 835.

(nn) There is no national common or general law which can be made the basis of an action to recover back unreasonable rates imposed by a carrier. Swift & Co. v. Philadelphia & Reading R. Co., 5 I. C. R. 116.

(oo) There is no national common or general law in the sense of a rule of civil conduct prescribed by the nation as sovereign as distinguished from the body of common law in force in the several states, which will be enforced by the Federal courts except in those areas not taken into the boundaries of the states. Swift & Co. v. Philadelphia & Reading R. Co., 5 I. C. R. 116.

(pp) The settled rule that the objection to evidence which was made and decided below must appear, and that the evidence improperly admitted must be set out either in the motion for a new trial or the bill of exceptions, applies to several of the grounds of the motion in this case, and therefore these grounds are not considered. The charge of the court was free from error, and there was no error in denying a new trial. Western Union Telegraph Co. v. Michelson, 5 I. C. R. 236.

(qq) If the court instructs the jury to find more than is absolutely necessary for them to find in order for plaintiffs to recover, such action cannot be complained of by the defendant. Seawell v. Kansas City, Ft. S. Scott & Memphis R. Co., 5 I. C. R. 262.

(rr) A verdict will not be disturbed on appeal where there is evidence tending to prove each fact necessary to support it, although the appellate court might have come to a different conclusion on the whole evidence. Rouse v. Youard (Kan. App.), 5 I. C. R. 315.

(sstt) New remedies and unprecedented orders may be availed of and made by a court of equity to meet an emergency, when based on sound principles and calculated to afford necessary relief without imposing illegal burdens. Toledo, A. A. & N. M. R. Co. v. Pennsylvania Co., 5 I. C. R. 545.

(uu) Court may inhibit unreasonable charges.—Although the court cannot compel a railroad company to enter into a contract for through shipments with another company under the Interstate Commerce Act, it may compel it to receive and forward the freights tendered at its terminus by the latter company, and inhibit it from charging for such service rates so unreasonable as to prohibit the shipment of interstate freight by the road of the latter and as to compel all such freight to be shipped over the road in whose favor a discrimination is made. Augusta Southern Ry. Co. v. Wrightsville Tennille Ry. Co., 7 I. C. C. app. XXXVIII.

(vv) Prohibition of suit by foreign corporation not applicable to interstate business.—A statute prohibiting foreign corporations transacting or soliciting business, or which have established an office within the state, from maintaining an action on any demand in any of the courts thereof, does not apply to such corporations while engaged in interstate commerce. Keating Implement & Machine Co. v. Favorite Carriage Co. et al., 7 I. C. C. app. XXXIX.

(ww) A court of equity will not dictate policy of carrier (quoting Judge Dillon.) Railroad Commission of Ohio

v. Hocking Valley Ry. Co., 12 I. C. C. 398.

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(xx) In a proceeding brought by a carrier to show that a system of rates is confiscatory the courts have before them the protection of the security holder's investment, a question of private rights, under the constitutional guaranties. Railroad Comm. of La. v. A. H. T. Ry., 48 I. C. C. 312, 367.

(yy) Under the Act complainant had the right to elect whether it would prosecute its claims for damages before the Commission or in the courts, and having elected to pursue the former course its right to prosecute the claim anew in the courts is controlled by the statute, the provisions of which the Commission is not empowered to modify. Hormel & Co. v. C. G. W. R. R., 56 I. C. C. 419, 425.

(zz) Under section 8 of the Act making a carrier liable for damages resulting to a shipper from the carrier's violation of the Act, a shipper may, for the carrier's failure to post and keep open for inspection its established rates, whereby the shipper is compelled to pay a higher rate than that in effect over a competing line, recover the difference between the rate paid and the competitive rate, and this despite the fact that the shipper would thereby be charged less than the defendent's published charge. St. L. S. W. Ry. Co. v. Lewellen Bros., 192 Fed. 540, 542.

(3a) While it is entirely proper for parties against whom an order of the Commission has been made reducing rates, to apply to the Commission for a rehearing, such application is not a condition precedent to the bringing of a suit in the Commerce Court for the purpose of setting aside such an order. A. C. L. v. I. C. C., 194 Fed. 449, 452.

(3b) A petition to the Commerce Court to enjoin an order of the Commission reducing rates is not an appeal or writ of error requiring all parties against whom the order of the Commission was rendered to join, but is a plenary suit in equity and may be brought by one carrier without joining the other parties to the order. A. C. L. v. I. C. C., 194 Fed. 449, 452.

(3c) Railroads may complain of rates prescribed by the Commission as to their effect upon their revenue, but not as to their effect upon shippers and places. A. C. L. v. I. C. C., 194 Fed. 449, 453.

(3d) After an order has been made by the Interstate Commerce Commission in favor of a complainant shipper against a railroad carrier for the payment of a damage award, proceedings brought in court because of the refusal of the carrier to comply with the order are properly for the damages sustained by the complainant (limited to the amount set forth in the pleadings), and such proceedings are de novo, and the damages are to be found by the jury under all the evidence, including the findings of the Commission, which are made evidence by the Acts of Congress. The right of action given by the Interstate Commerce laws to a partnership to recover damages suffered by it through the discriminatory acts and unfair practices of a railroad carrier is not lost in whole or part by the death of one of the partners. The common-law rule that personal actions die with the person has no application. The jury, in assessing damages, may consider as an element the lapse of time between the incurring of the damage and the rendering of the verdict, and allow for this in the assessment. Such element of damage, however, could not exceed the equivalent in amount of lawful interest. These principles are in consonance with and can be deduced from the rulings in a number of cases, of which it is sufficient to refer to Texas Ry. Co. v. Abilene Co., 204 U. S. 442, 27 Sup. Ct. 350, 51 L. ed. 553, 9 Ann. Cas. 1075; I. C. C. v. Alabama Ry. Co., 168 U. S. 174, 18 Sup. Ct. 45, 42 L. ed 414; West. ern N. Y. v. Penn. Co., 137 Fed. 343, 70 C. C. A. 23; P. R. R. v. Clarke, 238 U. S. 456, 35 Sup. Ct. 896, 59 L. ed. 1406. Minds v. Pennsylvania R. R., 237 Fed. 267, 268.

(3e) The remedies given by the Interstate Commerce Act to an aggrieved party are these: Any form of action, otherwise open to the injured party, is preserved to him. He is given the right to resort to an action at law, or he may, at his option, ask the Commission to award him damages. If he brings his action at law, it is necessarily based upon two propostions: One is that the regulation of which he complains is unlawful and the rule which he seeks to have established is the proper one. Whether this be a conclusion of law or a finding of fact is an academic distinction, but it must in fact appear. The other is the fact and amount of his damage. The first is an administrative question, and for obvious reasons is committed to the Commission, and the Com-

mission alone, to find. The second is a judical question, which may be submitted to the courts, or to any tribunal having the lawful power to determine it. The consequence follows that recourse to the Commission is only in part optional. The administrative question must be first determined by the Commission, because, if an action were brought at law, without this first finding, the plaintiff could not make out his case. His real option is this: He may submit the administrative question alone to the Commission, and thus, having established his right to recover his damages, may bring his action at law, and prove both his injury and the amount of his damages, or he may exercise the right given him by the statute by submitting both questions to the Commission. If he takes the first course, the action is one for damages and subject to well-known rules. If he takes the second course (as these plaintiffs did), what results? Had the right of trial by jury not been involved, Congress would doubtless have given the award of the Commission the effect of a judgment. The complainant, being a volunteer, is concluded by what the Commission does. The defendant is not concluded. If the defendant complies with the order, the plaintiff is done. If the order is not complied with, the plaintiff may have recourse to the courts (federal or state), setting forth his injury, the fact of his complaint to the Commission and the order made thereon, and that it has not been complied with. In the words of the statute, the cause then proceeds as an action for damages, except that the findings of the Commission are made evidence, and the defendant must pay costs and counsel fees. If this language of the statute is taken at its face value, and the action regarded as one for damages, the whole proceeding is simplified. If the view now presented by the defendant is taken, a host of baffling queries rush upon the mind. The obstacles which shut out this view may be summed up in the observation that, if such be the law, the defendant is given the undeserved advantage of being in a position in which it may gain, but cannot lose, and all its risks in this speculation are costs and counsel fees. In this view the jury would be required to find under all the evidence (including the order), not the damages (up to the limit of the award), but how much of the damage found by the Commission is shown by the evidence of the defendent at the trial to have been improperly allowed. Without meaning it as a statement of defendant's position, the practical effect may be presented by this illustration: If the Commission found a loss in tonnage of 1,000 tons, and a money loss of $2 per ton, and a consequent damage of $2,000, the plaintiff would be bound by each of these findings, but the defendant would not. If the defendant showed at the trial that the money loss per ton was only $1, the jury must apply this to the 1,000 tons found by the Commission, and could not render a verdict for over $1,000, notwithstanding that it also further appeared at the trial that the Commission had made another mistake, and that the true tonnage was 2,000 tons, and the actual damage $2,000. In other words, any mistakes made by the Commission against the defendant must be corrected by the jury; but mistakes made against the plaintiff cannot be corrected, notwithstanding the fact that one may offset the other. This is inconsistent with the rulings in the cited cases, and under them we do not feel at liberty to consider the question an open one. The action is one for damages, the proceedings in which are de novo, and in the nature of an appeal, with the added consequences ingrafted upon it by the Act of Congress. Whether the jury could award a larger sum in damages that the Commission allowed does not arise here. It might be conceded that under the Act of Congress the plaintiff was so limited, without affecting the character of the action as one for damages. This disposes of practically all of the questions raised. A formal disposition is made of all of them in the order in which they are set forth in the reasons for a new trial. Minds v. Pennsylvania R. R., 237 Fed. 267, 269, 270.

(3f) A plaintiff who brings his action at law for a cause of action arising under the provisions of the Interstate Commerce law, must (as every plaintiff must) make out his case. If he has been damaged by a car distribution made in accordance with a system or rule of distribution adopted by a railroad carrier and filed with the Commission in accordance with the requirements of the statutes, he has not suffered a legal injury, unless the distribution be one of the character condemned by law. This he must prove, and he can prove it only by a finding of the Commission. In consequence he is driven to go first to the Commission for all the administrative

findings. The reason for this lies on the surface of things. When, however, these have been found, either on complaint of our suppositious plaintiff or of some one before him, then he may bring his action at law and can recover. He can recover, because he can make out his case first by proving (through the finding of the Commission) that the system of car distribution enforced by the carrier defendant was unjust and discriminatory; and, secondly, that he has been damaged thereby, and to what amount. He is only compelled to go to the Commission when his case depends upon the administrative finding that the rule of car distribution of which he complains is an improper one. If the carrier has adopted and filed a fair and proper rule, or one has been found by the Commission, and the cause of action arises out of an unjust and discriminatory departure from it, causing damage, this fact may be established in an action at law, and no preliminary recourse to the Commission is necessary. The adjudged cases make clear the distinction by which it may be readily determined whether such recourse is necessary. The distinction indicated is not only consistent with, but is to be found in, the section of the act and the cases to which we have been referred; Section 9, Act to Regulate Commerce; P. R. R. v. Clark, 238 U. S. 456, 35 Sup. Ct. 896, 59 L. ed. 1406; Proctor v. U. S., 225 U. S. 282, 32 Sup. Ct. 761, 56 L. ed. 1091; Riddle v. Railroad, 3 Interst. Com. R. 230; P. R. R. v. International, 230 U. S. 184, 33 Sup. Ct. 893, 57 L. ed 1446, Ann Cas. 1915A, 315; P. R. R. v. Puritan, 237 U. S. 121, 35 Sup. Ct. 484, 59 L. ed. 867, Railroad v. Penn., 137 Fed. 343, 70 C. C. A. 23. To which may be added Barret v. Gimbel Bros., 226 Fed. at page 631, 141 C. C. A. 379, the approved ruling being reported in (D. C.) 215 Fed. 104, reference to which latter ruling is made merely as an expression of the views of this court already made. This further distinction is, of course, also clear, emphasizing the distinction already made. The complaining party is given an option or choice of the tribunal he will ask to assess his damages. When he has once made his election, he is (again of course) bound by it. He cannot follow an unsuccessful resort to one tribunal by taking the same claim of damages before another. What he can do, and what he must do, are sometimes coupled, and sometimes not. Both of them may be thus summarized If the question he asks to have determined is an administrative one, he has no option, but must make his complaint to the Commission, and cannot take it elsewhere. 2. If the questions are all and wholly juridical, he has the option (under the ruling of the courts, although the Commission has suggested a different view) of either bringing his action at law or complaining to the Commission. 3. If the questions necessarily arising are some of them administrative and some juridical, then he must first go to the Commission to have the administrative questions determined, but as to the juridical questions he still retains his alternative or optional right. 4. He may first apply to the Commission to have the administrative questions determined, limiting his complaint to this feature, and, if determined in his favor, may bring his action at law, establishing what may be called the administrative facts by putting in evidence the finding of the Commission and proving the judicial facts by any evidence at his command; or 5. He may include in his complaint to the Commission both the administrative and the juridical elements of his case, and have them determine both and everything involved in his complaint. If there had been no right of trial by jury involved, the supply of remedies provided by the act would doubtless have been stopped at this point. Because it was involved, Congress saw that something further was required. As the right of trial by jury was not involved in the administrative questions, the findings of the Commission as to them were made to conclude everybody. As the plaintiff would not bring the juridical questions before the Commission, except as a volunteer, the findings of the Commission were made to conclude him. As the defendant was not a volunteer, and as Congress wished to give to the carriers (whether it was a constitutional right or not) the right to a jury trial, the findings of the Commission were not made to conclude them. The carrier was therefore left at liberty to pay or not pay the award as it might elect. If it paid it, the complaint of the plaintiff was satisfied, and of course silenced. If it did not pay it, the plaintiff must have a further remedy, and this necessarily must be by a proceeding at law, because in no other way could the carrier be brought before a jury. He is therefore given (or there is restored to him)

a right of action at law. To make use (as far as could be done), of the fruits of the labor and time expended in securing the report of the Commission, the findings are made evidence, and the plaintiff is allowed his costs and counsel fees. If, to paraphrase the language of Congress, this action, to which the act of the defendant has driven the plaintiff, is treated in all respects as an action for damages, except that all the findings of the Commission are made evidence, etc., all or nearly all troubling questions are eliminated. If the findings of the Commission, are further regarded as binding upon the plaintiff, but open to any attack by the defendant, then a veritable legal chaos reigns. It will be seen to follow that in such final action the administrative findings must (as in the case of a first action at law) conclude everybody and settle the administrative facts. The facts to be found by the jury must be open ones to the defendant, and (at least may) be alike open to the plaintiff. The simplest view which might be taken of such a proceeding is that it is to be tried (with the exceptional features noted) precisely as the action for damages would have been tried, had the plaintiff gone first to the Commission to determine the administrative facts, and then brought his action; the administrative findings included in the report being treated as such preliminary findings. This would, however, open to the plaintiff the opportunity to go beyond the cause of action presented to the Commission, and would be inconsistent with some of the provisions of the act of Congress. All such inconsistencies disappear, however, if the proceedings are treated as in the nature of appeal proceedings, taking into court only the original complaint or cause of action presented to the Commission, but otherwise de novo, except for the evidentiary and other features ingrafted upon it by Congress, and with the administrative features conclusively established by the findings of the Commission, and the juridical facts open to be established by any otherwise proper evidence, and to be found under all the evidence, in the body of which is embraced the findings of fact by the Commission. Hinsdale Coal & Coke Co. v. Pennsylvania R. Co., 237 Fed. 272, 273, 274, 275.

(3g) The Transportation Act Feb. 28, 1920, §206, giving jurisdiction of claims against the Railroad Administration for violations of the Act to Regulate Commerce to the Interstate Commerce Commission but also providing that actions at law and suits in equity, which prior to federal control could have been brought against the carrier, might, after the termination of the control be brought against an agent designated for that purpose did not vest in the Commission sole jurisdiction over claims for a violation of the Interstate Commerce Act, but an action can be prosecuted by the shipper in the courts in cases where proceedings before the Commission are not a prerequisite to such action. Davis v. Parrington, 281 Fed. 10.

(3h) Where the Commission orders carriers to desist from according different rates to coal intended for the use of railroads as fuel than to commercial coal, and the facts, circumstances and conditions upon which it bases its orders are undisputed, and the question involved is the construction of sections 2 and 3 of the Act to determine whether the different charges constitute violations of those sections, the order is not merely administrative and is open to review by the Commerce Court. I. C. C. v. B. & O. R. R. Co., 225 U. S. 326, 32 Sup. Ct. 742, 746, 56 L. ed. 1107.

(3i) The courts have not been given jurisdiction to fix rates or practices in direct proceedings, nor can they so collaterally during the progress of a lawsuit when the action is based on the claim that unreasonable allowances have been paid, for if the decision of such questions was committed to the different courts, with different juries, the results would not only vary in degree, but might often be opposite in character, to the destruction of the uniformity in rate and practice which is the cardinal object of the Interstate Commerce Act. Mitchell Coal & Coke Co. v. P. R. R. Co., 33 Sup. Ct. 916; 230 U. S. 247.

(3j) The courts are no more authorized to determine the reasonableness of an allowance for a haul over a spur track, between mine and station, than they are to pass upon the reasonableness of a rate for a haul over a trunk line between station and station. Mitchell Coal & Coke Co. v. P. R. R. Co., 33 Sup. Ct. 916, 923; 230 U. S. 247.

(3k) Where the court has no jurisdiction over a suit for damages for unlawful discrimination in the payment of allowances, parties cannot by consent give jurisdiction to the court. Mitchell Coal

& Coke Co. v. P. R. R. Co., 33 Sup. Ct. 916, 924; 230 U. S. 247.

(3l) The Interstate Commerce Act, §9, allowing persons damaged by any common carrier to complain to the Interstate Commerce Commission, or to bring suit for damages in federal courts, provides two methods for the ascertainment of damages, which are exclusive, one to the Commission, and the other to the federal courts. Petition of Southern Lumber & Mfg. Co., 210 S. W. 639.

(3m) The Transportation Act Feb. 28, 1920, §206, giving jurisdiction of claims against the Railroad Administration for violations of the Act to Regulate Commerce to the Interstate Commerce Commission but also providing that actions at law and suits in equity, which prior to federal control could have been brought against the carrier, might, after the termination of the control be brought against an agent designated for that purpose did not vest in the Commission sole jurisdiction over claims for a violation of the Interstate Commerce Act, but an action can be prosecuted by the shipper in the courts in cases where proceedings before the Commission are not a prerequisite to such action. Davis v. Parrington, 281 Fed. 10.

(3n) The provision of Interstate Commerce Act, §9, giving an option of going before the Commission or the courts to recover damages occasioned by a violation of the statute, does not give the option to sue in court, contrary to another provision of the act, denying a right to recover in court for the same cause. Fulton Bag & Cotton Mills v. American Ry. Express Co., 288 Fed. 854.

ALL OTHER CITATIONS

Meeker v. Lehigh Valley Co., 162 Fed. 354, 362; A. C. L. v. I. C. C., 194 Fed. 449, 451, 453, 455; Langdon v. Penn. R. R. Co., 194 Fed. 486, 494, 495; Baer Bros. Mercantile Co. v. D. & R. G. R. R. Co., 200 Fed. 614, 616; Prairie Oil & Gas Co. v. U. S. 204 Fed. 798, 807; L. V. R. R. Co. v. U. S., 204 Fed. 986, 991; Stineman Coal Mining Co. v. Pennsylvania Ry. Co. (Pa. 1913), 88 Atl. 761; Langhill v. Pennsylvania R. Co., 98 Atl. (Pa. 1916), 873; Hogan Milling Co. v. Union Pac. Ry. Co. (Kan. 1914), 139 Pac. 397, 398; A. C. L. Ry. Co. v. Thomasville Live Stock Co. (Ga. 1913) 78 S. E. 1019, 1021; G. of G. Ry. Co. v. Birmingham Sand & Brick Co. (Ala. 1913), 64 So. 202, 205; Norfolk Trucker's Exch., Inc. v. Norfolk Southern R. Co. (Va., 1914), 82 S. E. 22, 92, 93; Western & A. R. Co. v. White Provisions Co. (Ga. 1914), 82 S. E. 644, 645; Manufacturers Ry. Co. v. St. L. I. M. & S. Ry. Co., 32 I. C. C. 100, 106; Detmer-Walen Co. v. D. L. & W. R. Co., 153 N. Y. S., 288, 289; Coad v. Chicago, St. P. M. & O. Ry. Co., (Ia. 1915), 154 N. W., 396, 397; Midway Coop. Elevator Co. v. Great Northern Ry., (N. Dak. 1918), 169 N. W. 494; Baltimore & O. R. Co. v. Carnegie Steel Co. (Pa. 1918), 251 Fed. 682; Missouli, K. & T. Ry. Co. of Texas et al v. Empire Express Co., (Tex. 1920), 221 S. W. 590; Petition of Southern Lumber & Mfg. Co., 210 S. W. 639; McGregor v. Great Northern Ry. Co., (N. Dak. 1919), 172 N. W. 841, 842; Chicago, R. I. & P. Ry. Co. et al, v. Gist (Okla. 1920), 190 Pac. 878; Express Contracts, 59 I. C. C. 518, 523; Fort v. Denver & R. G. R. Co. (Colo. 1921), 195 Pac. 109; Southwestern Telegraph & Telephone Co. v. City of Houston (Tex. 1920), 268 Fed. 878; Finkbine Lumber Co. v. Gulf & S. I. R. Co., 269 Fed. 933; Dusenberry v. Lehigh Valley R. Co. (N. N. 1920), 269 Fed. 1009; Export Bill of Lading, 64 I. C. C. 347, 353; State of Texas v. Interstate Commerce Commission, 42 Sup Ct. 261; Midway Co-op. Elevator Co. v. Great Northern Ry., (N. Dak., 1918), 169 N. W. 494; Cecil v. Southern Express Co. (Ky., 1921), 229 S. W. 1041; Fisk Rubber Co. v. New York, N. H. & H. R. R. (Mass. 1921), 132 N. E. 714; Shroyer v. Chicago, R. I. & P. Ry. Co., (Tex., 1920), 222 S. W. 1095; Kahn v. American Railway Express Co., (W. Va., 1921) 106 S. E. 126; J. C. Francesconi & Co. v. Baltimore & O. R. Co., 274 Fed. 687; Delaware & Hudson Co. v. United States (Interstate Commerce Commission, Intervener), 295 Fed. 558.

§1a. Contempt of Court.

CASES 1887-1908

(a) In matters of contempt a jury is not required by "due process of law." Courts possess the power to punish for contempt. Interstate Commerce Commission v. Brimson (U. S. Sup. Ct.), 4 I. C. R. 545.

(b) It is a contempt of court to interfere with property in the hands of a receiver, or with men in their employ. Ames v. Union P. R. Co. (C. C. D. Neb.), 4 I. C. R. 619.

(c) Punishment for contempt is not such a remedy for a conspiracy to obstruct the business of a railroad in the hands of a receiver as to prevent the remedy of the injunction. Farmers Loan

& Trust Co. v. Northern Pacific R. Co., 4 I. C. R. 744.

(d) Imprisonment for six months was imposed as a punishment for contempt of court in interfering with the operation of a railroad by a receiver, where, after the service of the restraining order, the defendant continued in his unlawful course and aggravated his contempt by speeches to the employes of the receiver. Thomas v. Cincinnati, N. O. & T. P. R. Co., (C. C. S. D. Ohio), 4 I. C. R. 788.

(e) Any wilful attempt, with knowledge that a railroad is in the hands of a court through its receiver, to prevent or impede the court in running the road, which as between private individuals would give a right of action for damages, —is a contempt of court. Thomas v. Cincinnati, N. O. & T. P. R. Co. (C. C. S. D. Ohio), 4 I. C. R. 788.

(f) Inciting the employes of a road in charge of a receiver to quit their service, in pursuance of the plans of an unlawful conspiracy, constitutes a contempt of court. Thomas v. Cincinnati, N. O. & T. R. Co., (C. C. S. D. Ohio), 4 I. C. R. 788.

(g) Instigating the employes of a receiver to leave their employment may be contempt without being a crime. Thomas v. Cincinnati, N. O. & T. P. R. Co., (C. C. S. D. Ohio), 4 I. C. R. 788.

(hi) In a proceeding for contempt in equity, a sworn answer, however full and unequivocal, is not conclusive, and does not entitle the defendant to discharge without inquiry into the facts. United States v. Debs. (C. C. N. D. Ill.), 5 I. C. R. 163.

(j) Alleged advice of counsel as to what a person under injunction might do will constitute no justification or mitigation, where the statement of facts made to such counsel is not disclosed, but on the contrary a presumption is raised that a full statement would not be advantageous. United States v. Debs. (C. C. N. D. Ill.), 5 I. C. R. 163.

(k) No violation or disregard of an injunction totally invalid for any reason can constitute a punishable contempt; but no irregularity or error in the procedure, or the order itself, can justify disobedience if the court acquired jurisdiction and did not exceed its powers in the particular case. United States v. Debs. (C. C. N. D. Ill.), 5 I. C. R. 163.

(l) An employee of a railroad company is not guilty of contempt as disobeying an injunction restraining the company from refusing to another road equal facilities for the interchange of traffic, where, rather than perform the duties necessary to such interchange, he quits the service in good faith, unconditionally and absolutely, while his train is safely stored in the company's yard and no special injury can result, no lives be imperiled, or property jeopardized, by his refusal to continue in the service; but so long as he continues in the service he is guilty of contempt in refusing to obey such injunction. Toledo, A. A. & N. M. R. Co. v. Pennsylvania Co. (C. C. N. D. Ohio), 5 I. C. R. 545.

(m) An engineer who, while on the road with his train, refuses to switch into the train a car from another road with which the labor organization to which he belongs is in conflict, declares that he quits the employment of the company, and refuses repeated orders to proceed with his train; but, upon receiving an order from such labor organization, completes his trip, and thereafter, upon being told what his next run will be, gives no notice of having quit or intending to quit his employment,—is guilty of contempt as violating an injunction restraining the company from refusing equal facilities for the interchange of traffic to such other company, of which he has notice. Toledo, A. A. & N. M. R. Co. v. Pennsylvania Co. (C. C. N. D. Ohio), 5 I. C. R. 545.

(n) The proper practice, upon the refusal of employees to obey an injunction against a railroad corporation, is the issuance of a citation requiring them to appear and show cause why they should not be attached for contempt. Toledo, A. A. & N. M. R. Co. v. Pennsylvania Co. (C. C. N. D. Ohio), 5 I. C. R. 545.

(o) Punishment of servant of corporation for violating injunction against it. —The servant of a corporation which has been enjoined from violating the Interstate Commerce Act may be punished for contempt in assisting in the violation of the injunction, although he was not a party to the suit or served with the order, if he had notice of it. Ex parte James Lennon v. 7 I. C. C. app. XIII.

(p) Violation of injunction against interference with interstate commerce, punishable as a contempt.—The United States circuit courts have power to punish for contempt persons who violate their injunctions against interference

with interstate commerce. The court says: The entire strength of the nation may be used to enforce in any part of the land the full and free exercise of the national powers and the security of all rights intrusted by the Constitution to its care. The strong arm of the national government may be put forth to brush away all obstructions to the freedom of interstate commerce or the transportation of the mails. If the emergency arises, the army of the nation and all its militia are at the service of the nation to compel obedience to its laws. But, the court continues, the right to use force does not exclude the right of appeal to the courts for a judicial determination and for the exercise of all their powers of prevention. Re Debs. v. 7 I. C. C. app. XXVII.

§2. Defenses.

See Cars and Car Supply §34; Crimes VIII; Interstate Commerce Commission §3; Special Contracts §6; Undercharges §3.

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(a) In determining the validity of a decision of the Commission its order cannot be considered by itself alone, but must be read in the light of the entire record. I. C. C. v. U. P. R. R., 222 U. S. 541, 551, 32 Sup. Ct. 108, 56 L. ed. 308.

(b) In determining the mixed questions of law and facts involved in the decisions of the Commission, the court confines itself to the ultimate question as to whether the Commission acts within its powers, and it will not consider the expediency or the wisdom of the order, or whether, on like testimony, it would have made a similar ruling. I. C. C. v. U. P. R. R., 222 U. S. 541, 547, 32 Sup. Ct. 108, 56 L. ed. 308.

(c) Where the complaint in a suit by a shipper to recover the excess exacted above the quoted rate does not reveal on its face that the quoted rate was less than the schedule rate filed with the defendant carrier cannot prove such fact as a defense under a plea of the general issue. Baldwin Land Co. v. Columbia Ry. Co., 58 Or. 285, 291, 114 P. 469.

§3. Mandamus.

CASES 1887-1908

(a) The discretionary power of the court, under the Interstate Commerce Act, to grant a mandamus to prevent unjust discrimination by a carrier, although some question of fact is undetermined, does not apply where no case of unjust discrimination is shown to exist. Re Morris v. D. L. & W. R. Co., 2 I. C. R. 617.

(b) The duty enjoined by the Act of Congress of Aug. 7, 1888, §2, upon the Pacific railroad companies, of affording equal facilities to all connecting lines of telegraphs without discrimination against any, should be enforced in the mode prescribed by §3, of application to the Interstate Commerce Commission, which is required to proceed by mandamus, rather than by bill in equity, as the remedy provided is exclusive. Union P. R. Co. v. United States (C. C. App. 8th C.), 4 I. C. R. 705.

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(c) A petition for mandamus which demands the production of papers executed before the passage of the Hepburn Act, so indefinitely worded that the court cannot determine what portions may be privileged communications between attorney and client, and what not, may be denied in the court's discretion. United States v. L. & N. R. R. Co., 212 Fed. 486, 494.

(d) Mandamus will not lie under section 20 to disclose privileged communications between an individual and his counsel. United States v. L. & N. R. R. Co., 212 Fed. 486, 493.

(e) Although mandamus will not lie so as to interfere with the exercise of its discretion by the Commission, it will lie to compel the Commission to take jurisdiction over carriers operating between Alaska and the States and betwen Alaska and adjacent foreign countries, where the Commission has refused to do so pursuant to its belief that the Interstate Commerce Act has conveyed upon it no authority over such carriers. I. C. C. v. H. S. S. Co., 224 U. S. 474, 484, 32 Sup. Ct. 556, 56 L. ed. 849.

(f) The Supreme Court of the District of Columbia will issue a writ of mandamus to compel the Interstate Commerc Commission to entertain a petition by a steamship company to compel the filing with the Commission of rates and the establishment of through routes and joint rates on traffic moving between Alaska and adjacent foreign countries, and Alaska and the state of Washington. Humboldt S. S. Co. v. I. C. C., 37 App. Cas. D. C. 266, 275.

§4. New Trial.

(a) Where the defendant carrier in a

suit by a shipper for unlawful discrimination produces all the books required to enable plaintiff to prove his case as to payment of rebates to competitors, plaintiff is not entitled to a new trial by reason of defendant's failure to produce the whole list of documents called for by him at the trial. International Coal Mining Co. v. Penn. R. R. Co., 162 Fed. 996, 997.

(b) Where a judgment against a railroad company in a suit to enforce an award of damages by the Interstate Commerce Commission for discrimination was reversed by the Supreme Court on the ground of the insufficiency of the evidence to sustain the award of the commission, and the case remanded for a new trial, the court on the second trial may properly admit additional evidence, not only such as was taken before the commission, but the testimony of new witnesses. Pennsylvania R. Co. v. Weber, 269 Fed. 111.

§5. Suits by or against Commission

See Procedure Before Commission §12.

CASES 1887-1908

(a) The principal office, within the meaning of the Act of Congress authorizing a circuit court where such office is situated, to enforce orders of the Interstate Commerce Commission, of a railroad corporation created by an Act of Congress which does not prescribe where such office shall be kept, is the one where its principal officers have their business domicil, the meetings of stockholders, directors, and executive committee are held, the stock books kept and the dividends declared, rather than the place where the subordinate officers in charge of the operating, traffic, and accounting departments of the business, discharge their duties. Interstate Commerce Commission v. Texas & P. R. Co. (C. C. S. D. N. Y.), 4 I. C. R. 62.

(b) The process of a Federal court cannot be exercised in aid of an investigation before the Interstate Commerce Commission as that is an administrative and not a judicial body as a proceeding before an administrative body is not a "case' 'or "controversy" within the constitutional powers of the Federal courts. Re Interstate Commerce Commission, 4 I. C. R. 315.

(c) A suit brought by the Interstate Commerce Commission in the United States circuit court to enforce an order of the Commission, is an original and independent proceeding. The court is not confined to a mere re-examination of the case as heard and reported by the Commission; but the court hears and determines the cause de novo upon proper pleadings and proof. The Commission's report is prima facie evidence of the matters of fact therein reported; but the court will hear all such other, and further testimony as either party may introduce, bearing upon the matters in controversy; and will permit such pleadings as will bring before the court clearly, and in legal form, such matters as may be pertinent and proper in view of the issues raised. Cases cited: 2 Inters. Com. Rep. 351, 2 L. R. A. 289, 37 Fed. Rep. 567, Kentucky & I. Bridge Co. v. Louisville & N. R. Co.; 3 Inters. Com. Rep. 796, 49 Fed. Rep. 177, Interstate Commerce Com. v. Lehigh Valley R. Co.; 50 Fed. Rep. 295, Interstate Commerce Com. v. Atchison, T .& S. F. R. Co. Interstate Commerce Commission v. Cincinnati N. O. & T. P. R. Co., 4 I. C. R. 332.

(d) Where a carrier has an office in one state, which is that of the executive officers, and where the stockholders' and directors' meetings are held, and the stock certificate books and the records of stockholders' and directors' meetings are kept, while the administrative offices of the carrier are in another state, the former is its principal office within the meaning of the Interstate Commerce Act, §16, relating to the place of bringing suits to enforce orders of the Commission. Interstate Commerce Commission v. Texas & P. R. Co. (C. C. App. 2d C.), 4 I. C. R. 408.

(e) The mingling indiscriminately of matters of legal and equitable cognizance in the same complaint, and the enforcement in a single suit of all the rights and duties mentioned, is not authorized by the Act of Congress of Aug. 7, 1888, §4, providing in effect that to secure and preserve to the United States the full value and benefit of its lines upon all the telegraph lines belonging to the railroad and telegraph companies mentioned in the Pacific Railroad companies acts, and to have them possessed, used, and operated in conformity with the statutes, it is made the duty of the attorney general by proper proceedings to prevent any unlawful interference with the rights and equities of the United States, to have legally ascertained and adjudicated all alleged rights of all persons and corporations claiming any control or interest in any telegraph lines or property, or ex-

clusive rights of way upon the lands of said railroad companies, and to have set aside all contracts and their provisions entered into by such companies unlawfully and beyond their powers. Union Pacific R. Co. v. United States, 4 I. C. R. 705.

(f) The Attorney General of the United States in a suit to enforce the duty imposed upon the Pacific railroad companies by Act of Congress of Aug. 7, 1888, §2, of affording equal facilities to all connecting lines of telegraph without discrimination, has, if such suit can be maintained, the burden of showing that some telegraph company has placed itself in a position to demand of the railway company the same facilities accorded to other companies, and that such demand has been refused, as it cannot be presumed that the railroad company intends to disregard its duty. Union Pacific R. Co. v. United States, 4 I. C. R. 705.

(g) The court cannot, upon a certificate of the Interstate Commerce Commission that in making an order it did not design to make it so broad as its terms import, enforce the order in such restricted sense, where it otherwise would not be enforceable. Interstate Commerce Commission v. Delaware, L. & W. R. Co., 5 I. C. R. 146.

(h) The opinion of the Interstate Commerce Commission has not the effect of a judicial determination; and in a proceeding to enforce it the court proceeds to hear the complaint de novo. Shinkle, Wilson, & Kreis Co. v. Louisville & N. R. Co., 5 I. C. R. 282.

(i) The circuit court and circuit court of appeals having refused to enforce an order of the commission requiring carriers to cease and desist from charging more than $1.00 per 100 lbs. on first class freights from Cincinnati to Atlanta, on the ground that the existing rate of $1.08 charged by such carriers had been shown, by evidence adduced in the circuit court, to be no more than reasonable, and that the prima facie case of unreasonableness made by the findings of the Commission had been overcome by such additional evidence,—this court will not review the finding of both such courts on that matter of fact. C., N. O. & T. P. R. Co. v. Inters. Com. Commission, 5 I. C. R. 391.

(j) An erroneous decision of the circuit court affirming the validity of an order of the Interstate Commerce Commission, made under a misconception of the extent of its powers, should be reversed by the circuit court of appeals, and the order set aside, and the cause remanded to the Commission in order that the latter, if it saw fit, might proceed therein according to law; and the circuit court of appeals should not undertake of its own motion to find and pass upon the questions of fact involved which were not considered by the Commission. Texas & P. R. Co. v. Interstate Commerce Commission, 5 I. C. R. 405.

(k) That the disparity in rates between import and domestic traffic was too great to be justified by ocean competition cannot be made by the circuit court of appeals the basis of an affirmance of a decision by the circuit court sustaining an order of the Interstate Commerce Commission denying that ocean competition should be regarded, when there was no allegation or testimony in the court below as to the extent to which a disparity in rates could be justified by ocean competition if that could be considered. Texas & P. R. Co. v. Interstate Commerce Commission (U. S. Sup.), 5 I. C. R. 405.

(l) An order made by the Commission, which rests upon an erroneous principle and is unreliable, cannot be sustained, and is not to be judicially enforced. Interstate Commerce Commission v. Lehigh V. R. Co., 5 I. C. R. 643.

(m) The court may go fully into the proof to determine whether it will approve an order made by the Commission, and may hear any additional proof. Interstate Commerce Commission v. L. & N. R. Co., 5 I. C. R. 656.

(n) The jurisdiction of the United States circuit court is limited to an approval or disapproval and to an enforcement or refusal to enforce an order of the Commission. The court has no authority to modify the order of the Commission. Interstate Commerce Commission v. L. & N. R. Co., 5 I. C. R. 656.

(o) The proper remedy, where the record of proceedings before the Interstate Commerce Commission by shippers of oil in accordance with a previous order of the Commission does not enable the Commission to determine whether any of the claims are supported by facts which would bring them within the terms of the order, is by proceeding in the courts under the Act to Regulate Commerce, §16. Independent Ref. Asso. v. Pennsylvania R. Co., 6 I. C. C. 449.

(p) Court cannot modify or change

order of Interstate Commerce Commission.—The circuit court cannot modify or change an order of the Interstate Commerce Commission as, the powers of the Commission being administrative and not judicial, the ancillary and supplemental jurisdiction is necessarily limited to granting or refusing compulsory obedience to the lawful orders of the Commission as made by it. Detroit, Grand Haven & Milwaukee Ry. Co. v. Interstate Commerce Commission, 7 I. C. C. app. LXXIV.

(q) Court will not determine rates to be charged by road which has been in, but has passed out of, possession of receiver.—The United States circuit court cannot assume jurisdiction to determine the question of rates of a railroad company in a proceeding to enforce an invalid order of the Interstate Commerce Commission because when the proceeding commenced the railroad was in the custody of receivers appointed by the court, where it has since been transferred to a new company, as a decision as to the duties of receivers in the past would be profitless. Farmers' Loan and Trust Co. v. Northern Pacific R. R. Co., 8 I. C. C. app. XXXV.

(r) Court cannot adjust differences between carrier and shipper, and correct abuses in railroad charges.—In a proceeding to enforce a decision and order of the Interstate Commerce Commission, the court has no general power to adjust differences between the litigants, or correct abuses by a railroad company in the conduct of its business, and can grant no relief unless a valid order has been made by the commission and violated by the railroad company. Farmers' Loan and Trust Co. v. Northern Pacific R. R. Co. 8 I. C. C. app. XXXV.

(s) Commission may maintain suit to restrain exaction of unreasonable rates.—The Interstate Commerce Commission may maintain a suit to compel a railroad to desist from exacting rates which it has determined to be unreasonable, although it has no authority to fix maximum rates. I. C. C. v. Chicago, Burlington & Quincy R. R. Co., 8 I. C. C. app. LXXIX.

(t) Petition to enforce order on sufficient facts not demurrable.—A demurrer will not lie to a petition by the Interstate Commerce Commission to compel a railroad company to desist from exacting unreasonable rates on the ground that the Commission's finding of facts does not support its order if the findings expressly state that the charge made is unreasonable, although the findings may not appeal to the judgment of the court upon the merits. I. C. C. v. Chicago, Burlington & Quincy R. R. Co., 8 I. C. C. app. LXXIX.

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(u) Suits to enforce the Commission's orders for reparation "shall proceed in all respects like other civil suits for damages." Vulcan Coal & Mining Co. v. I. C. R. R. Co., 33 I. C. C. 52, 67.

(v) In view of the difficult questions so frequently arising out of the relations between trunk line carriers and industries with industrial railways, rulings in this case should be reviewed by the courts in order that some definite principle may be judicially established by which the Commission may hereafter be guided in such cases as they arise. National Tube Co. v. B. & O. R. R. Co., 50 I. C. C. 489, 504.

(w) In 17 I. C. C. 552, the Commission reduced gathering rates on citrus fruits, pineapples and vegetables, from Florida points of production on the F. E. Ry. to the basing point at Jacksonville, Fla. Such reduction was made because of increased tonnage shown to exist on similar traffic handled by the S. A. L. Ry. and the A. C. L. R. R., though no evidence was adduced tending to show that similar conditions existed with respect to the F. E. C. Ry. HELD, that the order of the Commission directing such reductions should have been enjoined. F. E. C. Ry. Co. v. United States, 34 Sup. Ct. 867, 873; 234 U. S. —., 58 L. ed.—; reversing 200 Fed. 797, refusing to enjoin the commission's order in 17 I. C. C. 552.

(x) The court in substituting its judgment as to the existence of preference for that of the Commission, on the ground that where there was no dispute as to the facts it had a right to do so, obviously exerted an authority not conferred upon it by the statute. It is not disputable that from the beginning the very purpose for which the Commission was created was to bring into existence a body which, from its peculiar character, would be most fitted to primarily decide whether from facts, disputed or undisputed, in a given case, preference or discrimination existed. The amendments by which it came to pass that the findings of the Commission were made not merely prima facie but

conclusively correct in case of judicial review, except to the extent pointed out in the Illinois Central and other cases, show the progressive evolution of the legislative purpose and the inevitable conflict which exists between giving that purpose effect and upholding the view of the statute taken by the court below. It cannot be otherwise, since if the view of the statute upheld below be sustained, the Commission would become but a mere instrument for the purpose of taking testimony to be submitted to the courts for their ultimate action. U. S. v. L. & N. R. R. Co., 35 Sup. Ct. Rep. 113, 114; 235 U. S. 314; 236 U. S., 318, 59 L. ed.

(y) The Interstate Commerce Commission and the Railroad Labor Board, when sued by a state as corporate entities created by the United States for governmental purposes, are not "citizens" of any state, within the provision fixing the original jurisdiction of the Supreme Court. State of Texas v. Interstate Commerce Commission, 42 Sup. Ct. 261.

(z) The remedy by suit in the District Court to set aside or suspend orders of the Interstate Commerce Commission, to which the United States shall be made a party, under Judicial Code, §§207, 208, 211, and Act, Oct. 22, 1913 is the exclusive remedy, and precludes an original suit by the state in the Supreme Court, in which the United States is not made a party. State of Texas v. Interstate Commerce Commission, 42 Sup. Ct. 261.

(aa) Allegations, in an original bill filed by a state against the Interstate Commerce Commission, that it owned an intrastate railroad and was a shipper of freight affected by the rates prescribed by the Commission, which it sought to set aside, do not relieve the state of the necessity of pursuing the statutory remedy to annul such orders by suit in the District Court, to which the United States shall be made a party. State of Texas v. Interstate Commerce Commission, 42 Sup. Ct. 261.

(bb) Suits to restrain or set aside orders of the Interstate Commerce Commission are required to be brought in the United States District Court by Judicial Code, §§208, 211 and Act. Oct. 22, 1913, and cannot be brought in a state court. Lambert Run Coal Co. v. Baltimore & O. R. Co., 42 Sup. Ct. 349.

(cc) Under the Interstate Commerce Act the parties who may maintain suits in the courts to enjoin, set aside, annul or suspend an order of the Interstate Commerce Commission are not limited to those who were parties to the proceeding before it upon which the order was based. The proceeding in the courts is not an appeal; it is a plenary suit in equity. The determination of the question as to what parties may maintain such suits is left by the Interstate Commerce Act to the general rules and practices in equity, and under them any party whose rights of property are in danger of irreparable injury from an unauthorized order of the Commission may appeal to a Federal Court of equity for relief. Peavey & Co. v. U. P. R. R. Co., 176 Fed. 409, 417.

(dd) The courts cannot by mandamus, injunction or otherwise, control or modify any order of the Commission made by it in the due performance of its merely administrative functions. Jacoby v. P. R. R. Co., 200 Fed. 989, 997.

(ee) The sole question before the courts in passing upon the validity of an administrative order of the Commission is whether it had power to make the order, and not the mere expediency or wisdom of having made it. Jacoby v. P. R. R. Co., 200 Fed. 989, 997.

(ff) Where an entire system of rates has been established by the Commission, the courts are empowered to inquire whether all classes of traffic are charged relatively reasonable rates, or are justly classified; whether the body of rates prescribed is such as to work a practical destruction to rights of property, and, if it be found that such system is unjust and unreasonable to such extent, to restrain its operation. L. V. R. R. Co. v. U. S., 204 Fed. 986, 991.

(gg) Jurisdiction of a suit to review an order of the Commission is not affected by the fact that the order of the Commission has already been complied with by the railroad company by putting the rates into effect. McLean Lumber Co. v. United States, 237 Fed. 460.

(hh) An order of the Interstate Commerce Commission, made on petition of shippers complaining of new rates about to be established by a railroad company, which, while not granting relief to the extent prayed for by retaining the old rates in force, establishes a schedule of new and higher rates, but lower than those proposed by the company, is not a mere negative order, and is reviewable

by the courts. McLean Lumber Co. v. United States, 237 Fed. 460.

(ii) While recognizing fully the general doctrine of Railroad Co. v. Ellerman, 105 U. S. 166. 26 Sup. Ct. 1015, In re Debs, 158 U. S. 564, 15 Sup. Ct. 900, 39 L. ed. 1092, and other cases upon which the Commission relies in argument, that a plaintiff in equity having no pecuniary or property interest in the subject-matter of the litigation is not entitled to injunctive relief, we find nothing in these decisions constraining us to conclude that the interest of a shipper in the rate which he is required to pay for the transportation of his property in the necessary conduct of his business is not such a direct pecuniary interest and property right as to give him the necessary standing in a court of equity for its protection. McLean Lumber Co. v. United States, 237 Fed. 460, 465.

(jj) A new trial granted in an action on an award of damages by the Interstate Commerce Commission for discrimination in the distribution of coal cars, on the ground that the award of the Commission, which was a part of the evidence submitted to the jury, under a later decision of the Supreme Court was made on an erroneous basis, and that the jury were not fully instructed on the point. Clark Bros. Coal Mining Co. v. P. R. R. Co., 238 Fed. 642.

(kk) A suit by a shipper against a carrier to recover charges for switching and weighing services performed by the shipper, which charges had previously been disallowed by the Interstate Commerce Commission, is not one in which an order of the Commission can be set aside. Finkbine Lumber Co. v. Gulf & S. I. R. Co., 269 Fed. 933.

(ll) A District Court of the United States would not review the action of the Interstate Commerce Commission in determining what is the operating revenue of a carrier for the purpose of obtaining compensation from the United States government for the use of the railroad while being operated by the government during the world's war. Detroit & T. S. L. R. Co. v. Interstate Commerce Commission, 277 Fed. 535.

(mm) A writ of certiorari should not issue to review a decision of the Interstate Commerce Commission, even if such decision was beyond its jurisdiction, especially where the Commission's action was not final under the statute. Detroit & T. S. L. R. Co. v. Interstate Commerce Commission, 277 Fed. 535.

(nn) Under Act March 21, 1918, §1, making it the duty of the Interstate Commerce Commission to ascertain the average annual operating scheme on which the compensation of a railroad during federal control was to be based, it was necessary for the Commission to determine what items should be included in the income, and a decision deducting from the income the item in controversy was within its jurisdiction, and not reviewable by certiorari. Detroit & T. S. L. R. Co. v. Interstate Commerce Commission, 277 Fed. 535.

(oo) Certiorari will not issue to an administrative officer or body to review a decision in a matter over which the officer or body had jurisdiction. Detroit & T. S. L. R. Co. v. Interstate Commerce Commission, 277 Fed. 535.

(pp) A finding by the Interstate Commerce Commission that a discrimination is undue or unjust relates to an administrative question of fact, and is not reviewable by the District Court. Pennsylvania R. Co. v. United States. 295 Fed. 523.

(qq) Under Commerce Court Act (Comp. St. §993), and Comp. St. §994, as to District Court's jurisdiction of cases brought to set aside, annul, or suspend any order of the Interstate Commerce Commission, the federal District Court has jurisdiction of a suit to enjoin entry of and to set aside a "tentative valuation" placed on property of common carrier by the Intertsate Commerce Commission, under Interstate Commerce Act, §19a, as amended (Comp. St. Ann. Supp. 1923, §8591); such valuation being an "order" of the Commission. Delaware & Hudson Co. v. United States (Interstate Commerce Commission, Intervener) 295 Fed. 558.

ALL OTHER CITATIONS

National Paving Brick Mfrs. Asso. v. A. & V. Ry., 80 I. C. C. 179, 183.

II. APPEAL.

§6. In general.

Important Cases Since 1908

(a) Under the Act as amended June 29, 1906, a suit in the courts to enjoin an order of the Commission fixing terminal charges is not confined to an ascertainment of what was determined by the Commission and to a consideration of the sufficiency of the facts as

determined by it to sustain the order, but on the contrary the hearing may be de novo and may include the taking and consideration of evidence other than that before the Commission. M. K. & T. Ry. Co. v. I. C. C., 164 Fed. 645, 649.

(b) In a suit in equity to enjoin an order of the Interstate Commerce Commission fixing terminal charges the court should start with the presumption that the order is valid, and the burden of showing that the facts are such as to render the order invalid rests upon the carrier assailing it, and unless the case made on behalf of the carrier is a clear one the order ought to be upheld. M. K. & T. Ry. Co. v. I. C. C., 164 Fed. 645, 650.

(c) Where the Interstate Commerce Commission exceeds the authority conferred upon it by the statute, the courts may review and enjoin its decision. C. R. I. & P. Ry. Co. v. I. C. C. 171 Fed. 680, 688.

(d) Where it is not contended that the Commission acted unlawfully or otherwise improperly in fixing rates, except that it failed to give weight, or not sufficient weight to this or that consideration, which the carrier thinks ought to have been weighed, and, if weighed, should have produced a different opinion, the United States Circuit Court cannot review the discretion of the Commission so acting in its legislative capacity. L. & N. R. R. Co. v. I. C. C. 184 Fed. 118, 124.

(e) The courts will not review the discretion of the Commission in selecting the element to be considered in fixing reasonable rates or in determining the weight to be given to particular elements. L. & N. R. R. Co. v. I. C. C. 184 Fed. 118, 124.

(f) In a petition to a Circuit Court, under section 16 of the Act, to enforce an order of reparation it is not necessary that the order of the Commission offered as evidence state the cause of action involved where the petition and the record show that the cause of action before the Circuit Court is the same as that before the Commission. Chicago, B. & Q. R. R. Co. v. Feintuch, 191 Fed. 482, 486.

(g) In a petition to the Circuit Court to enforce an order of the Commission before the judge sitting without a jury, the full report of the Commission, containing a commingled statement of opinion drawn from the facts and of conclusions of law, as well as of the facts themselves, was admitted in evidence, complainant stating to the court the nature of said report and offering it in evidence in so far as the facts therein contained were material or competent. HELD, the admission of said report was not prejudicial on the ground that it included the extraneous opinions and conclusions of the Commission. Chicago, B. & Q. R. R. Co. v. Feintuch, 191 Fed. 482, 487.

(h) Under Rev. St. §700 (Comp. St. 1913, §1668), providing that, when an issue of fact in a civil cause is tried by the court without a jury, the rulings of the court in progress of the trial, if excepted to and presented by bill of exceptions, may be reviewed on a writ of error or appeal, and when the finding is special the review may extend to the determination of the sufficiency of the facts found to support the judgment, assignments of error attacking the judgment as not based on the evidence cannot be considered, where there was no request for findings of fact or declarations of law and none were made by the court, though rulings on the sufficiency of the petition and on the admission and exclusion of evidence may be reviewed if proper exceptions were taken. Chicago, M. & St. P. Ry. Co. v. George A. Herzel & Co., 240 Fed. 281.

(i) The Supreme Court may not, under the guise of exerting judicial power, usurp merely administrative functions by setting aside a lawful order upon its conception as to whether the administrative power has been wisely exercised. I. C. C. v. I. C. R. R., 215 U. S. 452, 470, 30 Sup. Ct. 155, 54 L. ed. 280; I. C. C. v. C. & A. R. R. Co. 215 U. S. 479, 30 Sup. Ct. 163, 54 L. ed. 291.

(j) In determining whether an order of the Commission shall be suspended or set aside, the Supreme Court must consider (a) all relevant questions of constitutional power or right; (b) all pertinent questions as to whether the administrative order is within the scope of the delegated authority under which it purports to have been made; and (c) whether, even although the order be in form within the delegated power nevertheless, it must be treated as not embraced therein because its authority has been manifested in such an unreasonable manner as to cause it to be within the elementary rule that the substance, and not the shadow, deter-

mines the validity of the exercise of the power. I. C. C. v. I. C. R. R. 215 U. S. 452, 470, 30 Sup. Ct. 155, 54 L. ed. 280. I. C. C. v. C. & A. R. R. Co., 215 U. S. 479, 30 Sup. Ct. 163, 54 L. ed. 291.

(k) A railroad cannot complain of an order of the Commission where the grievance is one not against it but against the shipper. I. C. C. v. C. R. I. & P. Ry., 218 U. S. 88, 109, 30 Sup. Ct. 651, 54 L. ed. 946.

(l) The primary jurisdiction over unjust discrimination by carriers is with the Commission, the power of the courts being that of review and is confined in that review to questions of constitutional power and all pertinent questions as to whether the action of the Commission is within the scope of the delegated authority under which it purports to have been taken. I. C. C. v. C. R. I. & P. Ry., 218 U. S. 88, 110, 30 Sup. Ct. 651, 54 L. ed. 946.

(m) It would be a very strong proposition to say that parties were bound in the higher courts by a finding of the Commission, based on specific investigation made in the case without notice to them. U. S. v. B. & O. S. W. R. R. Co., 33 Sup. Ct. 5, 6; 226 U. S. 14.

(n) Where reports and orders of the Interstate Commerce Commission were admitted in evidence upon the trial of an appeal in the district court under an agreement that part of such reports were incompetent and could be eliminated in the charge to the jury, and parts of such reports were read to the jury without any objection by opposing counsel, objection to the same cannot be raised for the first time upon appeal. Meeker v. Lehigh Valley R. Co., 35 Sup. Ct. Rep. 328, 334; 236 U. S. 412, 434; 59 L. ed.

(o) A decree enjoining the enforcement of intrastate rates fixed by a state for an interstate carrier as being confiscatory will not be disturbed on appeal because of errors which would not change the result. Rowland v. Boyle, 37 Sup. 577, 244 U. S. 106; 61 L. Ed.

(p) Objections that, in advance of a determination by the Interstate Commerce Commission as to whether the routing was reasonable, the state courts assumed jurisdiction of an action to recover an amount equal to that by which the freight for shipments carried on an interstate route between intrastate points exceeded the intrastate rate, are available in the federal Supreme Court, though first urged in the state Supreme Court, where they were considered and overruled. Northern Pac. Ry. Co. v. Solum, 38 Sup. Ct. 550.

(q) Prior to the Act of Sept. 6, 1916, c. 448, §2, a judgment of the state court, allowing recovery of the amount by which freight for a shipment carried over an interstate route between intrastate points exceeded the intrastate rate, may be reviewed on writ of error, a federal question being raised by assignments of error that the state court erred in holding the cause of action was not affected by the federal statutes regulating interstate commerce (Act Feb. 4, 1887, c. 104, 24 Stat. 379), and that the state court erred in assuming jurisdiction in advance of a determination by the Interstate Commerce Commission as to whether the routing was reasonable, but after the Act of 1916 went into effect, such a judgment could not be reviewed on writ of error, as the question of the validity of a statute or treaty, or the validity of any authority exercised under the state, was not drawn in question. Northern Pac. Ry. Co. v. Solum, 38 Sup. Ct. 550.

(r) Claim that the case is governed by federal law, raised after the case had twice been passed on by the state Supreme Court, is too late to allow of error to such court. Missouri, K. & T. Ry. Co. v. Sealy, 39 Sup. Ct. 97.

(s) Though an appeal to the Supreme Court is the only method of review when the jurisdiction of the District Court rests solely upon the claim that a state statute violates the federal Constitution, an appeal may be taken to the Circuit Court of Appeals where the state statute is attacked not only as violating the federal Constitution, but also as violating a federal statute, in which case the jurisdiction of the District Court arises under a law of the United States within Judicial Code, §24 (Comp. St. §991). Lemke v. Farmers' Grain Co. of Embden, N. D., 42 Sup. Ct. 244.

(t) In a case involving a through shipment, based on a contract between carriers as to rates, the initial carrier cannot raise a moot question as to the constitutionality of the Carmack Amendment as to shipments under the local rates of connecting carriers. C. C. C. & St. L. Ry. Co. v. Hayes (Ind., 1914), 104 N. E. 581, 585.

(u) A terminal carrier cannot on appeal take advantage of the provisions of

the Carmack Amendment, where there is no pleading covering the point and the matter was not included in a motion to direct a verdict nor any instruction asked on the subject. Glassman v. C. R. I. & P. Ry. Co. (Iowa, 1914), 147, N. W. 757, 759.

(v) An appellate court, being confined to a review of the rulings of the trial court cannot consider a ruling of the Interstate Commerce Commission neither pleaded nor put in evidence, but merely cited in an appeal brief. Keeney v. Chicago, B. & Q. R. R., (Iowa 1918), 167 N. W. 475.

(w) The Court of Appeals cannot take judicial notice of an order of the Interstate Commerce Commission, though published in the reports of such Commission, as when applicable, it should be put in evidence. Banaka v. Missouri Pac. Ry. Co., (Mo. 1916) 186 S. W. 7.

(x) In an action against a carrier for loss of a shipment of household goods, where no question as to an order of the Interstate Commerce Commission was raised in the pleadings or evidence in the trial court, such order can have no consideration in the Court of Appeals, when brought up for the first time since the submission of the cause in such court. Banaka v. Missouri Pac. Ry. Co., (Mo. 1916) 186 S. W. 7.

(y) In an action against a carrier for damages to a shipment, where the question of the necessity for written notice to the carrier of the shipper's claim was raised in the circuit court, a proviso of the Federal Interstate Commerce Act may be considered on appeal, though such act was not cited to the judge of the circuit court. Van Lindley Nursery Co. v. Southern Ry. Co., (S. C. 1918), 96 S. E. 221.

III. UNITED STATES COURTS.

§6½. Jurisdiction in general.

CASES 1887-1908

(a) A corporation is a citizen of the State by which it is created and in which its principal place of business is situated, so far as its right to sue and be sued in the federal courts is concerned, and within the clause of the Constitution extending the jurisdiction of said courts to controversies between citizens of different states. Baron v. Burnside, 1 I. C. R. 295.

(b) The jurisdiction of the federal courts depends upon and is regulated by the laws of the United States, and it cannot be affected by state legislation. Baron v. Burnside, 1 I. C. R. 295.

(c) A corporation is a citizen of the State by which created, so far as its right to sue and be sued in the federal courts is concerned. Barron v. Burnside (U. S. Sup. Ct.), 1 I. C. R. 295.

(d) Under the Act of Congress of March 3, 1887, a civil action in a federal court for violations of the Interstate Commerce Act can be brought only in the district whereof defendant is an "inhabitant," as jurisdiction is not dependent on citizenship. Connor v. Vicksburg & M. R. Co. (C. C. E. D. Mo.), 2 I. C. R. 177.

(e) The jurisdiction of the Federal Courts over actions for violations of the Interstate Commerce Act is not dependent on the fact of diverse citizenship, and hence, under Act of Congress of March 3, 1887, a civil action for such violations can be brought only in the district whereof the defendant is an "inhabitant." Connor v. Vicksburg & Meridian R. R. Co., 2 I. C. R. 177.

(f) The federal courts have jurisdiction of a suit against state railroad commissioners, brought by a corporation created by another State, to restrain the enforcement of a schedule of rates prepared by such commissioners under a state statute claimed by the complainant to be unconstitutional; such a suit is not in effect a suit against the State, and hence is not within the Eleventh Amendment to the Constitution, which prohibits the federal courts from entertaining suits brought against a State by citizens of another state. Chicago & Northwestern R. Co. v. Dey, 2 I. C. R. 325.

(g) Constitutional law; constitutional tenure of office of federal judges. Congress, in establishing "inferior courts," and prescribing their jurisdiction, must confer upon the judges, appointed to administer them, the constitutional tenure of office, that of holding "during good behavior," before they can become invested with any portion of the judicial power of the government. Kentucky and Indiana Bridge Co. v. Louisville & Nashville R. Co., 2 I. C. R. 351.

(h) Jurisdiction of the United States Circuit Court, independent of citizenship. The right asserted by petitioner arises, and is claimed, under a law of the United States, which relates to a subject, over

which Congress has exclusive control; and this is sufficient to sustain the court's jurisdiction, independent of the citizenship of the parties to the controversy, since it involves a federal question. Kentucky & Indiana Bridge Co. v. Louisville & Nashville R. Co., 2 I. C. R. 351.

(i) Constitutional law; jurisdiction of United States Circuit Court, under the Act to Regulate Commerce. The Act does not make the circuit court the mere executioner of the Commissioner's order, or recommendation, so as to impose upon the court a nonjudicial power. The court is not restricted to the mere ministerial duty of enforcing an order of the Commission. The suit in this court is, under the provisions of the Act, an original and independent proceeding, in which the Commissioners' Report is made prima facie evidence of the matters or facts therein stated. The court is not confined to a mere re-examination of the case, as heard and reported by the Commission; but hears and determines the cause de-novo, upon proper pleadings, and proofs; the latter including not only the prima facie facts reported by the Commission, but all such other and further testimony as either party may introduce bearing upon the matters in controversy. Kentucky and Indiana Bridge Co. v. Louisville & Nashville R. Co., 2 I. C. R. 351.

(j) Congress, in establishing "inferior courts" and prescribing their jurisdiction, must confer upon the judges appointed to administer them the constitutional tenure of office,—that of holding "during good behavior,"—before they can become invested with any portion of the judicial power of the government. Kentucky & I. Bridge Co. v. Louisville & N. R. Co. (C. C. D. Ky.), 2 I. C. R. 351.

(k) A federal court may take cognizance of a case involving the constitutionality of a state statute requiring the inspection of articles, and subjecting them to an inspection charge while they remain distinctly a commodity of interstate commerce. Re Rebman v. 3 I. C. R. 126.

(l) A federal court will discharge from custody on habeas corpus a person imprisoned in violation of the United States Constitution. Re White (C. C. W. D. Pa.), 3 I. C. R. 531.

(m) This court has jurisdiction of the question whether a tax is in violation of the clause of the United States Constitution granting to Congress the power to regulate commerce among the states. Pullman's Palace Car Co. v. Commonwealth of Pa., 3 I. C. R. 595.

(n) Congress may give the federal courts exclusive jurisdiction when a right arises under a law of the United States. Copp v. Louisville & N. R. Co. (La.), 3 I. C. R. 625.

(o) Circuit courts of the United States may constitutionally be given jurisdiction of suits by the government to enjoin illegal combinations in restraint of Interstate Commerce, and it does not depend on diverse citizenship of the parties. U. S. of America v. Jellico Mt. Coke & Coal Co. 3 I. C. R. 626.

(p) Diversity of citizenship of the parties is not necessary to give jurisdiction to United States circuit courts of suits arising out of alleged violations of the Interstate Commerce Act. Little Rock & M. R. Co. v. East Tennessee, V. & G. R. Co., (C. C. W. D. Tenn.), 4 I. C. R. 261.

(q) That the remedies prescribed by the Interstate Commerce Act are not applicable to a particular case arising under its provisions does not deprive the United States circuit court of jurisdiction, since by the Judiciary Act such courts are given jurisdiction of all controversies arising under any Act of Congress. Little Rock & M., R. Co. v. East Tennessee, V. & G. R. Co. (C. C. W. D. Tenn.), 4 I. C. R. 261.

(r) The Act of March 3, 1891, establishing United States circuit courts of appeals, repealed those clauses of the Act to Regulate Commerce which relate to appeals from the Circuit Court of the United States in cases prosecuted under the Interstate Commerce Act. Interstate Commerce Commission v. Atchison, T. & S. F. R. Co. (U.S. Sup. Ct.), 4 I. C. R. 347.

(s) The Federal court will remand a cause removed to it on the ground that the matter in dispute arose under the Constitution, laws, or treaties of the United States, where the only showing to that effect in the record is that a Federal question may arise if the evidence proves certain facts. State v. Chicago, M. & St. P. R. Co. (C. C. N. D. Iowa), 4 I. C. R. 425.

(t) To give a Federal court jurisdiction on the ground that the matter in dispute arose under the Constitution, laws, or treaties of the United States, it must clearly and unmistakably appear from the record that such Federal ques-

tion must necessarily be decided before the merits of the case can be disposed of. State v. Chicago, M. & St. P. R. Co. (C. C. N. D. Iowa), 4 I. C. R. 425.

(u) A suit to recover damages for acts which constitute a violation of the Interstate Commerce Act, the construction of which is in dispute between the parties, presents a Federal question for which it may be removed to a Federal court. Lowry v. Chicago, B. & Q. R. Co. (C. C. D. Neb.), 4 I. C. R. 435.

(v) On motion to remand, the court will not anticipate the trial of the case by deciding a Federal question for which the right of removal is claimed. Lowry v. Chicago, B. & Q. R. Co. (C. C. D. Neb.), 4 I. C. R. 435.

(w) The fact that a plaintiff rests his case on a common law liability will not deprive defendant of the right to remove it, if he bases his defense on an Act of Congress. Lowry v. Chicago, B. & Q. R. Co., 4 I. C. R. 435.

(x) A Federal court having jurisdiction will not, through principles of comity, hold its hand and leave the determintion of the validity of a state statute to the state courts. Re Langford (C. C. D. S. C.), 4 I. C. R. 437.

(y) In order to justify removal of a cause from a state court to the United States circuit court on the ground of a separable controversy between citizens of different states, the whole subject matter of the suit must be capable of being finally determined as between them, and complete relief afforded as to the separate cause of action, without the presence of others originally made parties to the suit. Merchants' Cotton Press & S. Co. v. Insurance Co. of North America (U. S. Sup. Ct.), 4 I. C. R. 499.

(z) The right to take steps for the removal of a cause to the circuit court of the United States, on the ground of a separable controversy, is confined to the parties actually interested in such controversy. Merchants' Cotton-Press & S. Co. v. Insurance Co. of North America (U. S. Sup Ct.), 4 I. C. R. 499.

(aa) A proceeding to compel the attendance of a witness before the Interstate Commerce Commission, or to require him to answer questions put to him, or to compel the production of books, documents, or papers in his possession, is a case of which, under the Constitution, a court of the United States may take cognizance. Interstate Commerce Commission v. Brimson (U. S. Sup. Ct.), 4 I. C. R. 545.

(bb) The 12th section of the Act of Feb. 4, 1887, as amended in 1889 and 1891, is constitutional and valid, so far as it authorizes or requires the circuit courts of the United States to use their process in aid of inquiries before the Interstate Commerce Commission. Interstate Commerce Commission v. Brimson, 4 I. C. R. 545.

(cc) The constitutionality of a state statute will not oust the jurisdiction of a Federal court in a suit between citizens of different states to prevent the wrongful administration of the statute by state officers, so as to make it an illegal burden and exaction upon an individual. Reagan v. Farmers' Loan & T. Co. (U. S. Sup. Ct.), 4 I. C. R. 560.

(ddee) A United States court in a case removed from a state court on the ground of diverse citizenship has no jurisdiction over a question as to the reasonableness of an interstate commerce rate. Swift v. Philadelphia & R. R. Co. (C. C. N. D. Ill.), 4 I. C. R. 633.

(ff) The mingling indiscriminately of matters of legal and equitable cognizance in the same complaint, and the enforcement in a single suit of all the rights and duties mentioned, is not authorized by the Act of Congress of Aug. 7, 1888, §4, providing in effect that to secure and preserve to the United States the full value and benefit of its liens upon all the telegraph lines belonging to the railroad and telegraph companies mentioned in the Pacific Railroad Companies Acts, and to have them possessed, used, and operated in conformity with the statutes, it is made the duty of the attorney general by proper proceedings to prevent any unlawful interference with the rights and equities of the United States, to have legally ascertained and adjudicated all alleged rights of all persons and corporations claiming any control or interest in any telegraph lines or property, or exclusive rights of way upon the lands of said railroad companies, and to have set aside all contracts and their provisions entered into by such companies unlawfully and beyond their powers. Union P. R. Co. v. U. S. (C. C. App. 8th C.), 4 I. C. R. 705.

(gg) The principles of the common law apply to controversies in the Federal courts in matters of national control so far as they are applicable to the

subject-matter. Murray v. Chicago & N. W. R. Co., 4 I. C. R. 806.

(hh) A state legislature cannot deprive a United States equity court of jurisdiction over an alleged unlawful reduction of freight rates affecting citizens of other states by itself, prescribing them by direct act, instead of delegating the authority to a commission. Ames v. Union Pacific R. Co., 4 I. C. R. 835.

(ii) There is no sufficient remedy at law to deprive a United States court of equity of jurisdiction over an alleged unlawful reduction by a state statute of freight rates, by reason of the fact that the statute provides for a petition to the state court which may, in its discretion, direct the board of transportation to permit the carrier to raise its rates to the former amount. Ames v. Union Pacific R. Co., 4 I. C. R. 835.

(jj) A state statute duly authenticated will be regarded by the United States courts as having been enacted in full compliance with all the prescribed forms, unless the constitution or decisions of such state require a determination of the question of enactment upon different evidence. Ames v. Union P. R. Co. (C. C. D. Neb.), 4 I. C. R. 835.

(kk) An erroneous decision of the circuit court affirming the validity of an order of the Interstate Commerce Commission, made under a misconception of the extent of its powers, should be reversed by the circuit court of appeals and the order set aside and the cause remanded to the Commission in order that the latter, if it saw fit, might proceed therein according to law; and the circuit court of appeals should not undertake of its own motion to find and pass upon the questions of fact involved which were not considered by the Commission. Texas & P. R. Co. v. Interstate Commerce Commission (U. S. Sup.), 5 I C. R. 405.

(ll) The United States circuit court has jurisdiction to enforce any rights arising under the interstate Commerce law, although the same rights may have existed at common law. Toledo, A. A. & N. M. R. Co. v. Pennsylvania Co., 5 I. C. R. 522.

(mmnn) A case for cognizance by a Federal court is constituted by the fact that a single question dependent of the Constitution or a law or treaty of the United States is involved, although at the same time other questions dependent upon the general principles of law are also involved. Toledo, A. A. & N. M. R. Co. v. Pennsylvania Co. (C. C. N. G. Ohio), 5 I. C. R. 545.

(oo) While the decision of the United States circuit court of appeals upon the same set of facts, but not between the same parties, has not the technical effect of a previous adjudication, it ought to be and is considered in this case conclusive upon the Commission as to the questions involved and decided. Cattle Raisers' Association v. Fort Worth & D. C. R. Co., 7 I. C. C. 513.

(pp) Each of several roads liable for violation of Commission order by one.—Each of several railroad companies engaged in transporting petroleum oil under a common arrangement for continuous carriage from Pennsylvania to the seaboard is guilty of violating an order of the Interstate Commerce Commission where one of such companies violates such order, and all are subject to the jurisdiction of the court in the western district of Pennsylvania in which such violation was made, in a suit brought therein by the Commission to enforce such order. Interstate Commerce Commission v. Western N. Y. & Philadelphia R. R. Co., 7 I. C. C. App. LXII.

(qq) Court has jurisdiction to enforce order against resident of another district.—A United States circuit court has jurisdiction of a bill by the Interstate Commerce Commission to enforce its order against a railroad company which has its principal office in another district, where such company in connection with other companies operates all their roads under a common management or arrangement in making the interdicted rates, although such company by itself has been guilty of no violation of the order in the district. The court says the order of the Commission relates to charges for transportation between Pueblo, Colorado, and San Francisco, California, as to which it is averred that the respondent roads are "under a common control, management, or arrangement for a continuous carriage or shipment" between the points. The statute provides that a petition of this kind shall be filed in the district in which the common carrier complained of has its principal office or in which the violation or disobedience of the order or requirement shall happen. This is the district in which the

violation or disobedience of the order has happened. The fact appears to be that the Southern Pacific Company has lines in California and in some of the States and territories between California and Colorado which connect with lines of the other respondents extending into and through the State of Colorado and to the City of Pueblo. If all these roads are operated under a common control, management, or arrangement in making the rates interdicted by the Interstate Commerce Commission, the act of one in this district is the act of all, and the violation or disobedience of the order by all the roads may be said to take place in this district. Interstate Commerce Commission v. Southern Pacific Co. et al., 7 I. C. C. App. XLVI.

IMPORTANT CASES SINCE 1908

(rr) Where a federal court had no jurisdiction of anything but state rates in a certain case, it could make no decree as to rates from Minneapolis and St. Paul to Iowa points. In re Advances in Class Rates, 25 I. C. C. 268.

(ss) The amendment of March 2, 1889, to section 16 provided for a jury trial before the Federal Courts. Vulcan Coal & Mining Co. v. I. C. R. R. Co., 33 I. C. C. 52, 67.

(tt) Where a party elects under section 9 to sue in a Federal court for alleged unreasonable charges, the court in which action is brought has jurisdiction to determine the sufficiency of the complaint. National Pole Co. v. Chicago & N. W. R. Co., 211 Fed. 65, 68.

(uu) Act Oct. 22, 1913, c. 32, 38 Stat. 219 (Comp. St. 1913, § 994), which provides that "the venue of any suit hereafter brought to enforce, suspend, or set aside . . . . . any order of the Interstate Commerce Commission shall be in the judicial district wherein is the residence of the party or any of the parties upon whose petition the order was made, ... except that where the order does not relate either to transportation or to a matter so complained of before the Commission the matter covered by the order shall be deemed to arise in the district where one of the petitioners in court has either its principal office or its principal operating office." HELD, that a suit by petitioners before the Commission to review an order establishing railroad rates, whether such order was made on their petition or not, was within the jurisdiction of the court of the district wherein all the petitioners either reside or have their principal operating office, and that whether or not the railroad company has its principal operating office within the district is immaterial. McLean Lumber Co. v. United States, 237 Fed. 460.

(vv) The determination of whether, under a contract for the transportation of live stock and an attendant, the attendant is a passenger for hire, is a question on which the federal courts are not bound by state decisions. Tripp v. Michigan Cent. R. R., 238 Fed. 449.

(ww) An ordinary action by a carrier to collect a freight bill from the consignor after it failed through error to collect the full amount from the consignee involves no action under the Elkins Act or any other interstate commerce laws, and therefore does not give a federal court jurisdiction where the amount involved is less than $3,000. Yazoo & M. V. R. Co. v. Zemurray, 238 Fed. 789.

(xx) On an application to the District Court for a temporary injunction restraining a State Railroad Commission and others from bringing suits to enforce rates prescribed by such commission so far as in conflict with an order of the Interstate Commerce Commission, heard before three judges, it was not necessary for the court to decide upon the merits of the case, but only to determine if the bill presented a case for equitable relief, especially where proceedings were still pending before the Interstate Commerce Commission affecting certain of the rates. E. Tex. R. Co. v. R. R. Comm. of Tex., 242 Fed. 300.

(yy) Subsequent reports of the Interstate Commerce Commission in the same case will be passed on by the Circuit Court of Appeals, rather than to subject the parties to the delay and expense of taking further steps in the court below, especially the question concerning the setting aside of the order of reparation becomes one of a moot character, in view of the later proceeding, and no attempt was made, and no purpose was expressed, by the railroads, either before the Commission or in the lower court, to offer evidence tending to overcome the prima facie effect of the order of reparation. M. L. & T. R. & S. S. Co. v. Isaac Joseph Iron Co., 243 Fed. 149.

(zz) Where the claim of a shipper against a railroad company to recover freight paid involves the construction of the tariff schedule, to determine what

rate applied to the shipment, and not any question of the reasonableness of rates, the jurisdiction of the Interstate Commerce Commission is not exclusive, but an action may be maintained in this instance in a District Court. National Elevator Co. v. Chicago, M. & St. P. Ry., 246 Fed. 588.

(3a) The provision of Act Oct. 22 1913, c. 32, that "the venue of any suit to enforce, suspend or set aside * * * any order of the Interstate Commerce Commission shall be in the judicial district wherein is the residence of the party * * * upon whose petition the order was made," applies only to the class of cases jurisdiction of which was transferred from the Commerce Court, thereby abolished, and does not by implication amended by Act June 18, 1920, c. 309, §13, conferring jurisdiction on District Courts of suits to enforce awards of money reparation to shippers, of which the Commerce Court was never vested with jurisdiction. Vicksburg, S. & P. Ry. Co. v. Anderson-Tully Co., 261 Fed. 741.

(3b) Where the tracks of a railroad company stopped across the Mississippi river from Vicksburg, but its trains and their crews, except the engines and engine crews, were transferred by boat across the river, and by arrangement with another company were hauled by the latter over its tracks to the Vicksburg terminal, used jointly by the two companies, the District Court of the Southern District of Mississippi held to have jurisdiction of a suit against it to enforce an award of damages to a shipper by the Interstate Commerce Commission, under Interstate Commerce Act, §16, as amended by Act June 18, 1910, c. 309, §13, giving jurisdiction to the District Court of any district "through which the road of the carrier runs." Vicksburg, S. & P. Ry. Co. v. Anderson-Tully Co., 261 Fed. 741.

(3c) Where another federal court had obtained jurisdiction over a suit to determine which of two railroads was entitled to a fund, that jurisdiction is exclusive, and the District of Columbia courts will not entertain certiorari to compel the Interstate Commerce Commission to credit the amount of that found as part of the operating revenue of one of the railroads, in determining the compensation to which it was entitled while under federal control, which would involve the determination of the right of that railroad to the fund. Detroit & T. S. L. R. Co. v. Interstate Commerce Commission, 277 Fed. 535.

(3d) While the Federal Control Act, §10 giving the right to initiate freight rates during federal control by filing them with the Interstate Commerce Commission, and Transportation Act, §208a, continuing the rates which existed under federal control during the six months period of government guaranty, were based as much on the war power as on the power of Congress to regulate interstate commerce, those provisions are laws regulating commerce, within Judicial Code, §24, subsec. 8, giving jurisdiction to the United States District Court over cases involving such laws without reference to the amount involved. Atlantic Coast Line Ry. Co. v. Railroad Commission of Georgia, 281 Fed. 321.

(3e) Under the rule that a federal court has primary jurisdiction of an action against an interstate carrier to recover overcharges, without previous submission of the claim to the Interstate Commerce Commission, where there is no occasion for the exercise of administrative discretion, and the construction of the tariff requires only determination of the meaning of words used in their ordinary sense, a complaint held prima facie to state a cause of action cognizable by a court in the first instance. Collins Co. v. Davis, 283 Fed. 837.

(3f) A question as to the carrier's responsibility under the bill of lading is none the less a federal one because it must be resolved by the application of principles under the common law. Southern R. Co. v. Prescott, 36 Sup. Ct. 469, 473; 240 U. S. 632; 60 L. ed. 836.

(3g) The interpretation of the uniform bill of lading issued in accordance with the schedule of freights and fares filed with the Interstate Commerce Commission in pursuance of the act of Congress and relating to an interstate shipment, and the consideration of the liability of the shipper thereunder, involve federal questions concerning which the decisions of the federal courts are supreme. Southern Railway Co. v. Prescott, 240 U. S. 632, 36 Sup. Ct. 469, 60 L. Ed. 836; Georgia, Florida & Alabama R. R. Co. v. Blish Milling Co., 241 U. S. 190, 36 Sup. Ct. 541, 60 L. Ed. 948; A., T. & S. F. Ry. v. Harold, 241 U. S. 371, 36 Sup. Ct. 665, 60 L. Ed. 1050. Crenshaw Bros. & Saffeld v.

Southern Pac. Co. (Cal. 1919) 181 Pac. 252, 256.

(3h) The jurisdiction of the Federal district courts, under the Acts of June 18, 1910 of "cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission," does not extend to a suit to set aside an order of such Commission, fixing a future day and place for the hearing of certain complaints made to it by certain coal companies seeking damages for the alleged failure of certain interstate carriers to furnish coal cars on demand, and to enjoin proceedings upon such complaints. The action of the Commission was not an "order" within the meaning of the statutes, but was a mere incident in the proceeding. U. S. v. I. C. R. R. Co., 37 Sup Ct 584, 244, U. S. 82, 61 L. Ed.

(3i) Where claimant in a state court sought to recover a sum less than $3,000 from defendant refrigerator company for damages to peaches, on the theory that it failed to properly load and ice refrigerator cars pursuant to its contract with a railroad company, defendant's liability, if any, depends upon the contract, and defendant cannot remove the cause from the state court, on the theory that it was one governed by the Acts of Congress, though the railroad company was subject to the Interstate Commerce Act and defendant, not being a common carrier, was not subject to the inhibition of the Judicial Code (Act March 3, 1911, c. 231) §28, as amended by Act Jan. 20, 1914, c. 11, 38 Stat. 278 (Comp. St. 1916, §1010) against removal by common carriers of suits under the Act to regulate commerce, where the amount does not exceed $3,000. Emery & Co. v. American Refrigerator Transit Co. 38 Sup. Ct. 414.

(3j) A claim for loss or damage to an interstate shipment is not a suit under the Interstate Commerce Act, so a suit for damages by a shipper of peaches against a refrigerator line which had a contract with a railroad to ice its cars, and which in this particular case had failed to do so properly, is not a suit under the Interstate Commerce Act, and a federal court has no jurisdiction of it unless the amount involved exceeds $3,000. Emery & Co. v. American Refrigerator Transit Co., 38 Sup. Ct. 414, 246 U. S. 634, 62 L. Ed. 912.

(3k) The United States court acquires no jurisdiction by removal of a cause of action from the state court, if the state court had no jurisdiction thereof, even though the action was one which might have been originally brought in the United States District Court. Lambert Run Coal Co. v. Baltimore & O. R. Co., 42 Sup. Ct. 349.

(3l) The district court has jurisdiction of a suit to recover excessive freight charges and demurrage paid under protest, though the Interstate Commerce Commission has power to fix and establish rules and rates; suit being to recover charges demanded and paid in violation of the Interstate Commerce Commission's rule fixing demurrage charges and freight rates, and not to assail the rule as unreasonable. Payne v. White House LumberCo., (Tex. 1921,) 231 S. W. 417.

(3m) An action by a shipper for damages to a jack delivered to a connecting carrier in Missouri to be transported over its lines and defendant's lines to a point in this state, the injury occurring in 1913, involving interstate commerce, arose under the laws of the United States, in view of the Carmack Amendment, and was removable to the federal courts, which had jurisdiction under Judicial Code, §24 (U. S. Comp. St. §991), notwithstanding that the jack was worth less than $3,000. Missouri, K. & T. Ry. v. Miller, (Tex. 1919), 211 S. W. 543.

(3n) The interpretation of a uniform bill of lading issued in accordance with a schedule of freights and fares with the Interstate Commerce Commission, in pursuance of acts of Congress relating to interstate shipments and the consideration of liability of shipper thereunder, involve federal questions concerning which the decisions of the federal courts are supreme. Crenshaw Bros. & Saffold v. Southern Pacific Co. (Cal. 1919), 181 Pac. 252.

(3o) An action brought in a state court against a carrier under the Carmack Amendment, involving less than $3,000, can be removed to the Federal District Court only where it affirmatively appears from the complaint that a Federal question is involved, or the validity, interpretation or construction of the laws of the United States arise, and not where the question presented is one of fact only. Orr v. Baltimore & O. Ry. Co., 145 N. Y. Supp. 378, 381.

ALL OTHER CITATIONS

Pratt v. Denver & R. G. W. R. Co., 234 Fed. 1007; Davis, Director General

of Railroads, v. Age-Herald Pub. Co., 293 F. 591; American R. Co. of Porto Rico v. South Porto Rico Sugar Co., 293 Fed. 670; Ga. S. & F. Ry. Co. v. Ga. Public Service Com. (Ga., 1923), 289 Fed. 878.

§7. Concurrent Jurisdiction.

See Interstate Commerce Commission §2; §16.

IMPORTANT CASES SINCE 1908

(a) In cases of the exaction of a rate higher than that in the published tariff, the shipper may go into court in the first instance, but the Act also appears to give the Commission and courts concurrent jurisdiction in this respect. Laning-Harris Coal & Grain Co. v. St. L. & S. F. R. R. Co., 15 I. C. C. 37, 39.

(b) Section 9 provides that any person claiming to be damaged, in accordance with the provisions of section 8, may either begin suit in court or apply to this Commission. National Wool Growers' Ass'n. v. O S. L. R. R. Co., 25 I. C. C. 675, 676.

§8. Exclusive Jurisdiction.

IMPORTANT CASES SINCE 1908

(a) A suit for damages arising from the payment to plaintiff's competitors of allowances not provided for in the published rates is one which, under sections 8 and 9 of the Interstate Commerce Act, can only be brought in a district or circuit court of the United States. Mitchell Coal & Coke Co. v. P. R. R. Co., 33 Sup. Ct. 916, 918; 230 U. S. 247.

(b) The question as to the proper construction of a bill of lading for an interstate shipment issued under the Carmack amendment is a Federal one which will sustain the appellate jurisdiction of the Federal Supreme Court over a state court. Ga., Fla. & Ala. Ry. Co. v. Blish Milling Co., 36 Sup. Ct. Rep. 541, 542; 241 U. S. 190; 60 L. ed. 948.

(c) The jurisdiction of all actions brought under the remedial sections of the Interstate Commerce Act to enforce its provisions, lies exclusively in the United States Courts. Pittsburgh, C. C. & St. L. Ry. Co. v. Wood (Ind., 1908), 84 N. E. 1009, 1012.

ALL OTHER CITATIONS

Hardaway v. Southern Ry. Co., (S. C. 1912), 73 S. E. 1020, 1023; K. C. S. Ry. Co. v. Albers Comm. Co., 79 Kans. 59, 60, 99, P. 819.

§9. Original Jurisdiction.

IMPORTANT CASES SINCE 1908

(a) United States courts under the Act as amended June 29, 1906, have no jusiduction to award damages for freight charges collected on cross-ties under duly published tariffs prior to the testing of the reasonableness of such rates by a complaint before the Interstate Commerce Commission, although the question involved is one of the relative reasonableness of rates and the Commission has passed upon the same relative classification in a proceeding between other parties, and has held that the rates on cross-ties should not, as in the case in question, exceed the rate on lumber. Howard Supply Co. v. C. & O. Ry. Co., 162 Fed. 188, 191.

(b) Under the Act as amended June 19, 1906, United States courts have jurisdiction to enjoin the putting into effect of interstate rates, made by an unlawful combination of carriers in restraint of commerce, prior to the institution of a proceeding before the Interstate Commerce Commission to test the reasonableness of such rates where the evidence indicates that the same are unreasonable and confiscatory. Macon Grocery Co. v. A. C. L. R. R. Co., 163 Fed. 738, 753.

(c) Under the Act as amended June 19, 1906, the courts have jurisdiction to enjoin an order of the Interstate Commerce Commission reducing terminal charges where the order results from a misconception and misapplication of the law to conceded or undisputed facts. Stickney v. I. C. C., 164 Fed. 638, 644.

(d) Under the Act a United States Circuit Court has original jurisdiction in a suit by a carrier for demurrage charges, where the reasonableness of such charges is not involved and where the question in dispute is the meaning of rules filed with the Interstate Commerce Commission, and a prior proceeding before the Commission is not necessary. Central R. R. Co. of N. J. v. Hite, 166 Fed. 976, 978.

(e) United States courts may, in their discretion, permit the parties to any complaint in the matter involved before the Interstate Commerce Commission to intervene as defendant in a suit to enjoin the order of the Commission, where such intervention does not delay the progress of the suit. D.

L. & W. R. R. Co. v. I. C. C., 169 Fed. 894.

(f) Under section 9 of the Act the courts have jurisdiction to entertain an original suit at law by a shipper against a carrier where the latter has extended free time to plaintiff's competitors for peddling goods from its cars after the expiration of the free time period allowed in its published tariffs and has denied the same privilege to plaintiff, and it is not necessary first to resort to the Interstate Commerce Commission since no question of the reasonableness of the published regulation is involved. Lyne v. D. L. & W. R. R. Co., 170 Fed. 847, 849.

(g) Where the reasonableness or unreasonableness of demurrage rules is not involved and the question is one of interpretation as to what the schedule of rates in regard to the charges for demurrage actually is, a United States Circuit Court has original jurisdiction without prior application to the Interstate Commerce Commission. Hite v. Central R. of N. J., 171 Fed. 370, 372.

(h) The Interstate Commerce Commission is an administrative tribunal and the wisdom and expediency of the lawful exercise of the discretion delegated to it under the Constitution and the statutes is not reviewable by the courts. But the power is vested in and the duty is imposed upon the United States Circuit Courts to relieve from orders of the Commission which deprive complainant of their property without due process of law or take it without just compensation, in violation of the fifth amendment to the Constitution, from orders which are beyond the limits of the power delegated to the Commission and from orders which, though in form within its delegated power, evidence so unreasonable an exercise of it that they are in substance beyond it. Peavey & Co. v. U. P. R. R. Co., 176 Fed. 409, 418.

(i) Where the Commission has primary jurisdiction over a practice affecting rates, original jurisdiction cannot be conferred on a United States Circuit Court to hear the case by stipulation of the parties. Mitchell Coal & Coke Co. v. Penn. R. R. Co., 183 Fed. 908, 909.

(j) By the amendments of 1906 the original jurisdiction of a United States court under section 9 of the Act has not been entirely destroyed, but it still may redress "such wrongs as can, consistently with the context of the Act, be redressed by courts without previous action by the Commission," and, whenever a complainant comes into the courts to redress a wrong which he alleges has resulted from some discriminatory act of a common carrier, it will always be necessary in the first instance to determine whether or not it is a wrong which can be redressed by the courts. Langdon v. Pennsylvania R. R. Co., 186, Fed. 237, 240.

(k) Upon the question whether a suit by a shipper charging discriminatory practices and payments should first be brought before the Commission, the court, upon motion of defendant to dismiss on the ground that a United States Circuit Court had no jurisdiction, denied the motion and refused to pass upon the question of jurisdiction until the jury should determine whether the payments and practices involved were made generally to all owners of lateral roads or were made simply to particular shippers. Langdon v. Penn. R. R. Co., 186 Fed. 237, 241.

(l) On February 22, 1911, plaintiff sued in a state court of Tennessee to recover the excess exacted above the lawfully published rate on lumber. The suit was removed to a United States Circuit Court on the ground of diversity of citizenship. The claim was never presented to the Interstate Commerce Commission. HELD, Under sections 9 and 16 of the Act as amended June 18, 1910, the state court had no jurisdiction to entertain the suit and therefore the federal court could not acquire jurisdiction by the removal proceedings. Darnell v. I. C. R. R. Co., 190 Fed. 656, 658.

(m) Under Judicial Code, §24, par. 1, diversity of citizenship of the parties will not give the federal court jurisdiction, where the amount involved is less than $3,000. New York Cent. R. Co. v. Mutual Orange Distributors, 251 Fed. 230.

(n) Where a bill of lading for an interstate shipment required the owner or consignee to pay the freight, an action by a connecting carrier to recover freight due is governed by the Carmack Amendment, and under Judicial Code §24, par. 8, is within the jurisdiction of a federal District Court, regardless of the amount involved. New York Cent. R. Co. v. Mutual Orange Distributors, 251 Fed. 230.

(o) A federal court, and not the Interstate Commerce Commission, HELD

to have original jurisdiction to determine the right of a railroad company to refuse to furnish cars for loading by a manufacturer of gasoline on a side track built by the railroad company for the purpose, at the expense of the shipper, on the ground that the loading point is too near the main track for safety, in the absence of any statute or regulation on the subject. Hines v. Henaghan, 265 Fed. 831.

(p) The conclusion of the Commission is subject to review, but when supported by evidence is accepted as final; not that its decision, involving as it does so many and such vast public interests, can be supported by a mere scintilla of proof, but the court will not examine the facts further than to determine whether there was substantial evidence to sustain the order. I. C. C. v. U. P. R. R. Co., 222 U. S. 541, 547, 32 Sup. Ct. 108, 56 L. ed. 308.

(q) A United States Circuit Court has no jurisdiction to enjoin the putting into effect of a schedule of interstate rates without prior application to the Interstate Commerce Commission, which body is vested with exclusive jurisdiction over questions of the reasonableness of interstate rates under the Interstate Commerce Act as amended June 29, 1906. A. T. & S. F. Ry. Co. v. Foster Lumber Co. (Okla., 1911), 122 P. 139.

§9a. Commerce Court.

ALL CITATIONS

A. T. & S. F. Ry. Co., v. U. S., 204 Fed. 647, 650; United States v. A. T. & S. F. Ry. Co., 34 Sup. Ct. 986, 992; 934 U. S. 476; 58 L. ed..—; U. S. v. L. & N. R. R. Co., 195 Fed. 88, 92; Proctor & Gamble Co. v. U. S., 225 U. S. 282, 292; 32 Sup. Ct. 761, 765, 56 L. ed. 1091, reversing 188 Fed. 221, 226, 227; Proctor & Gamble Co. v. U. S. 188 Fed. 221, 226, 227, Reversed 225 U. S. 282, 32 Sup. Ct. 761, 56 L. ed. 1091; L. & N. R. R. Co. v. U. S., 207 Fed. 591; United States v. L. & P. Ry. Co., 34 Sup. Ct. 741, 746; 234 U. S. 1; 58 L. ed.—; United States v. A. T. & S. F. Ry. Co., 34 Sup. Ct. 986, 993; 234 U. S. 476; 58 L. ed.—; I. C. C. v. B. & O. R. R. Co., 225 U. S. 326, 340, 32 Sup. Ct. 742, 746, 56 L. ed. 1107; U. S. v. B. & O. R. R. Co., 225 U. S. 306, 320, 32 Sup. Ct. 817, 819, 56 L. ed. 1100; Hooker v. I. C. C. 188 Fed. 242, 246, 247, 252; Eagle White Lead Co. v. I. C. C., 188 Fed. 256; Florida East Coast Ry. Co. v. U. S., 200 Fed. 797, 802; U. S. v. Union Stockyard & T. Co., 33 Sup Ct. 83, 89., 226 U. S. 286; United States v. A. T. & S. F. Ry. Co., 34 Sup Ct. 986, 993; 234 U. S. 476; 58 L. ed.—; Arkansas Fertilizer Co. v. U. S., 193 Fed. 667, 669; Southern Ry. Co. v. U. S. 193 Fed. 664, 666; A. C. L. R. R. Co. v. I. C. C., 194 Fed. 449, 458; Nashville Grain Exch. v. U. S., 191 Fed. 37, 39; A. T. & S. F. Ry. Co. v. I. C. C. 188 Fed. 229, 237, 239; S. P. Co. v. I. C. C. 188 Fed. 241; A. T. & S. F. Ry. Co. v. U. S., 203 Fed. 56, 57, 58; Florida East Coast Ry. Co., v. U. S., 200 Fed. 797, 802; Chamber of Commerce of Augusta, Ga. v. U. S., 197 Fed. 66; Louisville & N. R. Co. v. U. S., 197 Fed. 58, 65; L. & P. Ry. Co. v. United States, 209 Fed. 244, 252; Kansas City S. Ry. Co. v. U. S., 204 Fed. 641, 644, 646; A. T. & S. F. Ry. Co. v. I. C. C. 188 Fed. 229, 237; S. P. Co. v. I. C. C. 188 Fed. 241; Hooker v. I. C. C. 188 Fed. 242, 251; Eagle White Lead Co. v. I. C. C., 188 Fed. 256; L. & P. Ry. Co. v. United States, 209 Fed. 244, 251.

IV. UNITED STATES SUPREME COURT.

§10. In General.

CASES 1887-1908

(a) In cases arising under the law merchant, the Supreme Court of the United States has held itself less bound by the decisions of the state courts than in other cases. Cited in Smith v. Alabama (U. S. L. ed., 508), 1 I. C. R. 809.

(b) Where a state court decided that a state law taxing telegraph companies authorized and imposed a tax upon receipts derived from messages from or to other states, and sustained a state tax thereon under such law, the Supreme Court of the United States has jurisdiction to review such decision. Western U. Teleg. Co. v. Seay (U. S. Sup. Ct.), 2 I. C. R. 726.

(c) The Mississippi statute of March 2, 1888, as settled by the supreme court of that state, applies solely to commerce within the state, and the Supreme Court of the United States must accept as conclusive such construction of the statute of the State by its highest court. Louisville, N. O. & T. R. Co. v. Mississippi (U. S. Sup. Ct.), 2 I. C. R. 801.

(d) The construction put upon a Minnesota statute by the Supreme Court of Minnesota must be accepted by the U. S. Supreme Court. Chicago, M. &

St. P. R. Co. v. State of Minn., 3 I. C. R. 209.

(e) The Supreme Court of the United States has jurisdiction on error to a state court, of the question whether a tax is in violation of the clause of the United States Constitution granting to Congress the power to regulate commerce among the states. Pullman's Palace Car Co. v. Com. (U. S. Sup. Ct.), 3 I. C. R. 595.

(f) On a motion to remand, the court will not anticipate the trial of the case, by deciding a Federal question for which the right of removal is claimed. Lowry v. Chicago, B. & Q. R. Co., 4 I. C. R. 435.

(g) A writ of error to a state court brings to the Supreme Court of the United States only the Federal questions in the case. Ashley v. Ryan (U. S. Sup. Ct.), 4 I. C. R. 664.

(h) It is not within the province of this court to review any question as to the admission or rejection of testimony in the state court which does not bear directly upon some matter of a Federal nature. Cleveland, C. C. & St. L. R. Co. v. Bachus, 4 I. C. R. 677.

(i) Supreme Court will refuse to permit appeal from judgment enforcing order of Commission to operate as supersedeas.—This court will not grant a motion to declare that an appeal to it from the circuit court of appeals, when perfected and bond aproved, does not operate as a supersedeas, or to vacate the supersedeas, in a case where the judgment of that court reversed the decree of the circuit court dismissing a suit to enforce an order of the Interstate Commerce Commission, and directed the enforcement of such order. Louisville & Nashville R. R. Co. v. Behlmer, 8 I. C. C. App. LIII.

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(j) The question of the legality of an order of the Commission reducing rates does not become moot on appeal to the United States Supreme Court merely because the period to which the order applied the new rates prescribed has expired, in view of the public interests involved and in view of possible claims for reparation. S. P. Co. v. I. C. C., 219 U. S. 433, 452, 31 Sup. Ct. 288, 55 L. ed. 283.

(k) The Commission ordered defendant carrier to desist for a period of two years from Nov. 15, 1908, from granting to a shipper a certain unduly preferential wharfage privilege. The bill in equity to enjoin the order was argued Dec. 9, 1910, in the Supreme Court of the United States. HELD, in view of the public character of the questions involved and the fact that orders of the Commission are continuing, the appeal should not be dismissed on the ground that, the order of the Commission having expired, the case had thereby become moot. So. Pac. Terminal Co. v. I. C. C., 219, U. S. 498, 515, 31 Sup. Ct. 279, 55 L. ed. 310.

(l) Where in a suit in a state court to recover an overcharge the interpretation of the Act is involved to determine what were the legally applicable rates on the shipments in question, the Supreme Court of the United States has jurisdiction to review the decision of the state courts. Kansas City So. Ry. v. Albers Comm. Co., 223 U. S. 573, 591, 32 Sup. Ct. 316, 56 L. ed. 516.

(m) The supreme Court of the United States will not on appeal reverse an order of preliminary injunction granted by the Commerce Court to restrain an order of the Interstate Commerce Commission forbidding carriers to make certain allowances, except where there has been an abuse of discretion by the Commerce Court, and where it plainly appears that the preliminary order was in effect a decision by the Commerce Court of the whole controversy on its merits or where it is demonstratable that grave detriment to the public interests will result from a failure of the Supreme Court finally to dispose of the controversy without remanding the case. U. S. v. B. & O. R. R. Co., 225 U. S. 306, 32 Sup. Ct. 817, 821, 56 L. ed. 1100.

(n) The Supreme Court of the United States has power to review a ruling dismissing, for want of jurisdiction, a suit brought in a district or circuit court of the United States to recover under sections 8 and 9 of the Interstate Commerce Act, damages arising from the payment to plaintiff's competitors of allowances not provided for in the published tariffs. Mitchell Coal & Coke Co. v. P. R. R. Co., 33 Sup. Ct. 916, 918, 230 U. S. 247.

(o) The contention that an arrangement made by certain carriers with a terminal company violates the commodity clause of the Interstate Commerce Act will not be considered by the Supreme Court on an appeal from the Com-

merce Court from an order by the latter enjoining the enforcement of an order of the Commission, where there is nothing in the record showing that such a contention was pressed upon the Commission, considered by that body, or that the order rendered was in any respect based upon the commodity clause. United States v. Baltimore & O. Ry. Co., 34 Sup. Ct. 75, 82, 231 U. S. 274, 58 L. ed. —.

(p) The wife of an employee of the C. & W. C. Ry. sustained personal injuries while traveling on that line on a pass that purported to exempt the company form liability, the pass having been issued gratuitously under the Hepburn Act. On suit the state court, in 79 S. E. 242, held that under the act the pass was not a free pass, but was issued in consideration of the services of the employee. HELD, that a question was presented under the act, reviewable by the U. S. Supreme Court on writ of error. C. & W. C. Ry. Co. v. Thompson, 34 Sup. Ct. 964, 234 U. S. 576, 58 L. ed. —.

(q) In an appeal from an order of the District Court denying an interlocutory injunction to restrain the enforcement of an order of the Interstate Commerce Commission, the United States Supreme Court will determine whether as a matter of law the Commission's findings of fact support its order. L. & N. R. Co. v. United States, 35 Sup. Ct. 696, 697, 238 U. S. 1, 59 L. ed.

(r) It was no doubt because of the limited time in which orders of the Commission would be operative, and that there might be cases in which irreparable injury would result if an interlocutory injunction was not granted, that Congress, by the act of October 22, 1913 (38 Stat. at L. 220, chap. 32), provided that "an appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction." L. & N. R. Co. v. United States, 35 Sup. Ct. 696, 698, 238 U. S. 1, 59 L. ed.

(s) An appeal lies to the U. S. Supreme Court from an order of the district court directing a witness to answer certain questions propounded by the Interstate Commerce Commission and to produce certain documents called for by it. Ellis v. I. C. C., 35 Sup. Ct. 645, 646, 237 U. S. 5434; 59 L. ed. 1036.

(t) An order of a Federal district court, made upon a petition of the Interstate Commerce Commission filed under the Act which directs an officer of a corporation to answer certain questions propounded, and to produce certain documents called for by the Commission, possesses the finality requisite to sustain an appeal to the Federal Supreme Court. Ellis v. Interstate Com. Com., 35 Sup. Ct. 645, 646; 237 U. S. 434, 59 L. ed. 1036.

(u) The Federal Supreme Court on an appeal taken under the act of October 22, 1913, from an order of a Federal district court denying an interlocutory in junction to restrain the enforcement of an order of the Interstate Commerce Commission reducing an existing freight rate, will determine whether, as a matter of law, the Commission's findings of fact sustain its order. Louisville & N. R. Co. v. United States, 35 Sup. Ct. 696, 697, 238 U. S. 1; 59 L. ed. 1177.

(v) The quesion whether proper effect was given to the Interstate Commerce Act, and its amendments, in interpreting a stipulation in a bill of lading for an interstate shipment requiring notice of claims for damages to be given to the carrier's officers or station agents as excluding officers or station agents of connecting carriers,—is fairly presented, so as to sustain a writ of error from the Federal Supreme Court to review a judgment of the highest state court adjudging the stipulation to be no defense to the initial carrier when sued for injuries to the shipment, being unreasonable and inoperative, because no officer or agent primarily employed by the initial carrier was accessible at destination, where a through bill of lading was issued under the Federal legislation, the pleadings show that its application was invoked, and in the answer, as also in the instructions given at the defendant carrier's request, there was a distinct assertion that notice was not given to any officer or station agent of the defendant, or to any officer or station agent of the connecting carrier, which means that the defendant was proceeding upon the theory that the stipulation, when read in connection with the Federal statutes, contemplated and recognized that notice to an officer or agent of the connecting carrier would suffice. Northern Pac. Railway Company v. Wall, 36 Sup. Ct. 493, 241 U. S. 87, 60 L. ed. 905.

(w) The Federal Supreme Court has juridiction of a writ of error to a state court to review a decision adverse to

the contention that a local freight rate for coal shipped from Galewood, a station inside of Chicago, to Morton Grove, Illinois, a distance of about 12 miles, over a route wholly within that state, is so related to through freight rates to Galewood from coal-producing districts inside or outside the state, as to exclude regulation by the Illinois Public Utilities Commission. Chicago, M. & St. P. Ry. v. State Public Utilities Comm., 37 Sup. Ct. 173, 242 U. S. 333, 61 L. ed. 341.

(x) A case in which the defeated party insisted at the trial court and on appeal in the highest state court upon its asserted rights under the Interstate Commerce Act and in which those rights were passed upon adversely by the latter court, is within the appellate jurisdiction of the Federal Supreme Court, L. & N. R. R. v. Ohio Tie Co., 37 Sup. Ct. 120, 242 U. S. 288, 61 L. ed. 305.

(y) A stipulation in a suit to recover demurrage charges on private cars, "made for the purpose only of reviewing the judgment" below, that the track on which the cars were placed was a "private track," will be treated by the Federal Supreme Court on writ of error as a nullity, where the facts set forth in the petition and exhibits which determine the character of the track and relation to it of carrier and shipper, and which were admitted by the demurrer, show that such track in fact was owned by the carrier. Swift & Co. v. Hocking Valley R. R. 37 Sup. Ct. 287, 243 U. S. 281, 61 L. ed. 175.

(z) On writ of error to a state court the Supreme Court must accept the state court's definition of the authority of the state Public Service Commission under the state law. P. R. Co. v. Towers, 38 Sup. 2, 245 U. S. 6, 62 L. ed. 117.

(aa) A judgment of the Circuit Court of Appeals, reversing a judgment of the District Court and granting a new trial, is not reviewable on writ of error, as it calls for further proceedings in the trial court, and a writ of error will lie to review final judgment only. Spiller v. Atchison, T. & S. F. Ry. Co., 40 Sup. Ct. 466, 467.

(bb) Though a judgment of a Circuit Court of Appeals, reversing the judgment of the District Court and granting a new trial, is not a "final judgment" if it is advisable to review such judgment without further protracting the litigation it is reviewable by certiorari under Judicial Code, §262 (Comp. St. §1239), authorizing the Supreme Court to issue all writs necessary for the exercise of its jurisdiction. Spiller v. Atchison, T. & S. F. Ry. Co., 40 Sup. Ct. 466, 467.

(cc) A judgment of a Circuit Court of Appeals involving less than $1,000 is made "final" by the combined effect of the U. S. Judicial Code,§§ 128, 241 and is therefore reviewable by certiorari under section 240. Spiller v. Atchison, T. & S. F. Ry. Co., 40 Sup. Ct. 466, 467.

(dd) In a carrier's action against a consignee to collect a balance of freight charges on interstate shipments in which neither party was wholly successful, the judgment of the state court is reviewable by writ of certiorari. New York Cent. & H. R. R. Co. v. York & Whitney, 41 Sup. Ct. 509.

(ee) Where a railroad company brought suit in a federal court attacking intrastate freight rates established by a state railroad commission, on the ground that they violated the federal Constitution, but the decree was reversed by the Supreme Court, with directions to dismiss the bill, that court has jurisdiction of an appeal from a decree allowing claims of shippers for overcharges during the time an injunction was in force, though the appeal involves only the construction of the tariff adopted by the commission; the decree being but supplementary to the main cause. St. Louis, I. M. & S. Ry. Co. et al. v. J. F. Hasty & Sons, et al., 41 Sup. Ct. 269.

(ff) A finding by the District Court that the report and order of the Interstate Commerce Commission, requiring a refund of excessive charges to the shipper, was prima facie evidence of the facts therein stated, did not adopt the findings by the Commission as special findings by the court, which might be reviewed by the Supreme Court without exception taken to them. Vicksburg, S. & P. Ry. Co. et al. v. Anderson-Tully Co., 41 Sup. Ct. 524.

(gg) The Supreme court will not substitute its judgment for that of Congress in determining whether practices threaten to burden or obstruct interstate commerce, unless the relation of the subject to interstate commerce and its effect on it are clearly nonexistent. Stafford v. Wallace, 42 Ct. 397.

(hh) In cases arising in the state courts involving the rights and liabilities of the parties to an interstate ship-

ment, the decisions of the Supreme Court of the United States, construing and applying the federal Act, are controlling upon the state courts. St. Louis, I. M. & S. Ry. Co. v. Bentley (Okla. 1918), 176 Pac. 250.

(ii) A decision by the United States Supreme Court that a state oil inspection statute was void as a burden on interstate commerce, which that court itself had subsequently construed as not holding the state statute absolutely void, is not res judicata as to the right of an oil company to recover all payments made by it for oil inspection under that statute. Union Oil Co. of Calif. v. State (Wash. 1923), 216 P. 22.

(jj) The corrections of findings of the Interstate Commerce Commission cannot be assailed in the United States Supreme Court, the evidence not being before that court. Hines v. United States (1923) 44 Sup. Ct. 72.

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Atchison, T. & S. F. Ry. Co. v. Cooper (Okla. 1918), 175 Pac. 539; St. L. & S. F. R. R. Co. v. Woodruff Mills (Miss. 1913), 62 So. 171, 172; Wabash R. R. Co. v. Priddy (Ind. 1913), 101 N. E. 724, 729; C. C. C. & St. L. Ry. Co. v. Blind (Ind. 1914), 105 N. E. 483, 494; New York Cent. & H. R. R. Co. v. York & Whitney Co. (Mass. 1918), 119 N. E. 855; Midland Linseed Co. v. American Liquid Fireproofing Co. (Ia. 1918), 166 N. W. 573; Chicago, R. I. & G. Ry. Co. v. Dalton (Tex. 1915), 177 S. W. 556; Dunning v. Western Union Telegraph Co. (Nebr. 1922), 187 N. W. 890; Hines, Director General of Railroads, v. Mason (Ark., 1920), 221 S. W. 861.

V. STATE COURTS

See Actions at Law; Discrimination §16; Interstate Commerce Commission §2; Loss and Damage §5; Overcharges §3; State Rates and Regulations; Undercharges §7½; War Legislation.

§11. In General.

CASES 1887-1908

(a) A legal or equitable right under state laws may be prosecuted before state courts, and, when the parties reside in different states, before federal courts, subject to this qualification, that, when a right arises under a law of the United States, Congress may give the federal courts exclusive jurisdiction. Copp v. Louisville & Nashville R. Co., 3 I. C. R. 625.

(b) A state court has no jurisdiction of an action for damages against a carrier for violation of the Interstate Commerce Law as that provides for redress, either by procedure before the Commission or suit before a federal court. Copp v. Louisville & N. R. Co. (La.), 3 I. C. R. 625.

(c) The state courts have not lost their jurisdiction of the subject-matter of actions against carriers because of interstate shipments by reason of the fact that Congress has legislated upon the subject. St. Joseph & G. I. R. Co. v. Palmer, 4 I. C. R. 494.

(d) The fact that a subject like interstate commerce is beyond state legislative control does not ipso facto exclude the jurisdiction of state courts from cases growing out of such commerce. Murray v. Chicago & N. W. R. Co. (C. C. N. D. Iowa), 806; St. Joseph & G. I. Co. v. Palmer (Neb.), 4 I. C. R. 494.

(e) A state court is bound by the decision of the United States Supreme Court on the question of the legality of the taxation of the business of express and telegraph companies in respect to interstate commerce. Western U. Teleg. Co. v. Fremont (Neb.), 5 I. C. R. 66.

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(f) In the Minnesota rate case, the Federal Court had no jurisdiction of anything but state rates, In re Advances in Class Rates, 25 I. C. C. 268, 271.

(g) The question of expediency in granting the Commission and courts concurrent jurisdiction in suits for damages was decided by Congress and is a matter reserved for the consideration of the legislative branch of the Government, into which the Commission can not inquire. Vulcan Coal & Mining Co. v. I. C. R. R. Co., 33 I. C. C. 52, 68.

(h) State courts are not without jurisdiction in every case involving rights or questions under the Interstate Commerce Act. Detroit, M. & T. S. L. Ry. v. City of Monroe et al. (Mich. 1919), 262 Fed. 177.

(i) An action to determine the rate applicable to dunnage used in shipments of automobiles, where the only

question was the construction of the terms of published tariff classifications, HELD, within the jurisdiction of a court, and not requiring a precedent application to the Interstate Commerce Commission. Butler Motor Co. v. Atchison, T. & S. F. Ry. Co., 272 Fed. 683.

(j) A state court has jurisdiction to compel by mandamus an interstate carrier to switch a car from a shipper's mill located on a spur track to its main track, thence a short distance on its main track, thence by a connecting switch to an intersecting interstate carrier, although the car is destined to another state, the purpose of such order being to prevent discrimination among shippers in local switching service. Missouri Pacific Ry. v. Larabee Mills, 211 U. S. 612, 623, 29 Sup. Ct. 214, 53 L. ed. 352.

(k) An action cannot be maintained against a carrier in a state court under sections 9 and 22 of the Act to recover reparation for unjust discrimination in charging a published rate of 50c higher per ton for coal loaded from wagons than the published rate when the coal is loaded from tipples, where no prior application has been made to the Commission for relief. Robinson v. B. & O. R. R. Co., 222 U. S. 506, 509, 32 Sup. Ct. 774, 56 L. ed. 288.

(l) In a suit in a state court to recover reparation for unjust discrimination, the court is not required by section 14 of the Act, in order to make the reports of the Commission competent evidence, to take judicial notice of the decisions of the Commission where they are not mentioned in the pleadings or in the agreed statement of facts. This provision makes the decisions of the Commission as published admissible in evidence without other proof of their genuineness, but does not relieve litigants from the necessity of offering them in evidence. Robinson v. B. & O. R. R. Co., 222 U. S. 506, 512, 32 Sup. Ct. 114, 56 L. ed. 288.

(m) Without preliminary action by the Interstate Commerce Commission a state court has no jurisdiction of an action by shippers to recover from an interstate carrier sums expended by them in constructing grain doors or bulkheads in cars furnished by the carrier for interstate carload shipments of farm products in bulk, the applicable duly filed interstate rate schedules making no reference to allowances for grain doors or bulkheads. Loomis v. Lehigh Valley R. Co., 36 Sup. Ct. 228, 229, 240 U. S. 43, 60 L. ed. 517.

(n) It is true that §§8 and 9 deal with the redress of injuries resulting from violations of the act, and give the person injured a right either to make complaint to the Interstate Commerce Commission or to bring an action for damages in a federal court, but not to do both. If the Act said nothing more on the subject it well may be that no action for damages resulting from a violation of the act could be entertained by a state court. But the Act shows that §§8 and 9 do not completely express the will of Congress as respects the injuries for which redress may be had or the modes in which it may be obtained, for §22 contains this important provision: "Nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute but the provisions of this act are in addition to such remedies." The three sections if broadly construed, are not altogether harmonious, and yet it evidently is intended that all shall be operative. Only by reading them together and in connection with the act as a whole can the real purpose of each be seen. They often have been considered and what they mean has become pretty well settled. Thus it has been held that the manifest purpose of the provision in §22 is to make it plain that such "appropriate common law and statutory remedies" as can be enforced consistently with the scheme and purposes of the Act are not abrogated or displaced. (Texas & P. R. Co. v. Abilene Cotton Oil Co., 204 U. S. 426, 446, 447, 51 L. ed. 553, 561, 562, 27 Sup. Ct. Rep. 350, 9 Ann. Cas. 1075) that this provision is not intended to nullify other parts of the act, or to defeat rights or remedies given by earlier sections, but to preserve all existing rights not inconsistent with those which the Act creates (Pennsylvania R. Co. v. Puritan Coal Min. Co., 237 U. S. 121, 129, 59 L. ed. 867, 872, 35 Sup. Ct. Rep. 484); that the act does not supercede the jurisdiction of state courts in any case, new or old, where the decision does not involve the determination of matters calling for the exercise of the administrative power and discretion of the Interstate Commerce Commission or relate to a subject as to which the jurisdiction of the Federal courts is otherwise made exclusive (id.

130); that claims for damages arising out of the application, in interstate commerce, of rules for distributing cars in times of shortage, call for the exercise of the administrative authority of the Commission where the rule is assailed as unjustly discriminatory, but where the assault is unequal and discriminatory application, no administrative question is presented and the claim may be prosecuted in either a Federal or a state court without any precedent action by the Commission (id. 131, 132); and that, if no administrative question is involved, as well may be the case, a claim for damages for failing upon reasonable request to furnish to a shipper in interstate commerce a sufficient number of cars to satisfy his needs may be enforced in either a Federal or a state court without any preliminary finding by the Commission, and this whether the carrier's default was a violation of its common-law duty existing prior to the Hepburn Act of 1906, or of the duty prescribed by that act (id. 132-135; Eastern R. Co. v. Littlefield, 237 U. S. 140, 143, 59 L. ed. 878, 882, 35 Sup. Ct. Rep. 489; Illinois C. R. Co. v. Mulberry Hill Coal Co., 238 U. S. 275, 283, 59 L. ed. 1306, 1310, 35 Sup. Ct. Rep. 760; Pennsylvania R. Co. v. Clark Bros. Coal Min. Co., 238 U. S. 456, 472, 59 L. ed. 1406, 1413, 35 Sup. Ct. Rep. 896). Pennsylvania R. Co. v. Sonman Shaft Co., 37 Sup. Ct. 46, 47, 48, 242 U. S. 120, 61 L. ed. 188.

(o) A state court has jurisdiction without previous action by the Interstate Commerce Commission of a suit by a coal mining company against an interstate carrier to recover the damages arising in interstate commerce out of the latter's failure to furnish such company with the number of coal cars to which it claims to be entitled under the carrier's own rule for car distribution, since, the rule itself not being attacked, there was no administrative question involved. Pa. R. Co. v. Stineman Coal Min. Co., 37 Sup. Ct. 118, 242 U. S. 298, 61 L. ed. 316.

(p) The state court cannot acquire jurisdiction of a suit to enjoin the enforcement of a rule of the carriers, which was in fact prescribed by the Interstate Commerce Commission, by the plaintiff's concealment in his bill of the fact that the rule was so prescribed. Lambert Run Coal Co. v. Baltimore & O. R. Co., 42 Sup. Ct. 349.

(q) In an action for freight on an interstate shipment controlled by the Elkins Act, counterclaim for injuries to the shipment cannot be maintained in a state court, that being the ruling of the federal courts, despite plaintiff's contention that his personal interest as suitor in the state court would be inconvenienced, for the state public policy cannot run counter to the national. Delaware, L. & W. R. Co. v. Henry Nuhs Co. (N. J. 1919), 111 Atl. 223.

(r) Under the Act as amended in 1906, a state court has no jurisdiction to determine whether an express company shall, as to interstate shipments, deliver packages to the residences and places of business of consignees, since there has been an assumption of exclusive jurisdiction by Congress over such shipments down to the point where the transit is entirely at an end. State v. Adams Express Co., 171 Ind. 138, 144, 85 N. E. 337, 966.

(s) The Interstate Commerce Commission is not vested with jurisdiction over suits to recover damages for delay in the delivery of an interstate shipment, so far as to prevent the state courts from entertaining such actions. Pittsburgh, C. C. & St. L. Ry. Co. v. Knox (Ind. 1912), 98 N. E. 295, 299.

(t) A state court has no jurisdiction of an action to recover overcharges where it is alleged that the carrier published a rate of 1c per 100 lbs., with a minimum charge of $5.00 per car, under which it should have furnished cars of a carrying capacity of 50,000 lbs., but instead was furnished cars of a capacity of 40,000 lbs., which was insufficient to enable them to earn $5.00 at the given rate, since such allegations show a contention relating to the lawful construction of an interstate tariff. St. Louis Southern Ry. Co. v. J. S. Patterson Const. Co. (Ind. 1914), 104 N. E. 512, 516.

(u) Suits by interstate carriers may be instituted in the state courts to recover the difference between the lawful charge for service as shown by published tariffs and the amount actually paid for such service. Cleveland, C. C. & St. L. Ry. Co. v. Talge Mahogany Co., 112 N. E. (Ind. 1916), 890.

(v) A state court has jurisdiction, in a suit by a carrier to collect a greater charge for a shorter than for a longer haul, to entertain a defense by the shipper that the carrier had no permission

from the Interstate Commerce Commission to make such charge and was not authorized to do it on account of dissimilar circumstances and conditions. (Hancey, J., dissenting.) Great Northern Ry. Co. v. Loonan Lumber Co. (S. D. 1910), 125 N. W. 644, 646.

(w) Under the Interstate Commerce Act as amended a shipper cannot sue in a state court to recover excessive demurrage charges exacted of him on an interstate shipment, but must first resort to the Interstate Commerce Commission, which has exclusive original jurisdiction over such shipment. Starks Co. v. Grand Rapids & I. Ry. Co. (Mich. 1911), 131 N. W. 143, 145.

(x) The provision of the Act as amended June 29, 1906, and April 13, 1908, relating to attorney's fees do not give the right to recover such fees in a state court in a suit for loss or damage in transit. Blair & Jackson v. Wells-Fargo Co. (Ia. 1912), 135 N. W. 615, 620.

(y) Without preliminary action by the Interstate Commerce Commission, a state court has no jurisdiction of an action by a shipper to recover from an interstate carrier sums expended by him (the shipper) in lining and coopering cars furnished by the carrier for interstate carload shipments of grain in bulk; the applicable duly filed interstate rate schedules making no reference to allowances therefor. Midway Co-op. Elevator Co. v. Great Northern Ry. (N. Dak. 1918), 169 N. W. 494.

(z) A shipper cannot bring an original action for recovery of cooperage, in a state court, as the Interstate Commerce Commission has primary juridiction. Midway Co-op. Elevator Co. v. Great Northern Ry. (N. Dak. 1918), 169 N. W. 494, 496.

(aa) A rate established in violation of Section 4 of the Interstate Commerce Act is an illegal rate and the excess over the reasonable rate may be recovered by a claimant in a state court without first resorting to the Interstate Commerce Commission. McCaull-Dinsmore Co. v. Great Northern Ry. Co. (Minn. 1922), 191 N. W. 42.

(bb) A state court has power to construe a tariff. Wilson v. Long Island R. Co., 165 N. Y. S. 913.

(cc) Where the plaintiff, in a suit for excessive charges, resulting in unjust discrimination, does not rely upon the Interstate Commerce Act, but bases his claim on common law principles, an action for such recovery may be brought in a state court, although the shipments involved were made across state lines. Missouri, K. & T. Ry. Co. v. The New Era Milling Co., 79 Kans. 435, 448, 100 P. 273.

(dd) Where a carrier represents that it is collecting of all shippers switching charges on interstate shipments levied by a connecting carrier and is, in fact, absorbing such charges for favored shippers, a state court has jurisdiction in an action for damages for discrimination, since, under sections 9 and 22 of the Act, the state courts are not deprived of jurisdiction over actions for breaches of duty by the carriers which would give rise to causes of action at common law or under a state statute. Lilly Co. v. Northern Pac. Ry. Co. (Wash. 1911), 117 P. 401, 402.

(ee) A state court has power to construe a tariff on file with the Interstate Commerce Commission and to say whether or not a particular rate exacted is in accordance with the tariff. So. Pac. Co. v. Frye & Bruhn (Md. 1914), 143 Pac. 163, 165.

(ff) Since the Hepburn Act, the federal statutes, supplemented by the Common law as declared by the federal courts, have superceded all state laws pertaining to the substantive rights of parties to an interstate shipment of property; but, in respect to remedies and procedure, the state laws are applicable in state courts. St. L. & S. F. R. Co. v. Mounts (Okla. 1914), 144 Pac. 1036.

(gg) Where the Interstate Commerce Commission has held a published rate to be excessive, a state court has jurisdiction under section 22 of the Act to entertain an action by a shipper to recover the excess exacted over and above the reasonable rate prescribed. Robinson v. B. & O. R. R. Co., 64 W. Va. 406, 63 S. E. 323.

(hh) Section 22 of the Interstate Commerce Act permits an action to be brought in a state court for the wrongful failure of a terminal carrier to deliver an interstate shipment. W. & A. R. Co v. White Provision Co. (Ga. 1914), 82 S. E. 644, 646.

(ii) A carrier failed to post an interstate rate in the depot at the point of origin, as required by section 6 of the

Interstate Commerce Act as amended June 29, 1906. A shipper purchased grain and relied on the lower rate previously in effect and on file at the depot. He was compelled to pay the higher rate, unposted, but filed with the Interstate Commerce Commission. HELD, a state court had jurisdiction to entertain an action for damages for a failure to post the rate, under section 22 of the Interstate Commerce Act, providing that "nothing in this Act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this Act are in addition to such remedies," I C. R. R. Co. v. Henderson Elevator Co., 138 Ky. 220, 229, 127 S. W. 779.

(jj) While there is an overcharge resulting from the application of the wrong rate, and a state court only needs to consider the quesion as to which of two rates applies, without reference to the reasonableness of either of them, the case is one within its jurisdiction. Kansas City Southern Ry. Co. v. Tonn, 102 Ark, 20, 143 S. W. 577; C. R. I. & P. Ry. Co. v. Lena Lumber Co., 99 Ark. 105, 137 S. W. 562; St. L. S. W. Ry. Co. v. Gramling, 97 Ark. 353, 133 S. W. 1129; St. L. S. F. & T. Ry. Co. v. Roff Oil & Cotton Co., 61 Tex. Civ. App. 190, 128 S. W. 1194; Western & A. R. Co. v. White Provision Co., 142 Ga. 246, 82 S. E. 644; St. Louis, I. M. & S. Ry. v. Ft. Smith & V. B. Ry. (Ark. 1917), 191 S. W. 902, 903.

ALL OTHER CITATIONS

L. & N. R. R. Co. v. Warfield, 6 Ga. App. 550, 551, 65 S. E. 308; Hardaway v. Southern Ry. Co. (S. C. 1912), 73 S. E. 1020, 1022, 1025; Lipman v. A. C. L. R. Co. (S. C. 1912), 73 S. E. 1026, 1027; Galveston H. & S. A. Ry. Co., v. Piper Co. 52 Tex. Civ. App. 568, 572, 115 S. W. 107; Perkett v. Manistee & N. E. R. R. Co. (Mich. 1913) 141 N. W. 607, 610; Galveston, H. & S. A. Ry. Co. v. Crow (Tex. 1919), 117 S. W. 107; L. & N. R. R. Co. v. Scott, 133 Ky. 724, 729, 118 S. W. 990; Thacker Coal & Coke Co. v. N. & W. Ry. Co., 67 W. Va. 448, 454, 68 S. E. 107; Lilly Co. v. Northern Pac. Ry. Co. (Wash. 1911), 117 P. 401, 402; Aldrich v. S. Ry. Co. (S. C. 1913), 79 S. E. 316, 319; Western & A. R. Co. v. White Provision Co. (Ga. 1914), 82 S. E. 644, 646; I. C. R. R. Co v. Henderson Elevator Co., 138 Ky. 220, 227, 127 S. W. 779; St. L. & S. F. R. R. Co. v. Heyser (Ark. 1910), 130 S. W. 562, 564; Loomis v. L. V. R. R. Co. (N. Y. 1913), 101 N. E. 907, 913; Loomis v. Lehigh Valley R. R. Co. (N. Y. 1910), 132 N. Y. Sup. 138, 140; Pecos & N. T. Ry. Co. v. Meyer (Tex., 1913), 155 S. W. 309, 314; Pecos & N. T. Ry. Co. v. Porter (Tex., 1913) 156 S. W. 267, 270; St. Louis, B. & M. Ry. Co. v. Gould (Tex. Civ. App. 1914), 165, S. W. 13; U. S. Nickel Co. v. Barett (1914), 148 N. Y. S. 325, 328; McElvain v. Railroad, 151 Mo. App. 126, 146, 131 S. W. 736; St. L. S. W. Ry. Co. v. Gramling, 97 Ark. 353, 357, 133 S. W. 1129; C. R. I. & P. Ry. Co. v. Lena Lumber Co. (Ark., 1911), 137 S. W. 562; Kansas City S. Ry. Co. v. Tonn (Ark. 1912), 143 S. W. 577, 580; Petition of Southern Lumber & Mfg. Co., 210, S. W. 639; Mott Store Co. v. St. L. & S. F. Ry. Co. (Mo. App. 1914), 168 S. W. 322; S. A. Foster Lumber Co. v. U. P. R. Co.(Neb. 1915), 151 N. W. 168; Elliott v. C. M. & St. P. Ry. Co. (So. Dak. 1915), 150 N. W. 77, 778; So. Pac. Co. v. Fry & Bruhn, 143 Pac. 163, 166; Drewfuss v. Penn. R. Co., 153 N. Y. S. 966, 969; Harris v. Southern Ry. Co. (S. C. 1915), 85 S. E. 158, 159; St. Louis Southwestern Ry. Co. v. Goldstein (Tex. 1922), 245 S. W. 226; Louisville & N. R. Co. v. Oman (Ky. 1915), 178 S. W. 1090 1091; Illinois C. R. v. Mulberry Hill Coal Co., 35 Sup. Ct. 760, 761; Pecos & N. T. Ry. Co. v. Porter (Tex. 1916), 183 S. W. 98, 100; Rock Milling & E. Co. v. Atchison T. & S. F. Ry. Co., 158 Pac. (Kan. 1916), 859; Read & Davis v. C. V. Railway (N. H. 1913), 86A, 161, 162; Langhill v. Pennsylvania Railroad Co., 98 Atl. (Pa. 1916), 873; Sunderland Bros. Co. v. B. & O. S. W. Ry. (Mo. 1916), 190 S. W. 650; American Exp. Co. v. South Dakota, 37 Sup. Ct. 656, 657, 244 U. S. 617, 61 L. ed; Wilson v. Long Island R. Co., 165 N. Y. S. 913, 914; Fremont Milling Co. v. C. & N. W. Ry. Co. (Nebr. 1917), 163 N. W. 331; Reliance Elevator Co. v. Chicago, M. & St. P. Ry. (Minn. 1917), 165 N. W. 867; Hall v. P. R. R. (Pa. 1917), 100 Atl. 1035; Groesbeck v. Michigan State Telephone Co. (Mich. 1919), 172 N. W. 799; Merchants Elevator Co. v. Great Northern Ry. Co. (Minn. 1920), 180 N. W. 105; Chicago, R. I. & P. Ry. Co., et al. v. Gist (Okla. 1920), 190 Pac. 878; Pittsburgh & L. E. R. Co. v. South Shore R. Co. (Pa. 1919), 107 Atl. 680; Southern Ry. Co. v. Buckeye Cotton Oil Co. (Miss 1921), 89 Sou. 228; Van Zant v. Kansas City Southern Ry. Co. (Mo. 1921), 232 S. W. 696; Shannon

v. Western Union Telegraph Co. (Ark. 1922), 238 S. W. 59; Tamsett v. Hines (Ala., 1922), 91 Sou. 788; Grand Rapids Showcase Co. v. Postal Telegraph-Cable Co. (Mich., 1921), 183 N. W. 731; Atchison, T. & S. F. Ry. Co. v. Wells, 285 Fed. 369; Union Oil Co. of Calif. v. State (Wash., 1923), 216 P. 22.

VI. PRACTICE AND EVIDENCE.

See Evidence; Procedure Before Commission; Reparation §23.

§12. In General.

CASES 1887-1908

(a) The right of removal must be determined by the pleadings at the time the petition is filed. Merchants Cotton Press & S. Co. v. Insurance Co. of North America, 4 I. C. R. 499.

IMPORTANT CASES SINCE 1908

(b) Commission will not undertake to pass upon the merits of issues involved in court cases, nor will it draw any inferences from the fact that such decree was discontinued prior to entry of decree. The Missouri River-Nebraska Cases, 40 I. C. C. 201, 253.

(c) A petition brought in the courts to recover an award of reparation by the Commission for the exaction of unreasonable rates must itself allege that the rates were unreasonable, and it is not sufficient to set forth the proceedings of the Commission, setting out the causes of complaint, in order to comply with section 5 of the Act of June 29, 1906, which requires the petitioner to set forth briefly the causes for which he claims damages. Baer Bros. Merchantile Co. v. D. & R. G. R. R. Co., 200 Fed. 614, 616.

(d) A petition to recover in the courts an award of reparation by the Commission does not sufficiently allege service of the Commission's order on the defendant which alleges that "thereafter, said Commission, agreeable to the provisions of law in that regard, duly caused a properly authenticated copy of its said report, together with order aforesaid, to be delivered to the said defendant," as defendant is entitled to a direct averment of service and the manner thereof in terms so clear as to permit an issue of fact. Baer Bros. Merchantile Co. v. D. & R. G. R. R. Co., 200 Fed. 614, 618.

(e) It does not at all follow that because the Act makes certain findings of fact by the Commission prima facie evidence of such facts, it also determines their probative force. Lehigh Valley R. R. Co. v. Clark, 207 Fed. 717, 728.

(f) In a proceeding to recover on a reparation order the finding of the Commission that the rate charged was unreasonable and fixing the excess over the legal rate, is prima facie correct, if not conclusive; and if no evidence to the contrary is offered, and both parties ask peremptory instruction, verdict for plaintiff is properly directed. St. L. & S. F. Ry. Co. v. S. Samuels & Co., 211 Fed. 588, 594.

(g) Sections 14 and 16 of the Interstate Commerce Act, as amended by the Act of June 2, 1906, clearly distinguish suits to enforce administrative orders of the Commission, which are in equity, where the only issue is as to the legality of the order, and an action to recover reparation awarded. The latter is not a suit to enforce the order, but an action at law, triable by jury, and the proceedings are as in other civil actions, save that the findings and order of the Commission are received as prima facie evidence of the facts recited. L. V. R. R. Co. v. Meeker, 211 Fed. 785, 792.

(h) In an action to recover reparation awarded, where plaintiff has introduced the report of the Commission, the court should instruct the jury as to what findings are and what are not made prima facie evidence by the statute. L. V. R. R. Co. v. Meeker, 211 Fed. 785, 795.

(i) Under the provision of the Interstate Commerce Act, that a suit for damages based on an award of the Interstate Commerce Commission "shall proceed in all respects like other civil suits for damages," except that "the findings and order of the Commission shall be prima facie evidence of the facts therein stated," plaintiff in such action may introduce evidence in addition to that produced before the Commission. Missouri Pac. Ry. Co. v. C. E. Ferguson Sawmill Co., 235 Fed. 474.

(j) A motion by defendants to dismiss on grounds going to the merits is a waiver of any objection to the venue or jurisdiction of the particular court, where it has general jurisdiction by reason of diversity of citizenship. McLean Lumber Co. v. United States, 237 Fed. 460.

(k) The courts will take judicial no-

tice of the proclamation of the President of December 26, 1917, declaring the necessity to take possession and control of certain systems of transportation in the United States, including railroads. Muir v. Louisville & N. R. R. Co., 247 Fed. 888.

(l) In action by railway company to recover alleged storage charges on interstate shipments, where the case was one of far-reaching importance, a judgment entered on motion for judgment for want of sufficient affidavit of defense may, in the discretion of appellate court, be reversed without opinion on the questions involved, so as to allow proofs to be placed of record before the case is reviewed. Freedom Oil Works Co. v. Pittsburgh, C. C. & St. L. Ry. Co., 254 Fed. 800.

(m) The provision of General Order of Director General of Railroads No. 50 of October 28, 1918, that pleadings in pending actions for injuries against a railroad company "may" be amended by substituting the Director General and dismissing the company as defendant, must be construed as permissive only, in view of Federal Control Act, providing that carriers, while under federal control, shall be subject to all laws and liabilities as common carriers, and that actions may be brought against them, "and judgments rendered as now provided by law," and such substitution of parties will not be made on motion of defendant. Jensen v. Lehigh Valley R. R., 255 Fed. 795.

(n) In a suit against a railroad company, under Interstate Commerce Act, §16, as amended by Act June 18, 1910, c. 309, §13, to enforce an award of damages made to a shipper by the Interstate Commerce Commission, a complaint is sufficient which sets out the findings of the commission and its order, which are by, the statute made prima facie evidence of the facts stated. Vicksburg, S. & P. Ry. Co. v. Anderson-Tully Co., 261 Fed. 741.

(o) In a suit to enforce an award of damages made to a shipper by the Interstate Commerce Commission, the introduction in evidence of the findings and order of the commission is sufficient to entitle plaintiff to judgment, in the absence of any evidence on behalf of defendant. Vicksburg, S. & P. Ry. Co. v. Anderson-Tully Co., 261 Fed. 741.

(p) That the person on whom service of summons was made in a suit against a railroad company was at the time an employe of the government railroad administration, then in control of defendant's road, did not prevent him from being at the same time an agent of defendant on whom service might properly be made. Vicksburg, S. & P. Ry. Co. v. Anderson-Tully Co., 261 Fed. 741.

(q) The unreasonableness of the rate and the amount of plaintiff's damage caused thereby were found by the commission. The introduction of the award was unreasonable and that the plaintiff was injured thereby to the extent of the award. If the defendants declined to introduce evidence to rebut the plaintiff's case so made, the District Judge had no alternative than to render judgment. He did not rule that defendants could not rebut the prima facie case made by plaintiff, but that they had not done so; and not having done so, that he was required to treat the plaintiff's prima facie case, which unrebutted, as entitling the plaintiff to a judgment. Vicksburg. S. & P. Ry. Co. v. Anderson-Tully Co., 261 Fed. 746.

(r) Insufficient or defective certification of a carrier's applicable tariff schedules on file with the Interstate Commerce Commission, which were admitted in evidence by the trial court, could not justify a state appellate court in arbitrarily disregarding such schedules when passing upon the question whether or not the carrier had limited its liability for the baggage of an interstate passenger to a specified sum unless a greater value is declared and excess charges paid. New York C. & H. R. R. v. Beaham, 37 Sup. Ct. 43, 242 U. S. 148, 61 L. ed. 210.

(s) Under Act Oct. 22, 1913, requiring suits to enforce, suspend, or set aside an order of the Interstate Commerce Commission made upon petition to be brought in the district of the residence of the parties upon whose petition the order was made, and Judicial Code, §§ 208, 211 (Comp. St. 1916, §§ 997, 1004), requiring such suits to be brought against the United States, a suit to set aside an order of the Interstate Commerce Commission made on the petition of residents of Missouri could not be maintained in the Northern district of Illinois, as the United States, being suable only by its consent, could not be sued in a district not within the consent given. Illinois Cent. R. R. v. Public

Utilities Commission, 38 Sup Ct. 170, 245 U. S. 493, 62 L. ed 425.

(t) The Interstate Commerce Act provides that, if an order of the Interstate Commerce Commission respecting transportation be not obeyed by the carrier, it may be enforced at the suit of the Commission, an injured party, or the United States, by an appropriate writ or process restraining further disobedience and enjoining due compliance with the order. Oct. 22, 1913, c. 32, 38 Stat. 219, provides, that suits to enforce, suspend, or set aside in whole or in part an order of the Commission relating to transportation, and made upon petition, may be brought only in the district in which the petitioners or one of them resides. HELD, that where the Commission on petition of residents of Missouri ordered carriers to cease discriminating between St. Louis, Mo., Keokuk, Iowa, and Illinois points respecting rates between such points and other Illinois points, and the carriers thereupon raised the Illinois intrastate rates and sued to enjoin the state authorities from interfering with the establishment and maintenance of the increased rates, the suit was not one to enforce, suspend, or set aside an order of the Commission, and might be brought in the Northern district of Illinois. Illinois Cent. R. R. v. Public Utilities Commission, 38 Sup. Ct. 170, 245 U. S. 493, 61 L. ed 425.

(u) A cross-bill to set aside an order of the Interstate Commerce Commission could not be retained as to other defendants after its dismissal as to the United States, since under Judicial Code, §§ 208, 211, the United States is made a necessary party to such a suit. Illinois Cent. R. R. v. Public Utilities Commission, 38 Sup. Ct. 170, 245 U. S. 493, 62 L. ed. 425.

(v) Within Act Oct. 22, 1913, declaring venue of suit to set aside order of Interstate Commerce Commission to be the district wherein is the residence of the party or any of the parties on whose petition the order was made, the carriers making fourth section applications (constituting the proceedings) wherein the order was made, and not the other parties (a merchants' association and a state railroad commission) whose applications were instrumental in securing a reopening of the proceedings resulting in the order, are the parties whose residence is controlling. Skinner & Eddy Corp. v. U. S. 39 Sup. Ct. Rep. 375.

(w) The return of the marshal that he served the process on an agent of defendant is sufficient showing of the agency of the person served, where the only denial was a stipulation that the railroad of defendant at the time was under government control, since the agent may not have been in the employ of the Director General of Railroads at all, or may have been serving as agent for both the Director and the company. Vicksburg, S. & P. Ry. Co. et al. v. Anderson-Tully Co., 41 Sup. Ct. 524.

(x) An arrangement between two railroad companies, one of which owned no line within the district, whereby the cars of the latter were carried over the tracks of the other within the district for payments computed on the mileage basis and on a through tariff, is equivalent to a lease of the tracks within the district, so as to authorize suit in that district, under Interstate Commerce Act, §16, as amended by Act June 18, 1910, §13 (Comp. St. §8584), allowing such action in any district through which the road of the carrier runs. Vicksburg, S. & P. Ry. Co. et al. v. Anderson-Tully Co., 41 Sup. Ct. 524.

(y) Requiring briefs with references to the pages of the record, has been so neglected that the court could not determine whether going concern value should be included in the rate base, without itself reading and briefing the record, and the assignment of error to the refusal to include such value will not be considered. City of Houston v. South-Western Bell Telephone Co., 42 Sup. Ct. 486.

(z) An award of the Commission is not a judgment in the sense that it concludes the enforcement of the claim upon which it rests in a court otherwise having jurisdiction of the cause of action. The award is merely prima facie evidence of the facts contained therein in an action brought on it in a state or Federal Court; and when introduced in evidence to support a claim is open to attack and may be wholly discredited. Clark Bros. Coal Mining Co. v. Pennsylvania Ry. Co. (Pa 1913), 88 Atl. 1754, 761.

(aa) In an action against an initial carrier for losses due to delay in the shipment of a carload of strawberries, it is error to refuse to allow the defendant to prove its published tariffs filed with

the Commission containing regulations providing for a higher rate if the shipments were not made subject to the terms and limitations of the bill of lading. N. Y. P. & N. Ry. Co. v. Peninsula Produce Exchange (Ind., 1914), 89 Atl. 433, 437.

(bb) Plaintiff sued in a state court to recover for materials and labor furnished in repairing freight cars and furnishing grain doors for such cars, which had been furnished by the defendant for transporting grain by the plaintiff in interstate commerce. Rule 78 of the Interstate Commerce Commission made the reimbursement of shippers for expense incurred in attaching grain doors to box cars unlawful unless expressly provided for in the tariffs of the carrier. No such provision was incorporated in the tariffs. The answer did not show that this rule was in force at the time the shipments were made and the labor and material furnished. HELD, on demurrer, the answer did not state a defense as contended on the ground that to permit recovery would result in a violation of sections 6 and 3 of the Interstate Commerce Act. Hanks v. M. P. Ry. Co. (Neb. 1912) 138 N. W. 750, 753.

(cc) Courts will take judicial notice that the country is at war, and has taken over the railroads under an act of Congress, and that there are extraordinary conditions making it necessary to raise the rates in order to defray the expenses of federal control and operation. Kneeland-Bigelow Co. v. Michigan Cent. R. Co. (Mich. 1919), 174 N. W. 605.

(dd) Courts will not take judicial notice of the schedules of rates filed by a carrier with the Commission and published as required by Acts of Congress. Cranor v. Southern Ry. Co. (Ga. 1913), 78 S. E. 1014, 1018.

(ee) Where suit is brought against a connecting carrier in interstate commerce for damage to goods delivered to it by the preceding carrier, a prima-facie case is made for the plaintiff by proof at reception of the goods by the defendant and their delivery in damaged condition. Thereupon the presumption arises that they were damaged through the negligence of the carrier sued. There is nothing in the Act of Congress fixing the liability of interstate carriers for loss or damage which would relieve them from this common-law presumption. A C. L. Ry. v. Thomasville Live Stock Co. (Ga. 1913), 78 S. E. 1019, 1022.

(ff) The fact that the certificate of the secretary of the Interstate Commerce Commission is made prima facie evidence of the character of the interstate rate certified implies that such rates may be proved in some other manner and by some other evidence. Aldrich v. S. Ry. Co. (S. C. 1913), 79 S. E. 3, 316, 320.

(gg) An action against an express company for loss of diamonds, in absence of contrary evidence, the court must presume from certificate of secretary of Interstate Commerce Commission that company's tariff of released rates was legally in effect. Tribble v. Southern Express Co., (S. C. 1918), 96 S. E. 712.

(hh) Court of Appeals will take judicial knowledge of a proclamation of the President of the United States. Western Union Telegraph Co. v. Glover, (Ala. 1920), 86 Sou. 154.

ALL OTHER CITATIONS

St. Louis Southern Ry. Co. (Ind. 1914), 104. N. E. 512, 514; Michigan Central R. Co. v. S. J. Peabody Lumber Co. (Ind. 1921), 131 N. E. 841; Vogel v. Delaware., 174 N. W. 198; Benjamin Moore & Co. v. Atchison, T. & S. F. Ry., 74 N. Y. S. 60; Summerfield et al. v. Hines, Former Director General of Railroads and Federal Agent (Nev. 1921), 197 Pac. 690; Cranor v. Southern Ry. Co. (Ga. 1913), 78 S. E. 1014, 1017; Western Union Telegraph Co. v. Hawkins (Ala. 1916), 73 So. 973, 974; Western Union Telegraph Co. v. Laslie (Ala. 1920) 84 So. 864; Western Union Telegraph Co. v. Glover (Ala. 1920), 86 So. 154; Pecos & N. T. Ry. Co. v. Porter (Tex. 1913), 156 S. W. 267, 273; Robinson v. Balt. & Ohio. R. R., 222, U. S. 506, 32 Sup. Ct. 114, 56 L. ed. 288. Banaka v. Missouri Pac. Ry. Co. (Mo. 1916), 186 S. W. 87; McFeena's Adm'r. v. Paris Home Telephone & Telegraph Co. (Ky. 1921), 227 S. W. 450; Bowers v. Missouri, K. & T. Ry. Co. of Texas (Tex. 1922), 241 S. W. 509.

§12½. Parties.

See Parties.

IMPORTANT CASES SINCE 1908

(a) In a suit to annul orders of the Interstate Commerce Commission granting to carriers increased rates on the ground that Transportation Act. Feb. 28, 1920, tit IV, authorizing such decision, was unconstitutional, the carriers were

necessary parties, and the relief prayed for cannot be granted in their absence. State of Texas v. Interstate Commerce Commission, 42 Sup. Ct. 261.

(b) The fact that the carriers and their employees, who were necessary parties to a suit by a state to set aside decisions of the Railroad Labor Board, could not be joined therein because of their citizenship, does not justify the court in proceeding in their absence. State of Texas v. Interstate Commerce Commission, 42 Sup. Ct. 261.

(c) In a suit by a state to vacate decisions of the Railroad Labor Board, establishing wages of railway employees within the state on the ground that Transportation Act Feb. 28, 1920, tit. III, giving the board such power, is unconstitutional, the carriers and their employees, who had recognized the validity of such decision and were operating thereunder, are necessary parties. State of Texas v. Interstate Commerce Commission, 42 Sup. Ct. 261.

(d) The United States is an indispensable party to a suit to restrain or set aside orders of the Interstate Commerce Commision, and cannot be joined as a party in a suit brought in the state court ,where the United States has not consented to be used. Lambert Run. Coal Co. v. Baltimore & R. Co., 42 Sup Ct. 349.

§13. Pleading.

See Loss and Damage §17; Pleading; Reparation §23.

CASES 1887-1908

(a) The voluntary joinder of the parties has the same effect for purposes of jurisdiction as if they had been compelled to unite. Merchants Cotton Press & S. Co. v. Insurance Co. of North America, 4 I. C. R. 499.

(b) A declaration to recover back unreasonable rates imposed by a carrier upon shipments since the passage of the Interstate Commerce Act is bad in failing to aver that no rates were published and in existence as required by the law. Swift & Co. v. Philadelphia & Reading R. Co., 5 I. C. R. 116.

IMPORTANT CASES SINCE 1908

(c) Fact that one company may be a subsidiary of another does not ipso facto entitle the latter to bring an action in its own name for damages suffered by the former. American Agricultural Chemical Co. v. Director General, as Agent, 66 I. C. C. 650, 651.

(d) In an action by a shipper against a carrier under Section 16 of the Interstate Commerce Act to recover for excessive charges upon which the Commission had awarded damages, an allegation that the rates collected were unjust, unreasonable and in violation of law is one largely of fact and as against a general demurrer is sufficiently specific. D. & R. G. Ry. Co. v. Baer Bros. Merchantile Co. (C. C. A. 1913), 209 Fed. 577, 579.

(e) Since the shipper's right to recover for excessive charges made on interstate shipments depends entirely upon the rights given by the terms of the Interstate Commerce Act, it must appear from the complaints that such rates are in excess of those permitted as reasonable by the Commission. Goraty v. A. C. L. R. R. Co., 211 Fed. 227, 229.

(f) Since the Commission is charged with the duty of determining whether a charge is unreasonable, the plaintiff must, as a condition to his right to recover, allege and produce an order from the commission that the rate charged was unreasonable and therefore illegal. Goraty v. A. C. L. R. R. Co., 211 Fed. 227, 230.

(g) Mandamus will not lie under section 20 to disclose privileged communications between an individual and his counsel. United States v. L. & N. R. R. Co., 212 Fed. 486, 493.

(h) In an action against railroad companies to enforce an order of the Interstate Commerce Commission awarding reparation to plaintiff for unjust and unreasonable freight charges exacted by the carriers, a motion to require plaintiff to elect on which one of two orders of the Commission it would rely was properly denied, where the second order merely modified the first in a formal particular having nothing to do with the award of damages; nor was it material that the second order did not change the date fixed by the first for payment of the award, which had already passed. Missouri Pac. Ry. Co. v. C. E. Ferguson Sawmill Co., 235 Fed. 474.

(i) Where, in an action to enforce an order of reparation by the Interstate Commerce Commission, a demurrer was sustained to an answer alleging that the Commission had rescinded such order, and an appeal was taken, the Circuit

Court of Appeals may judicially notice subsequent proceedings of the Interstate Commerce Commission, resulting in the reinstatement of such order, though not brought to the attention of the court below, especially where they are practically admitted by counsel. M. L. &. T. R. & S. S. Co. v. Isaac Joseph Iron Co., 243 Fed. 149.

(j) A railroad company discriminated against a partnership engaged in coal mining and against the succeeding firm, a copartnership composed of one of the original partners and the widow of the deceased partner. The Interstate Commerce Commission made awards in favor of the new firm and of the surviving partner of the old firm. Separate suits were instituted on such awards, but they were confused, so that the surviving partner sued on the award in favor of the second firm, and vice versa. HELD, that the railroad company could not complain because, more than one year after the awards of the Interstate Commerce Commission were made, the trial court allowed them to be transposed so that each action was upon the proper award; such amendment not affecting its rights. P. R. Co. v. Minds, 244 Fed. 53.

(k) That a person jointly charged with a railroad company in an action to recover damages for unlawful discrimination, under Interstate Commerce Act, is a member of the partnership alleged to have been preferred, does not make it necessary to join the other members of the firm. Dusenberry v. Lehigh Valley R. Co. et al. (N. Y. 1920), 269 Fed. 1009.

(l) In vew of the Interstate Commerce Act, §13, permitting municipal corporations to apply by petition to the Interstate Commerce Commission for the correction of certain forbidden practices, and conferring on the Commission authority to institute inquiries, on its own motion or on the petition of any carrier, into any rate or fare made or imposed by authority of any state, a municipal corporation, which has a franchise contract with a transportation railway company fixing the rate or fare, has the right in its corporate capacity to bring suit under Act Oct. 22, 1913 to restrain the enforcement of an order of the Interstate Commerce Commission establishing different rates especially where the corporation might, under Gen. Code Ohio §§ 4311, 4312, be a party to an action to enjoin a violation of the franchise or to enforce its terms. Village of Hubbard, Ohio v. United States, 278 Fed. 754.

ALL OTHER CITATIONS

Williams v. Shows, 187 Ala. 132, 65 South 839; C. C. C. & St. L. Ry. Co. v. Hayes (Ind. 1914), 104 N. E. 581, 583; Reynolds v. Missouri, K. & T. Ry. (Mass. 1919), 123 N. E. 235; Cleveland, C. C. & St. L. Ry. (Ind. 1919), 123 N. E. 838; Hurt v. Atlanta, B. & A. Ry. Co. (Ala. 1919), 84 So. 631; Williams v. Shows, 187 Ala. 132, 65 South 839.

§14. Injunctions.

See Injunctions.

CASES 1887-1908

(a) A federal court has jurisdiction of a suit by a railroad company chartered in one state to restrain the railroad commissioners of another State from putting in force a schedule of rates, since such a suit is not one against a State within the 11th Amendment of the United States Constitution. Chicago & N. W. R. Co. v. Dey (C. C. S. D. Iowa), 2 I.C. R. 325.

(b) A preliminary injunction will be granted at the suit of a railroad company, to restrain the enforcement of a schedule of rates established by the state railroad commissioners when it is shown that the enforcement of such schedule would probably prevent the company from being able to declare any dividend and where the state statute furnishes a full remedy for the exaction of any unreasonable rates by the company. Chicago & Northwestern R. Co. v. Dey, 2 I. C. R., 325.

(c) To prevent a multiplicity of suits, equity may interfere by preliminary injunction, at the suit of a railroad company to restrain the enforcement of a schedule of rates established by the railroad commissioners although the schedule has not yet gone into effect, but the commissioners have begun the publication of notice of the date when it is to take effect. Chicago & Northwestern R. Co. v. Dey, 2 I. C. R. 325.

(d) In a suit to restrain the enforcement of unreasonable rates, it is no defense that plaintiff is a foreign corporation and may retire when the business ceases to be profitable, or that it operates through other States, where no rates are fixed, which will enable it to make profit. Chicago & N. W. R. Co. v. Dey (C. C. S. D. Iowa), 2 I. C. R. 325.

(e) Where a schedule of rates for railroad charges, fixed by legislative au-

thority, will not pay the cost of necessary service, appliances, and the repair thereof, interest on bonds, and then leave something for dividends, its enforcement will be enjoined. Chicago & N. W. R. Co. v. Dey (C. C. S. D. Iowa, 2 I. C. R. 325.

(f) The right asserted by a petitioner asking for the enforcement of an order of the Interstate Commerce Commission arises and is claimed under a law of the United States which relates to a subject over which Congress has exclusive control; and this is sufficient to sustain the jurisdiction of the circuit court, independent of the citizenship of the parties to the controversy, since it involves a federal question. Kentucky & I. Bridge Co. v. Louisville & N. R. Co. (C. C. D. Ky.), 2 I. C. R., 351.

(g) The rule that the dissolving of an injunction is discretionary, and that the refusal of the court below will not be disturbed unless the discretion is abused, does not apply to cases involving questions of law arising upon the face of the pleadings. Burlington, C. R. & N. R. Co. v. Dey (Iowa), 3 I. C. R. 584.

(h) Allegations of a petition for an injunction, that the right and liberty of contracting with reference to its business is denied to the petitioner, and that its property is therefore taken from it without its consent, and that it is compelled to enter into involuntary, unreasonable, and unprofitable contracts, do not amount to allegations of facts, but to mere statements of conclusions, and are not, therefore, admitted by a motion to dissolve the injunction. Burlington, C. R. &. N. R. Co. v. Dey (Iowa), 3 I. C. R. 584.

(i) An injunction may be dissolved on motion, although the facts alleged in the petition are not denied, if the issues involved simply the validity of statutes which, if valid, will render the injunction improper notwithstanding the allegations of fact. Burlington, Cedar Rapids & N. R. Co. v. Dey 3 I. C. R. 584.

(j) Circuit courts of the United States may constitutionally be given jurisdiction of suits by the government to enjoin illegal combinations in restraint of interstate commerce; and it does not depend on diverse citizenship of the parties. United States v. Jellico Mountain Coke & C. Co. (C. C. M. D. Tenn.), 3 I. C. R. 626.

(k) Authorizing an injunction by a federal court against illegal combinations in restraint of interstate commerce, although they are made misdemeanors, does not violate the provisions of the Constitution of the United States requiring the trial of crimes to be by a jury. United States v. Jellico Mountain Coke & C. Co. (C. C. M. D. Tenn.) 3 I. C. R. 626.

(l) Decree enjoining violation of an order of the Interstate Commerce Commission passed October 29, 1891, which prohibited the exaction of a rate for the transportation of oranges from Florida to northeastern cities which should exceed the rates in force prior to November 23, 1890, by more than 5 cents per box,—allowing complainant a counsel fee of $5,000,—and directing defendant to pay costs of the suit, including the Master's charges of $870.50. Florida Fruit Exchange v. Savannah F. & W. R. Co., 4 I. C. R. 400.

(m) All the carriers which united in making a joint rate are not necessary parties in a suit for an injunction against one of them, founded on an alleged disobedience of an order of the Interstate Commerce Commission, which commanded its abandonment. Interstate Commerce Commission v. Texas & P. R. Co. (C. C. App. 2d C.), 4 I. C. R., 408.

(n) The enforcement of city ordinances which attempt an unconstitutional interference with interstate commerce may be restrained by injunction from a federal court. Georgia Packing Co. v. Macon (C. C. S. D. Ga.), 4 I. C. R. 508.

(o) An injunction against the enforcement of unreasonable and unjust rates fixed by railroad commissioners must not extend to restraining the commission from proceeding to establish other rates. Reagan v. Farmers' Loan & T. Co. (U. S. Sup. Ct.), 4 I. C. R. 560.

(p) A suit to restrain the enforcement by state officers of unjust and unreasonable rates fixed for carriers by state authority is not a suit against the state, within the prohibition of the 11th amendment, since the state is interested only in a governmental, and not in a pecuniary, sense. Reagan v. Farmers' Loan & T. Co. (U. S. Sup. Ct.), 4 I. C. R. 560.

(q) So much of the decree of the States circuit court in this case as restrains the state railroad commissioners from proceeding under the railroad commission act to establish reasonable rates and regulations is set

aside, but so much of it as restrains the enforcement of the rates already established is affirmed. Reagan v. Merchantile Trust Co., 4. I. C. R. 575.

(r) Decree reversing a decree of the United States circuit court refusing to enforce an order of the Interstate Commerce Commission requiring defendants to desist from making a greater charge in aggregate on freight in less than car lots from Cincinnati to Social Circle than they charge on such freight from Cincinnati to Augusta. Interstate Commerce Commission v. Cincinnati N. O. & T. P. R. Co., 4 I. C. R. 582.

(s) No one can have an injunction against the collection of a tax until he has paid so much of the tax assessed against him as it can plainly be seen he ought to pay. Northern P. R. Co. v. Clark (U. S. Sup. Ct.), 4 I. C. R. 641.

(t) A preliminary injunction will be granted to restrain threatened acts in pursuance of an unlawful conspiracy in restraint of commerce between the states. United States v. Elliott (C. C. E. D. Mo.), 4 I. C. R. 708.

(u) Equity will not enjoin employes of a receiver of a railroad from quitting his service although the effect of such action will be to cripple the property or prevent or hinder the operation of the road. Arthur v. Oakes, (C. C. App. 7th C.), 4 I. C. R. 744.

(v) Trade unions are not prohibited by an injunction against illegal combinations of workingmen. Arthur v. Oakes (C. C. App. 7th C.), 4 I. C. R. 744.

(w) A combination and conspiracy of the employes of a receiver of a railroad company to quit the service with the object and intent of crippling the property and preventing or hindering the operation of the road is illegal, since it involves the intimidation and oppression of others and the injury to property in their keeping tending to the prejudice of the public. Farmers Loan & Trust Co. v. Northern Pacific R. Co., 4 I. C. R. 744.

(x) A combination or conspiracy having for its purpose the inauguration of a strike upon the lines of a railway operated by receivers is unlawful and may be prevented by injunction. Farmers Loan & Trust Co. v. Northern Pacific R. Co., 4 I. C. R. 744.

(y) An injunction is the appropriate remedy to prevent an unlawful combination and conspiracy to interfere with the operation of a railway and paralyze its business, since the injury would be irreparable and compensation could be obtained only through a multiplicity of suits. Farmers Loan & Trust Co. v. Northern Pacific R. Co., 4 I. C. R. 744.

(z) A preliminary injunction will be granted to restrain threatened acts in pursuance of an unlawful conspiracy in restraint of commerce between the states. United States v. Elliott, 4 I. C. R. 798.

(aa) An injunction will lie against railroad employes who, continuing in employment, refuse to perform their duties, where the direct result of such refusal works irreparable damage to the employer, and at the same time interferes with the transmission of the mail and with commerce between the states, notwithstanding there is no precedent for such injunction. Southern California R. Co. v. Rutherford (C. C. S. D. Cal.), 4 I. C. R. 800.

(bb) An injunction against an unlawful combination in restraint of trade, in violation of the Act of Congress, will not be denied because, after the filing of the bill, the unlawful interference with trade has ceased. United States v. Workingmen's Amalgamated Council, 4 I. C. R. 831.

(cc) The enforcement of an unreasonable reduction, by the legislature, of freight rates, may be enjoined. Ames v. Union P. R. Co. (C. C. D. Neb.), 4 I. C. R. 835.

(dd) A preliminary injunction will not be granted in a proceeding to enforce an order of the Interstate Commerce Commission where the questions involved are for the first time presented for judicial determination, as the Interstate Commerce Commission is an administrative body, and not a court. Interstate Commerce Commission v. Cincinnati N. O. & T. P. R. Co., 5 I. C. R. 131.

(ee) A motion for a preliminary restraining order in proceedings to enforce an order of the Interstate Commerce Commission will be overruled where a like motion upon the same order has been overruled by another judge after full argument. Interstate Commerce Commission v. Cincinnati N. O. & T. P. R. Co., 5 I. C. R. 131.

(ff) It is not necessary to file with a petition for the enforcement of an order of the Interstate Commerce Com-

mission the transcript of the evidence taken before it, under the statute making the findings of fact of the Commission prima facie evidence of the matter stated, but either party may introduce and use as evidence any competent and relevant testimony taken before the Commission. Interstate Commerce Com. v. Cincinnati N. O. & T. P. R. Co., 5 I. C. R. 131.

(gg) In proceedings to enforce an order of the Interstate Commerce Commission fixing rates, the carrier will not be required to keep an account with every shipper, and pay into the registry of the court the excess over the rates fixed by the Commission, as a condition of refusing a preliminary order, in the absence of a very strong showing of right in favor of the complainant. Interstate Commerce Com. v. Cincinnati, N. O. & T. P. R. Co., 5 I. C. R. 131.

(hh) A preliminary injunction will not be granted to restrain a carrier from charging or collecting freight in excess of rates fixed by the Interstate Commerce Commission, where the carrier will be practically without remedy if the order of the Commission is held unlawful, but the injury to the shippers in paying such rates will be comparatively slight, and excessive and speculative shipments would be induced by the temporary lowering of rates. Interstate Commerce Com. v. Cincinnati, N. O. & T. P. R. Co., 5 I. C. R. 131.

(ii) Upon a motion for a preliminary injunction the comparative inconvenience and injury to the parties must be looked at, and the injunction will not be granted when the injury to the defendant is likely to be greater than the benefit to the complainant. Interstate Commerce Com. v. Cincinnati, N. O. & T. P. R. Co., 5 I. C. R. 131.

(jj) The rule that an injunction will not be granted to prevent the commission of a crime penally punishable does not apply to a conspiracy of employees to injure and destroy their employer's property and obstruct interstate Commerce, as irreparable injury would be done and a multiplicity of suits to redress the wrongs would be occasioned. United States v. Elliott, 5 I. C. R. 148.

(kk) The remedy by injunction against combinations and conspiracies to obstruct or destroy interstate commerce, given by the act of Congress of July 2, 1890, §1, is within the power of Congress. United States v. Elliott (C. C. E. D. Mo.), 5 I. C. R. 148.

(ll) An injunction to restrain a conspiracy may be made operative upon all persons acting in concert with the designated conspirators and committing acts in furtherance of the conspiracy, although not especially named in the writ, by ordering of service of the writ upon them, and that they shall then come within the terms of the injunction. United States v. Elliottt, 5 I. C. R. 148.

(mm) A private person cannot maintain a bill in equity to enforce the provisions of the act of Congress of July 2, 1890, against unlawful restraints and monopolies, as §7, which is the only one giving a private remedy, confers only the right to sue at law for damages. Pidcock v. Harrington, 5 I. C. R. 161.

(nn) Alleged advice of counsel as to what a person under injunction might do will constitute no justification or mitigation of disobedience, where the statement of facts made to such counsel is not disclosed, but, on the contrary, a presumption is raised that a full statement would be advantageous. United States v. Debs., 5 I. C. R. 163.

(oo) The answer of a stranger to a bill for an injunction, charged with contempt in its violation, is no more conclusive than that of a party to the bill. United States v. Debs., 5 I. C. R. 163.

(pp) An injunction will lie under the act of Congress of July 2, 1890, §§1, 4, declaring conspiracies in restraint of trade or commerce among the several states illegal, and empowering the circuit courts to restrain violations of the act, in proceedings instituted by the district attorney to enjoin a conspiracy of striking employees to prevent the operation of railroads engaged in interstate commerce. United States v. Debs (C. C. N. D. Ill.), 5 I. C. R. 163.

(qq) If the report of the Interstate Commerce Commission is to be regarded as making out a prima facie case of illegal rates upon an application for preliminary injunction, such effect is lost when an issue is made by a sworn answer upon the principal conclusions of the report. Shinkle, W. & K. Co. v. Louisville & N. R. Co. (C. C. S. D. Ohio), 5 I. C. R. 282.

(rr) A preliminary injunction would not be granted in a proceeding to enforce a report of the Interstate Commerce Commission, as the Interstate

Commerce Act, §16, contemplates an injunction only as the final result of a hearing on pleadings and proof. Shinkle, Wilson & Kreis Co. v. Louisville &N. R. Co., 5 I. C. R. 282.

(ss) To obtain a preliminary injunction plaintiff should show either that his right is very clear, or that the injunction will operate with but little injury to the defendant, and that, if refused, the injury to himself will be very great. Shinkle, Wilson & Kreis Co. v. Louisville & N. R. Co., 5 I. C. R. 282.

(tt) An injunction will lie to prevent the chief officers of a labor organization from enforcing or putting into operation a rule of such organization making it the highest offense against the order for a member in the employ of a railroad company to handle cars received from another company with which a conflict approved by such chief officers exists, where refusal to handle such cars will constitute a violation of the Interstate Commerce Act requiring the furnishing of equal facilities for the interchange of traffic; and such officers may be required to rescind a direction already given for the enforcement of such rule,—especially where the order so directed to be rescinded will induce violations of an injunction previously granted against the company and its employees. Toledo, A. A. & N. M. R. Co. v. Pennsylvania Co. (C. C. N. D. Ohio), 5 I. C. R. 522.

(uu) A mandatory injunction may be issued by a court of equity upon a preliminary hearing, to enforce a duty which is defined by law, where the rights of the parties are free from doubt. Toledo, A. A. & N. M. R. Co. v. Pennsylvania (C. C. N. D. Ohio), 5 I. C. R. 545.

(vv) Employees of a railroad company need not be made parties to an injunction restraining its officers and employees from refusing equal facilities for the interchange of traffic to another road, in order to make the injunction binding upon them, but it is sufficient if they are served with full and proper notice of the orders and process of the court. Toledo, A. A. & N. M. R. Co. v. Pennsylvania Co. (C. C. N. D. Ohio), 5 I. C. R. 545.

(ww) Employees of a railroad company may be restrained from commission of violence or intimidation, or from enforcing rules and regulations which result in irremediable injuries to their employers and to the public. Toledo, A. A. & N. M. R. Co. v. Pennsylvania (C. C. N. D. Ohio), 5 I. C. R. 545.

(xx) Jurisdiction to enjoin violation of Interstate Commerce Act.—The Federal courts have jurisdiction of a suit to enjoin violation of the Interstate Commerce Act by refusing to accept from a connecting carrier goods designed for interstate transportation. Ex parte James Lenon 7 I. C. C. App. XIII.

(yy) Carrier not compelled to give facilities to all carriers.—A mandatory injunction will not be granted under the general equity powers of a court to compel one carrier which has contracted for through traffic with another to give a third carrier the same facilities. Gulf, Colorado & Santa Fe R. R. Co. v. Miama Steamship Co., 8 I. C. C. App. XLVII.

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(zz) Injunctions restraining defendants from taking baggage cars supplied to express companies and equipped for transporting live fish, granted by state and federal courts. Lay v. Amer. Exp. Co., 51 I. C. C. 373, 374.

(3a) A brewing company that tenders beer to a railroad for transportation from Oklahoma to Missouri, which the carrier refused to accept and transport does not have to first apply to the Interstate Commerce Commission for relief before asking for an injunction as that body has no jurisdiction over such a case, Royal Brewing Co. v. M. K. & T. Ry. Co. (Kan. 1914), 217 Fed. 146, 148.

(3b) A forwarder of freight is a shipper and hence the acceptance by the forwarding company of a commission or salary for forwarding all shipments over a specified railroad is acceptance by the forwarder of a rebate in violation of both the Interstate Commerce Act and the Elkins Act, and an injunction will lie at the suit of the United States to restrain such practice. United States v. Lehigh Valley R. Co., 222 Fed. 685.

(3c) A bill to enjoin an order of the Interstate Commerce Commission denying special relief from the fourth section which, while making general averments that the order is confiscatory, makes no specific facts from which such conclusions are derived, is not sufficient in law. Louisville & N. R. Co. v. United States, 225 Fed. 571, 583.

(3d) A bill to enjoin an order of the Interstate Commerce Commission deny-

ing special relief from the fourth section is an original suit in equity and an ex parte of witness not subject to cross examination is not admissible without the consent of the other party. Louisville & N. R. Co. v. United States, 225 Fed. 571, 584.

(3e) The inherent power of a court of equity to maintain the status quo pending an appeal from a decree changing the status quo is not impaired or lessened by any provision of Interstate Commerce Act, the act creating the Commerce Court or Act Oct. 22, 1913, c. 32 38 stat. 219, abolishing the Commerce Court and transferring its jurisdiction to the District Courts. Louisville & N. R. Co. v. United States, 227 Fed. 273, 275.

(3fg) Where it appeared, on a motion to modify a decree denying an interlocutory injunction and dismissing the petition, in a suit to set aside an order of the Interstate Commerce Commission relative to the interchange of traffic between the petitioners and a certain other railroad, that if the decree should be reversed by the Supreme Court, a great and irreparable injury would in the meantime result to the petitioners, by reason of a diversion of part of their traffic by competing railroads, enabled to obtain access to local industries on their lines through the enforcement of such order, and the expense and disturbance of their business caused by changing their former practices and the publication of new tariffs, while it did not clearly appear that any particular individuals would suffer material financial injury if the order of the Commission was stayed for a short time, the enforcement of the order would be stayed, to enable the petitioners to perfect their appeal, and present to the Supreme Court an application for a preliminary suspension order pending the hearing of the appeal. Louisville & N. R. Co. v. United States, 227 Fed. 273, 275.

(3h) In a suit against the Interstate Commerce Commission and carriers to prevent enforcement of new rates, where there is an application for a temporary injunction, and the District Judge calls in two other judges, one of them being a Circuit Judge, to dispose of such application, the court as constituted is without jurisdiction to dispose of the case on the merits. Brown Drug Co. v. United States, 235 Fed. 603.

(3i) Where new rates permitted by the Interstate Commerce Commission would work injury and possible discrimination against towns in South Dakota, while the previous existing rates worked injury and possibly had for several years discriminated against a town in Iowa, a temporary injunction pending a suit against enforcement of the rates, will not be granted, the court being unable to measure the respective injuries, and the order of the Interstate Commerce Commission being presumptively valid. Brown Drug Co. v. United States, 235 Fed. 603.

(3j) When the Commission has acted concerning rates, a court should not substitute its judgment for that of the Commission. The question as to whether the court should enjoin certain rates pending a full hearing, or not, would necessarily to a great extent turn upon the Commission's opinion as to the reasonableness or unreasonableness of the new rates. This court cannot decide that question. It is not within its power to decide it, but such power is vested in the Commission exclusively. Kiser Co. v. Central of Georgia Ry Co., 236 Fed. 573, 578.

(3k) Act Oct. 15, 1914, c. 323, section 20, 38 Stat. 730, declares that no restraining order or injunction shall be granted in any case between an employer and employees, or between persons employed and persons seeking employment, involving or growing out of a dispute concerning the terms or conditions of employment, unless necessary to prevent irreparable injury to property or property rights, and that no such restraining order shall prohibit any person or persons, whether singly or in concert, from terminating any employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceable means to do so. Employees of complainant, ship company, engaged as a common carrier, which also carried the mails, struck, and defendants, composing the union of which they were members, picketed the wharves of complainant and intimidated other laborers from accepting complainant's offers of employment. Defendants threw rocks on the wharves, and in other ways interfered by violence with complainant's business and access to its shins. Interstate Commerce Act Feb. 4. 1887, c. 104, §3, 24 Stat. 380 (Comp. St. 1913, §8565), and §10, as amended by Act March 2, 1889, c. 382, §2, 25 Stat. 857 (Comp. St. 1913, §8574), respectively declare that every common

carrier subject to the provisions of the Act shall afford reasonable facilities for the exchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines, and that any common carrier which shall wilfully omit to do any act or thing required to be done shall be guilty of a misdemeanor. HELD, that, though defendants were authorized under the statute to persuade third persons to decline complainant's offers of employment, and to refuse to deliver goods to complainant, or to patronize it, their interference with complainant's transportation business by violence was unlawful and will be enjoined, as it would not only expose complainant to loss, but to prosecution for violations of law. Alaska S. S. Co. v. International Longshoremen's Ass'n., 236 Fed. 964.

(3l) Owners of lumber mills, whose operation is dependent to a large extent upon logs shipped by them over a particular railroad, have such a pecuniary "interest" in the rates charged for the transportation of logs over such road as to entitle them to maintain a suit to enjoin enforcement of an order of the Interstate Commerce Commission fixing such rates, made in a proceeding to which they were parties. McLean Lumber Co. v. United States, 237 Fed. 460.

(3m) A suit by shippers to enjoin enforcement of an order of the Interstate Commerce Commission requiring the establishment and maintenance of rates is not open to the objection that it seeks to have the court itself establish rates. McLean Lumber Co. v. United States, 237 Fed. 460.

(3n) The courts have power and are required by the statute to set aside and enjoin the enforcement of an order of the Interstate Commerce Commission, based upon a finding which is unsupported by evidence. Chestnut Ridge Ry. Co. v. United States, 248 Fed. 791.

(3o) Under the U. S. Judicial Code, a federal court cannot enjoin prosecution of a suit in a state court, where not in aid of its own jurisdiction previously acquired, but to enable it to assume jurisdiction of the controversy then pending in the state court, because a federal question is incidentally involved therein. Detroit, M. & T. S. L. Ry. v. City of Monroe et al. (Mich. 1919), 262 Fed. 177.

(3p) Under the Interstate Commerce Act, as amended, as to the duty of common carriers subject to that act, a suit may be maintained. without first resorting to the Interstate Commerce Commission, to restrain carriers from putting into effect a supplement to their freight classifications whereby the classification under which a commodity has been carried for years is canceled, and the commodity is included among articles not accepted for transportation, as no question of reasonableness of classifications, etc., is involved. Viscose Co. v. Hines, Director Gen. of Railroads, et al., 263 Fed. 726.

(3q) Where a preliminary injunction, granted by a state court ex parte, without notice, is dissolved by a federal court after removal of the cause and a hearing on the ground that neither court has jurisdiction of the subject matter, the court will not, in the exercise of its discretion, allow a supersedeas to continue the injunction in force pending an appeal. Corona Coal Co. v. Southern Ry. Co., 266 Fed. 726.

(3r) A preliminary injunction granted, restraining enforcement of an order of the Interstate Commerce Commission directing trunk line carriers to cease and desist from making allowances to a terminal railroad company, for switching services, where such order was made on a petition of the terminal company for reparation for failure to make such allowances in a past period during which they had been discontinued, though subsequently resumed, which petition did not tender any issue as to the future practice, and petitioner was not advised that such issue was to be considered, and where the only evidence as to existing conditions was the record in a proceeding several years before. National Tube Co. et al. v. United States et al., 272 Fed. 735.

(3s) Communities or shippers aggrieved by tariff schedules filed conformably to an order of the Interstate Commerce Commission relieving the carrier in certain respects from the operation of the long-and-short-haul clause of the act, are afforded ample remedy by the provisions of §§13, 15, for complaints to the Commission and action by such commission on complaints or on its own initiative, and they may not seek redress in the courts by way of injunction after having been refused a rehearing by the Commission in the proceedings upon

the carriers' application, to which the communities and shippers were not parties. U. S. v. Merchants' & M. Traffic Asso., 37 Sup. Ct. 24, 242 U. S. 178, 61 L. Ed. 233.

(3t) The courts have jurisdiction to enjoin increase of rates under authority of order of Interstate Commerce Commission, and that without redress being first sought in a proceeding before the commission, where the claim is not that the rate is unjust as unreasonably high or discriminatory, but that the commission has exceeded its authority, and therefore the order is void, inview of the Interstate Commerce Act prescribing conditions on which only an increase shall be permitted, where a carrier by rail shall in competition with a water route reduce rates. Skinner & Eddy Corp. v. U. S. 39 Sup. Ct. Rep. 375.

(3u) The United States District Court cannot grant an injunction against the enforcement of a rule prescribed by the Interstate Commerce Commission, unless there are present three judges, as required by Act Oct. 22, 1913. Lambert Run Coal Co. v. Baltimore & O. R. Co., 42 Sup. Ct. 349.

(3v) Where a railroad property terminated its contract with an express company for the latter's breach, it may, suing by the Federal Director General enjoin the express company from forcibly placing shipments on its trains and having employees ride thereon without paying fares. Director General of Railroads v. People's Express (Mass. 1920), 126 N. E. 417.

(3w) Injunction proceedings by a state to compel a railway company chartered by such state to obey orders of the state Railroad Commission which had not been declared void by any court and to restrain it from adopting a schedule of intrastate rates prepared in compliance with orders brought in a state court, Judicial Code 207, 208, not applying, such a proceeding not being a "suit to enjoin, set aside, annul or suspend any order of the Interstate Commerce Commission," which is required by such sections to be brought in a federal court, which court shall have exclusive jurisdiction. Abilene & S. Ry. v. State (Tex. 1918), 199 S. W. 878.

(3x) A complaint in suit for injunction, alleging that defendant railroad threatened to cut off side tracks owned by complainant, a sugar company, unless complainant paid an alleged illegal greasing charge, HELD to show absence of adequate remedy at law, and to state a cause of action for equitable relief. American R. Co. of Porto Rico v. South Porto Rico Sugar Co. 293 F. 670.

ALL OTHER CITATIONS

Village of Hubbard, Ohio v. United States, 278 Fed. 754; Peoria & P. U. Ry. Co. v. United States, 44 Sup. Ct. 194; P. & W. Ry. v. I. C. C. 293 Fed. 1001.

§15. Limitation of Actions.

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(a) Amended regulation No. 18a, promulgated by the Director General of Railroads April 18, 1918, providing that "all suits against carriers while under federal control must be brought in the county or district where the plaintiff resided at the time of the accrual of the cause of action or in the county or district where the cause of action arose," as applied to suits in the federal courts, is within the authority conferred on the President by Act March 21, 1918. Wainwright v. Pennsylvania R. Co., 253 Fed. 459.

(b) Under General Order No. 26 of Director General of Railroads, as to staying trial, on showing that just interests of government will be prejudiced by present trial of action against carrier under federal control pending in a county or district other than where the cause of action arose or plaintiff then resided, but allowing a new action in the other county or district, stay depends on the circumstances of each case; the primary consideration being the situation of the government relative to railroad witnesses leaving their work. Cocker v. New York, O. & W. Ry. Co., 252 Fed. 676; Harnick v. Penn. R. R., 253 Fed.

(c) Under circumstances of case, held, trial of action against railroad, brought in New York, for injury, at Scranton, Pa., of a boy then residing there, should be stayed, under General Order No. 26 of the Director General of Railroads. Cocker v. New York, O. & W. Ry., 253 Fed. 676.

(d) Suit against carrier while under federal control, brought, after promulgation of and contrary to General Orders Nos. 18 and 18a of the Director General of Railroads, in a county or district other than where the cause of action arose, or where plaintiff resided when it accrued, will be dismissed. Cocker v. New York, O. & W. Ry., 253 Fed. 676.

(e) Limitations begin to run, as to an action for refusal of switching facilities

in violation of federal and state acts relating to unlawful discrimination, from the refusal of the application, not from the date the application was made. Langhill v. Pennsylvania R. Co., 98 Atl. (Pa. 1916), 873.

(f) The 3-year statute of limitations applies to actions to recover the cost of repairing cars to put them in condition to receive the property to be shipped therein, and the statute begins to run on each item when the shipment is made. Rock Milling & Elevator Co. v. Atchison, T. & S. F. Ry. Co., 158 Pac. (Kans. 1916) 859.

(g) One injured in New Mexico suing a railroad in Texas could not by mandamus compel immediate trial of his action contrary to general orders Nos. 18, 18a and 26 of the Director General of Railways, in the absence of compliance with No. 26, permitting application to the Director General for relief in event of unnecessary hardship by postponment according to those orders. Rhodes v. Tatum (Tex. 1918), 206 S. W. 114.

(h) An action to recover money paid on a settlement, through mistake of law and fact, is not one on an express contract, and is barred in two years under the statute of limitations of Texas. Galveston, H. & S. A. Ry. Co. v. Lykes Bros. 294 Fed. 968.

§16. War Legislation and Venue.

See War Legislation.

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(a) To remove from the state to the federal court an action on the ground that it arose under the Constitution and laws of the United States such fact must appear from the initial pleading of the plaintiff; and, where it did not appear, such cause cannot be removed, though the action was one against a railroad company, and it was contended that, because the President, under Act Aug. 29, 1916, had taken possession of and assumed control of railroads before the initiation of the action, the cause was one removable, as arising under the laws of the United States. Muir v. Louisville & N. R. R., 247 Fed. 888.

(b) Where claimants acquired a cause of action prior to the Presidential proclamation taking over the carriers, as the Act of Aug. 29, 1916, does not authorize the President to make any proclamation of any character in taking possession and assuming control of transportation systems, and thus the presidential proclamation is without force of law, actions begun in the state court against a railroad company after the President had taken possession of railroads, which were based on the negligence of the railroad company occurring prior to the executive action, cannot be removed to the federal courts, under the Judicial Code, on the ground that they were actions arising under the Constitution and laws of the United States, for the cause of action was not based on any Act of Congress, and the proclamation of the President, though it might have afforded basis for the actions, was without effect as law. Muir v. Louisville & N. R. R., 247 Fed. 888.

(c) A finding by the Interstate Commerce Commission that a rate or fare imposed by a state authority on intrastate commerce causes undue,, unreasonable, and unjust discrimination against interstate and foreign commerce is binding on the courts, if there is any evidence to support it. Lehigh Valley R. Co. v. Public Service Commission, Second Dist. of State of New York et al., 272 Fed. 758.

(d) Interstate Commerce Act, §16, as amended by Act June 18, 1910, §13 (Comp. St. §8584), authorizing action to enforce an order of the Commission requiring a carrier to refund excessive charges to the insurer, does not require that the carrier shall be the owner of a railroad within the district, to sustain venue under the provision allowing suit in any district through which the road runs. Vicksburg, S. & P. Ry. Co. et al. v. Anderson-Tully Co., 41 Sup Ct. 524.

(e) The provision of the act abolishing the Commerce Court (Comp. St. §§ 992, 994), fixing the venue of any suit to enforce, suspend, or set aside an order of the Interstate Commerce Commission, did not impliedly repeal the provision of Interstate Commerce Act, §16, as amended by Act June 18, 1910, §13 (Comp. St. §8584), allowing actions to enforce a reparation order by the Commission in any district through which the carrier's road ran, since the amendments of the Interstate Commerce Act indicated an intention to broaden the venue for the later remedy, and the repealing provisions in the act abolishing the Commerce Court were restricted to acts or parts of acts

in so far as they related to the establishment of the Commerce Court, which never had jurisdiction over a reparation action. Vicksburg, S. & P. Ry. Co. et al. v. Anderson-Tully Co., 41 Sup. Ct. 524.

(f) Under Federal Control Act, §10 (Comp. St. 1918, Comp. St. Ann. Supp. 1919 § 3115, 3-4j), allowing actions at law against carriers without defense that the carrier is an instrumentality of the federal government, an action to enforce an order by the Interstate Commerce Commission, requiring the carrier to repay to the shipper excessive charges collected before the government took control, can be maintained against the company during the period of government control. Vicksburg, S. & P. Ry. Co. et al. v. Anderson-Tully Co., 41 Sup. Ct. 524.

(g) Freight rates are controlled by the schedules and tariffs on file with and approved by the Interstate Commerce Commission, but provisions relating to the limitation of actions are controlled by special contracts made between the parties and subject to the approval of the Commission, and the fact that the Commission has given the carrier the right to make a contract does not authorize its enforcement unless and until the contract is in fact made. Mason v. Maine Central R. R. Co. (Me. 1920), 110 Atl. 425.

§16a. Enforcement of Commission's Orders.

ALL CITATIONS

Vicksburg S. & P. Ry. Co. et al. v. Anderson-Tully Co., 41 Sup. Ct. 524; Lehigh Valley R. Co. v. Public Service Commission, Second Dist., of State of New York et al., 272 Fed. 758.

§17. Election of Remedies.

IMPORTANT CASES SINCE 1908

(a) Under the Interstate Commerce Act, §9, where a consignee of coal invoked the jurisdiction of the Interstate Commerce Commission respecting the interpretation of a carrier's tariffs respecting reconsignments, their validity, charges for demurrage, reconsignment and reparation claims, etc., and the Commission passed on most of the questions, but had never made any final order of reparation or determination of the amount to be paid, the consignee had elected his remedy and could not sue to recover demurrage and reconsignment charges claimed to have been illegally collected in the state circuit court. Waters v. Becker, (Wisc. 1921), 186 N. W. 167.

CRATED SHIPMENTS

See Classification §6½.

CREDIT ACCOUNT

See Crimes §3; Discrimination §5; Evidence §19.

CASES 1887-1908

(a) The refusal of a carrier, after payment of freight and offer of customary switching charges, to switch cars to a connecting line for delivery at the coal yard of the consignee, whose financial responsibility is not questioned, unless he promises in advance to pay any demurrage charges that may be made, regardless of their unreasonableness, will render the carrier liable for damages to him, although he had previously refused to pay such charges on other cars. Macoon v. Chicago & N. W. R. Co. (Com.), 3 I. C. R. 711.

(b) The Act does not recognize uncertain or indefinite transportation charges, the idea of unequal compensation for like service, or discrimination in the treatment of persons similarly situated, is repugnant to every requirement of that law, and a party to an interstate shipment can not be excluded by the carrier from privileges afforded to other patrons in the same locality because of his refusal to pay excessive freight charges, even though an agreement to subsequently refund the excess should accompany the demand. Phelps & Co. v. T. & P. R. Co., 4 I. C. C. 363, 367.

(c) Complainant alleged unjust discrimination from the refusal of defendant to deliver uncompressed cotton consigned to complainants at New Orleans upon the same terms as it delivers such cotton to other consignees without requiring the payment of freight charges before delivery because of a guaranty in writing made by those consignees making them responsible for freight charges in case payment thereof should be refused by the original consignees. HELD, the record shows that the guaranty requested by defendants covered the payment of freight charges that were excessive in that they were not covered by tariff, and the discrimination should

be removed as the carrier has no right to collect any amount other than its legal tariff rate. Phelps & Co. v. T. & P. R. Co., 4 I. C. C. 363.

(d) The lien of carriers upon freight for charges earned is satisfied by payment of rates for their services which they are lawfully entitled to demand, and a guaranty executed to a carrier by consignees or third parties, which might be construed to enable the carrier, in consideration of freight delivery before settlement of transportation charges, to exact for services rendered in moving and delivering the freight whatever it chooses to demand, cannot be used by the carrier to force payment of charges in excess of those it would be entitled to collect or receive if previous freight delivery had not been made. Phelps & Co. v. T. & P. R. Co., 4 I. C. C. 363, 367.

(e) Other connecting carriers are not entitled to through billing and rating and the use of tracks and terminals of a carrier which has voluntarily made an arrangement giving these advantages to one connecting carrier. Little Rock & M. R. Co. v. St. Louis & S. W. R. Co., 4 I. C. R. 854.

(f) Requiring prepayment of freight charges by a connecting carrier without requiring it of other shippers or carriers at the same place does not constitute an unreasonable or undue disadvantage within the meaning of the interstate commerce act. Little Rock & M. R. Co. v. St. Louis & S. W. R. Co., 4 I. C. R. 854.

(g) Express company need not extend equal credit to all connecting carriers.—The obligation to furnish equal facilities without discrimination does not require a common carrier to advance money to all other carriers on the same terms or to give credit for the carriage of articles of trade and commerce to all carriers because it extends credit for such service to some others. Southern Indiana Express Co. v. United St. Express Co., 8 I. C. C. App. LXII.

IMPORTANT CASES SINCE 1908

(h) Section 15 of the Act provides among other things, that whenever upon due procedure and after full hearing the Commission shall be of opinion and find that any regulation or practice of any carrier subject to the Act is unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial it has the power to determine the question and make an order that the carrier shall cease and desist from the violation of the Act found to exist. Clearly the Commission has no authority as an independent proposition to require a carrier to extend credit to any of its patrons for charges for its services. However, it has long been a practice of carriers, for the convenience of themselves as well as their patrons, to accept payment of accumulated charges at the end of brief stated periods and this practice has not been found unlawful. It cannot be doubted, however, that the all-embracing prohibitions of the law against undue or unreasonable preference, prejudice, or disadvantage apply to this practice as to all others. Not all discriminations are unlawful, but only those that are unjust. American Coal & Coke Co. v. M. C. R. R., 36 I. C. C. 195, 197.

(i) It is unlawful for trunk lines through the device of unadjusted settlements with industrial lines indirectly to extend credit to the industries owning such lines to the prejudice of other shippers. Northampton & B. R. R. Co. Case, 41 I. C. C. 68, 72.

(j) Paragraph (2), section 3, of the Act held inapplicable to freight moving wholly or partly by water when delivery or relinquishment of possession at destination is affected by or through the water line, but extension of credit on freight moving under such circumstances by carriers subject to the act held to be a practice subject to control under other general provisions. Regulations for Payment of Rates and Charges. 63 I. C. C. 375, 376, 377.

(k) The extension of credit on freight moving partly by water and partly by railroad when both are under a common control, management, or arrangement for a continuous carriage or shipment, and when delivery or relinquishment of possession of the freight at destination is affected by or through the water line, found to be a practice subject to the provisions of section 1, paragraph (6); section 2; section 3, paragraph (1); and section 15, paragraph (1) of the act. Regulations for Payment of Rates and Charges, 63 I. C. C. 375, 377.

(l) Paragraph 3 section 2 of the Act is inapplicable to freight transported wholly or partly by water when delivery or relinquishment of possession at destination is effected by or through the water line, but the Commission has control over the extension of credit in such cir-

cumstances under other general provisions of the act. Ex Parte 73, 63 I. C. C. 375, 376.

(m) Original report, 57 I. C. C. 591, prescribed rules and regulations for the prompt payment of transportation rates and charges, and fixed 96 hours as the maximum time for which the carriers should extend credit. The McCloud River Railway requested relief from these provisions on freight from and to Bartle, Calif., when destined to or from interior points not served by railroad, but by stage or truck, in Siskiyou, Shasta and Modoc counties, California. Formerly petitioner maintained regular schedules for the handling of mail in connection with routes to and from the interior points. On account of loss of business, petitioner abandoned the regular mail service, and the Post Office Department changed the base of the routes from Bartle to Redding, Calif. Redding is on the S. P., about 78 miles south of Sisson. The average distance from Bartle to the interior points appears to be about 45 miles, and the minimum distance from Redding is about 68 miles, as compared with the former minimum distance of about 24 miles from Bartle. When freight bills are mailed to shippers and receives of freight at the interior points the letters must go by way of Sisson, S. P., to Redding and star routes to intermediate points. In many cases it has required as long as from a month to six weeks before replies to letters addressed to the interior points could be received. HELD, the period of 96 hours for payment of freight charges destined to interior points may be computed from the first 4 p. m. following 26 days after the mailing by petitioner of the freight bills for such traffic. Original order amended accordingly. In Re Section 3 of the Interstate Commerce Act, as Amended by section 405 of the Transportation Act, 1920, 69 I. C. C. 351.

(n) Where the rate tariffs on file with the Interstate Commerce Commission provided that carload shipments would not be delivered to a line which performed only switching services until transportation charges were paid, the carrier could not make a delivery without first requiring the payment of the charges, without thereby discriminating against other shippers in favor of the consignee, contrary to Interstate Commerce Act and Transportation Act. Feb. 28, 1920, § 405 (2). McGuire v. Atlantic Coast Line R. Co. (Va. 1923), 118 S. E. 225.

(o) Where a bill of lading designated a private siding as the destination of a carload shipment, but was expressly subject to the tariffs on file, which provided that the carrier would not deliver the car to another line, which performed switching services only, until all charges were paid, and it was necessary for the car to be handled by two switching lines to reach the designated siding, the initial carrier properly refused to deliver the car to a switching line until its charges were paid, and it was entitled to enforce the tariff provision for demurrage accruing before such payment. McGuire v. Atlantic Coast Line R. Co. (Va. 1923), 118 S. E. 225.

ALL OTHER CITATIONS

Boise Commercial Club v. Adams Express Co., 17 I. C. C. 115, 121; Gamble-Robinson Commission Co. v. C. & N. W. Ry. Co., 168 Fed. 161, 171; Sage & Co. v. I. C. R. R. Co., 18 I. C. C. 195, 196; Beekman Lumber Co. v. St. L. S. W. Ry. Co., 14 I. C. C. 532, 534, 535; American Coal & Coke Co. v. M. C. R. R., 36 I. C. C. 195, 197; Moshassuck Valley R. R. Case, 37 I. C. C. 566, 568; Northampton & B. R. R. Co. Case, 41 I. C. C. 68, 72; Atchison, T. & S. F. Ry. Co. v. Bowman, 158 Pac. (Colo. 1916), 814; Graustein v. B. & M. R. R., 45 I. C. C. 393, 405; Ruddock Orleans Cypress Co. v. Director General, 55 I. C. C. 236, 238; Ex Parte 73, 57 I. C. C. 591; Regulations for Payment of Rates and Charges, 57 I. C. C. 591; In Re Section 3 of the Interstate Commerce Act, as amended by section 405, 59 I. C. C. 456; Postal Telegraph-Cable Co. v. W. U. Telegraph Co., 59 I. C. C. 512, 515; Ex Parte 73, 63 I. C. C. 375, 376; Regulations for Payment of Rates and Charges, 63 I. C. C. 375, 376, 377, 378; U. S. v. Sunday Creek Co., 194 Fed. 252, 254; U. S. v. Hocking Valley Ry. Co., 194 Fed. 234, 241, 246; Hocking Valley Ry. Co. v. United States, 210 Fed. 735, 740, 745.

CREOSOTING-IN-TRANSIT

ALL CITATIONS

Freeman v. S. Ry., 42 I. C. C. 736; American Creosoting Co. v. Director General, 61 I. C. C. 145.

CRIMES

I. THE ELKINS ACT.

§1. Constitutionality.

§2. Construction.
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II. DISCRIMINATION.
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§11. Route and "common arrangement."
§12. Transportation.
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VII. INDICTMENT.
A. Charging Elements of Offense.
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B. Joinder of Defendants.
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D. Venue.
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VIII. DEFENSES.
§26½. In general.
§27. Former jeopardy.
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IX. PROCEDURE.
§28½a. In general.
§29. Province of court.
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§31. Conviction and verdict.
X. PENALTIES.
§32. Excessive fine.
XI. STATE REGULATION.
§33. In general.
XII. ALLIED OFFENSES.
§34. In general.
§35. False accounts.
§35a. Violation of Section 4.
§36. Theft.

CROSS REFERENCES

See Advertising II; Allowances IV; VII; VIII; §8 (7); Credit Account §3; Divisions IV; Express Companies IX; Loss and Damage IV; Overcharges III; Special Contract §3; Tap Lines §7.

I. THE ELKINS ACT.

See Elkins Act.

§1. Constitutionality.

See Constitutional Law.

CASES 1887-1908

(a) Legislation cannot abridge a constitutional privilege, and cannot replace or supply one, at least unless it is so broad as to have the same extent in scope and effect. Counselman v. Hitchcock, 3 I. C. R. 816.

IMPORTANT CASES SINCE 1908

(b) The provision for the Elkins Act making it a crime for a shipper to receive a rebate whereby property is transported at less than the published rates, which provision applies to a shipment under a through bill of lading from an interior port of the United States via rail and an ocean carrier to a European port, is not in violation of Article I, Section 9, Paragraph 5, of the Constitution of the United States forbidding the laying of a tax or duty on exports, or as the giving of preference by a regulation of commerce or revenue to the ports of one state over those of another. Armour Packing Co. v. U. S., 209 U. S. 56, 79, 80, 28 S. Ct. 428, 52 L. ed. 681; C. B. & Q. Ry. Co. v. U. S., 209 U. S. 90, 28 S. Ct. 439, 52 L. ed. 698.

ALL OTHER CITATIONS

N. Y. C. & H. R. R. R. v. U. S. 212 U. S. 481, 495, 496, 500, 29 Sup. Ct. 304, 309, 53 L. ed. 613, 624; U. S. Vacuum Oil Co., 158 Fed. 536, 539; U. S. v. G. N. R. R. Co., 157 Fed. 288, 290, 291.

§2. Construction.

See Act to Regulate Commerce II.

CASES 1887-1908

(a) A carrier which has conformed to the ruling of the Commission should not be prosecuted for alleged violation

of law in that respect, which occurred before such ruling was made and under a construction of the law then approved by the carrier's counsel. Slater v. Northern Pacific R. Co., 2 I. C. R. 243.

(b) The Act to Regulate Commerce should be liberally construed in favor of commerce among the States; but when complaint is made or relief sought solely or mainly in the interest of common carriers, the act complained of or the right asserted must clearly appear to have been forbidden or conferred; and where the complaining carrier is not in a position to commend itself to the favorable consideration of a court of equity, no strained construction of the law will be made in its favor. Kentucky & I. Bridge Co. v. Louisville & N. R. Co. (C. C. D. Ky.), 2 I. C. R. 351.

(c) The offense is fully seen in the final result, but the result being unlawful, the condemnation of the statute falls alike upon the result itself and the means by which it is reached. When the ultimate thing done is unlawful the steps for the purpose of its perpetration are equally unlawful, and the parties engaged in the transaction must be presumed to have intended by their acts the breach of law that ensues as the necessary consequence. Shamberg v. D. L. & W. R. Co., 3 I. C. C. 502, 512.

(d) Common law terms used in an Act of Congress creating an offense without defining the terms may be interpreted by the common law. United States v. Trans-Missouri Freight Association, 4 I. C. R. 443.

(e) Failure of a railroad company to run any other trains than their regular passenger trains for carrying the mail, is not a violation of law, but failure or refusal to carry mails on regular passenger trains, whether local or through trains, upon which they are required to carry mails, is unlawful. Re Charge to Grand Jury, 4 I. C. R. 777.

(f) A railroad company which causes a development company, the entire stock of which it owns, to purchase and ship grain without any bona fide interest therein, the railroad company accepting drafts in payment of its freight charges, and the only rate paid being the profit upon the transaction, which varies with each shipment, the whole transaction being a device to procure transportation of the grain at other than the published rate,—violates the Act to Regulate Commerce, §§2, 3, and 6. Re Alleged Useful Rates & Practices, 7 I. C. C. 33.

(g) It is the purpose of section 2 of the act to enforce equality between shippers, and it prohibits any rebate or other device by which two shippers shipping over the same line, the same distance, under the same circumstances of carriage, are compelled to pay different prices therefor. Pennsylvania Millers State Asso. v. P. & R. R. Co., 8 I. C. C. 531, 551.

(h) The Atchison, Topeka & Santa Fe Railway Company has systematically and continuously violated the act of February 19, 1903 (the so-called "Elkins law"), notwithstanding that it has, in a suit begun in the United States Supreme Court at the instance and request of this Commission, been under injunction since March 25, 1902, to observe in all respects its published schedules of rates. Re Transportation of Coal & Mine Supplies, 10 I. C. C. 473.

(i) The act of February 19, 1903 (the so-called Elkins law), which prohibits carriers from transporting traffic until a tariff has been published, requires observance of the tariff, provides a penalty for each violation of not less than $1,000 nor more than $20,000, and applies both to the carrier and the party receiving the concession, has, respecting the transportation involved in this proceeding, been systematically and continuously violated by the Atchison, Topeka and Santa Fe Railway Company and the Colorado Fuel and Iron Company from the day of its passage down to November 27, 1904, when the tariffs upon which this coal moved were reduced in all cases $1.15; and this notwithstanding the Atchison, Topeka and Santa Fe Railway Company has, in a suit begun in the United States circuit court at the instance and request of this Commission, been under injunction since March 25, 1902, to observe in all respects its published schedules of rates. Re Atchison, T. & S. F. R. Co., 10 I. C. C. 473.

(j) The act to regulate commerce, which requires carriers to publish and adhere to their tariffs, has been grossly and continuously violated by the Atchison, Topeka and Santa Fe Railway Company during the last five years in the following respects: It published rates on interstate shipments of coal from mines in Colorado and New Mexico which, under the tariffs, applied only to the transportation thereof, but which

for the Colorado Fuel and Iron Company were made by the railway company to include the price of the coal, and such price was paid to the fuel and iron company by the railway company. While giving rebates to the fuel and iron company from such tariff rates, it charged the full tariff rates on interstate shipments of coal by other shippers in not only the general coal region involved, but in the same coal field. This practice of the railway company resulted in closing markets for coal to shippers competing with the Colorado Fuel and Iron Company. Re Atchison, T. & S. F. R. Co., 10 I. C. C. 473.

(k) The Atchison, Topeka & Santa Fe Railway Company violated the Act to Regulate Commerce, which requires carriers to punish and adhere to their tariffs, by publishing rates on interstate shipments of coal from mines in Colorado and New Mexico, which, under the tariffs, applied only to the transportation thereof, but which for the Colorado Fuel & Iron Company were made by the railway company to include the price of the coal, and such price was paid by the fuel and iron company to the railroad company. Re Transportation of Coal & Mine Supplies, 10 I. C. C. 473.

(l) The act of February 19, 1903 (the so-called "Elkins law"), which applies both to the carrier and the party receiving the concession, has been systematically and continuously violated by the Atchison, Topeka & Santa Fe Railway company, and the Colorado Fuel & Iron Company from the day of its passage down to November 27, 1904, when the tariffs upon which coal moved were reduced in all cases $1.15. Re Transportation of Coal & Mine Supplies, 10 I. C. C. 473.

(mn) The Atchison, Topeka & Santa Fe Railway Company grossly and continuously violated the Act to regulate commerce in the following respects: It published rates on interstate shipments of coal from mines in Colorado and New Mexico, which, under the tariffs, applied only to the transportation thereof, but which for the Colorado Fuel & Iron Company were made by the railway company to include the price of the coal; and such price was paid to the fuel and iron company by the railway company; while giving rebates to the fuel and iron company from such tariff rates, it charged the full tariff rates on interstate shipments of coal by other shippers, in not only the general coal region involved resulted in closing markets for coal to shippers competing with the Colorado Fuel & Iron Company. Re Transportation of Coal & Mine Supplies, 10 I. C. C. 473.

(op) Indemnity not sound doctrine. Hope Cotton Oil Co. v. T. & P. Ry. Co., 12 I. C. C. 265.

(q) In the contemplation of the statute any methods, however skillfully devised, by which an unlawful result is effected, become devices for the end attained. The law deals with the results produced; and it is not material what means may be employed for the purpose, whether the means be direct or indirect, open or covert, is of no importance if they culminate in what the law forbids. The offense is fully seen in final result; but, the result being unlawful, the condemnation of the statute falls alike upon the result itself and the means by which it is reached. When the ultimate thing done is unlawful, the steps for the purpose of its perpetration are equally unlawful. The parties engaged in the transaction must be presumed to have intended by their acts the breach of law which ensues, with the necessary consequence. Muskogee Commercial Club v. M. K. & T. Ry., 12 I. C. C. 312, 318.

IMPORTANT CASES SINCE 1908

(r) The object of the Elkins Act is to prevent favoritism and to place all shippers upon equal terms. Rate for Transportation of Anthracite Coal, 35 I. C. C. 220, 289.

ALL OTHER CITATIONS

Armour Packing Co. v. U. S. 209 U. S. 56, 77, 78, 28 Sup. Ct. 428, 52 L. ed. 681; C. B. & Q. Ry. Co. v. U. S., 209 U. S. 90, 28 Sup. Ct. 439, 52 L. ed. 698; U. S. v. Bunch, 165 Fed. 736, 739; Colorado Free Pass Investigation, 26 I. C. C. 491, 492; Franke Grain Co. v. I. C. R. R. Co., 27 I. C. C. 625, 629; Hocking Valley Ry. Co. v. United States, 210 Fed. 735, 742, 743; Miller v. U. S. S., 221 Fed. 67; New Orleans Shippers' Asso. v. I. C. R. R., 34 I. C. C. 32, 33; Rate for Transportation of Anthracite Coal, 35 I. C. C. 220, 229. Seymour v. M. L. & T. R. R. & S. S. Co., 35 I. C. C. 492, 493; Vandalia Ry. Co. v. United States, 226 Fed. 713, 714, 716, 718; Canales v. G. H. & S. A. Ry. Co., 37 I. C. C. 573, 574; Claims for Loss and Damage of Grain, 48 I. C. C. 530, 568; Washington & C. Ry. Co. v. Mobile &

O. R. R., 225 Fed. 12; Vandalia R. Co. v. U. S., 226 Fed. 713, 141 C. C. A, 469 (7 C. C. A.); C., St. P., M. & O. Ry. v. U. S., 162 Fed. 835, 90 C. C. A. 211 (8 C. C. A.); C. & A. Ry. v. U. S., 156 Fed. 558, 84 C. C. A. 324, 26 L. R. A. (N. S.) 551 (7 C. C. A.); Pennsylvania Co. v. United States, 257 Fed. 261, 264; State Line & S. R. Co. v. Lehigh Valley R. Co. (Pa. 1923) 120 A, 829.

§2¼. Bill of Lading Act.

IMPORTANT CASES SINCE 1908

(a) Act Aug. 29, 1916, c. 415, §41 (Comp. St. §8604-U), penalizing the forgery of interstate and foreign bills of lading, etc., unconstitutionally exceeds Congress' power under the commerce clause, when applied to an entirely fictitious bill of lading having no connection with any actual or contemplated interstate commerce. United States v. Ferger, 256 Fed. 388.

ALL OTHER CITATIONS

Louisville & Nashville R. R. Co. v. Mottley, 219 U. S. 467, 478, 487, 496, 31 Sup. Ct. 265, 55 L. Ed. 297, 34 L. R. A. (N. S.) 671; New Haven R. R. Co. v. Interstate Commerce Commission, 200 U. S. 361, 391, 26 Sup. Ct. 272, 50 L. Ed. 515; Armour Packing Co. v. United States, 209 U. S. 56, 72, 28 Sup. Ct. 428, 52 L. Ed. 681; United States v. Union Stock Yard, 266 U. S. 286, 307, 33 Sup. Ct. 83, 57 L. Ed. 266; Dye v. United States, 262 Fed. 6, 9.

II. DISCRIMINATION.

See Discrimination.

§2½. In General.

CASES 1887-1908

(a) A discount allowed by a railroad company where consignment of coal in one year shall amount to 30,000 tons or upward is an unjust discrimination. Providence Coal Co. v. Providence & Worcester R. Co., 1 I. C. R. 363.

(b) A contract by a railroad company to carry corn at the customary rates, and to grant a rebate to the shipper, is not illegal as being in violation of the law to prevent unjust discrimination; nor is it fraudulent as to the purchaser of the corn. Christie v. Missouri P. R. Co. (Mo.), 2 I. C. R. 22.

(c) The action of the Grand Trunk Railway Company of Canada in transporting coal and coke under a schedule specifying a total rate of $1 per ton from Buffalo, Blackrock, and Suspension Bridge, in the United States, to Hamilton, Dundas, and several other points in Canada,—the published tariff rate,—but accepting a reduced charge, or allowing a rebate of 25 cents a ton, in favor of certain consignees at Hamilton, Dundas, and other points in Canada,—is in violation of the Act to Regulate Commerce, and unlawful. Re Grand Trunk R. Co. (Com.), 2 I. C. R. 496.

(d) An agreement by a railroad company to transport coal at a specified rebate from regular tariff rates, in consideration of the shipper's erecting a dock and coal pockets on the company's land for use by both parties, is not, as a matter of law, void because of unjust discrimination against other shippers; especially where the shipper also agrees to do his own loading and to ship in large quantities. The question of unjust discrimination is one of fact. Root v. Long Island R. Co. (N. Y.), 2 I. C. R. 576.

(e) The practice by a common carrier of arbitrarily determining what persons should receive a so-called "manufacturers' rate" is a violation of the Act to Regulate Commerce. Re Louisville & N. R. Co. (Com.), 4 I. C. R. 157.

ALL OTHER CITATIONS

St. L. I. M. & S. Ry. Co. v. West Bros, (Tex. 1913), 159 S. W. 142, 144; Johnson v. N. Y. N. H. & H. Ry. Co., (Me. 1913), 88 Atl. 988, 991; Burgess Bros Co. v. Stewart, 184 N. Y. S. 199.

§3. Credit Account.

CASES 1887-1908

(a) A guaranty executed to a carrier by consignees or third parties, which might be construed to enable the carrier, in consideration of freight delivery before settlement of transportation charges, to exact for services rendered in moving and delivering the freight whatever it chooses to demand, cannot be used by the carrier to force payment of charges in excess of those it would be entitled to collect or receive if previous freight delivery had not been made. Phelps v. Texas & P. R. Co. (Com.), 4 I. C. R. 44.

(b) The exercise by a railway company of the right to prepayment, or to retain a lien upon the goods until payment is made, or to hold the consignee responsible in case of delivery before payment, or the waiver of some of such rights at different times, cannot be construed to be a denial of equal facilities

or a discrimination. Little Rock & M. R. Co. v. St. Louis, I. M. & S. R. Co. (C. C. W. D. Ark.), 4 I. C. R. 537.

(c) Requiring prepayment of freight charges by a connecting carrier, without requiring it of other shippers or carriers at the same place, does not constitute an unreasonable or undue disadvantage within the meaning of the Interstate Commerce Act. Little Rock & M. R. Co. v. St. Louis & S. W. R. Co. (C. C. App. 8th C.), 4 I. C. R. 854.

(d) A guaranty executed to a carrier by consignees or third parties, which might be construed to enable the carrier, in consideration of freight delivery before settlement of transportation charges, to exact for services rendered in moving and delivering the freight whatever it chooses to demand, cannot be used by the carrier to force payment of charges in excess of those it would be entitled to collect or receive if previous freight delivery had not been made. Phelps v. Texas & P. R. Co., 6 I. C. C. 36.

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(e) A carrier, under the Act as amended in 1906, practices a discrimination in respect to transportation in favor of one shipper and against others of the same class, shipping the same commodity from the same points and under substantially the same conditions, by the device of extending credit to such favored shipper for the freight charges on such shipments by it, while exacting and collecting cash compensation for substantially similar shipments from the other shippers in question. U. S. v. Hocking Valley Ry. Co., 194 Fed. 234, 246.

(f) If, a direct cash payment for exclusive tonnage is a rebate in respect to property transported under such a contract, any device whereby a similar payment is made comes within the prohibition of the statute. A loan at less than the market rate of interest, like a lease at less than market rental (C. C. C. & St. L. Ry. Co. v. Hirsch, 204 Fed. 849, 853, 123 C. C. A. 145), is in effect, a gift of the difference between the contract and the market rate, and is, in every respect, equivalent to a direct payment of that amount of money. Vandalia R. Co. v. United States, 226 Fed. 713, 717.

ALL OTHER CITATIONS

U. S. v. Sunday Creek Co., 194 Fed. 252, 254; Meeker & Co. v. Lehigh Valley R. R. Co., 21 I. C. C. 129, 161; Hocking Valley Ry. Co. v. United States, 210 Fed. 735, 740, 745;

III. FREE TRANSPORTATION.

See Express Companies §5; Tap Lines §8; Transportation.

§4. In General.

IMPORTANT CASES SINCE 1908

(a) Defendant, an employe of a railroad company, and entitled to receive a pass, delivered his pass to one Pounds, who was not an employe and not entitled to use or receive the same, but did use it in an interstate journey. Defendant was prosecuted under section 1 of the Act of June 29, 1906, prohibiting the use of free transportation by anyone except certain persons enumerated in the Act. HELD, under this section the statute intended that all persons making use of any interstate free pass should be liable to the penalty prescribed by the statute, unless they are excepted by the terms thereof, and that Pounds not being so excepted, defendant was liable for aiding and abetting an act in violation of the statute. U. S. v. Williams, 159 Fed., 310 313.

(b) Riding upon the tender of an interstate train by permission of the engineer without payment of fare is made unlawful by the act, under which any common carrier violating the provisions of that statute against free transportation is guilty of a misdemeanor and subject to a penalty, and any other person, other than those excepted, who uses such interstate free transportation, is made subject to a like penalty. Illinois C. R. Co. v. Messina, 36 Sup. Ct. 368, 369; 240 U. S. 395; 60 L. Ed. 709.

ALL OTHER CITATIONS

U. S. v. Martin, 176 Fed. 110, 113; Colorado Free Pass Investigation, 26 I. C. C. 491, 492, 495, 496; Montana Pass Situation, 29 I. C. C. 411; In Re Financial, etc., of Certain Carriers, 31 I. C. C. 261, 264; United States v. Illinois Centr. R. Co., 230 Fed. 940, 941.

IV. MISBILLING.

See Classification §8.

§5. In General.

See Classification V.

CASES 1887-1908

(a) Recommendations by Commission for regulations for detecting underbilling and of legislative action imposing penal-

ty upon shippers guilty of underbilling. Re Unbilling, 1 I. C. R. 813.

(b) Underbilling weights of freight, whereby one person pays less compensation for like services than another is within inhibition of Act. Re Underbilling, 1 I. C. R. 813.

(c) The methods of inspection adopted by certain railroad companies, to detect and prevent underbilling and false classification, are approved by the Commission, but can not be accepted as a substitute for the requirement that every carrier should itself be held, and in turn should itself hold every station agent, responsible for the correctness of the weight and classification of freight received, so far as the same can be practically ascertained. Re Underbilling, 1 I. C. R. 813.

(d) The permission by a common carrier, of the practice of underbilling the weight of freight or giving it a false classification, whereby less compensation is paid by one person than by another for "a like and contemporaneous service," is within the inhibition of the Act to Regulate Commerce. Re Underbilling, 1 I. C. R. 813.

(e) The permission of a common carrier, of the practice of underbilling the weight of freight or giving it a false classification, whereby less compensation is paid by one person than by another for a like and contemporaneous service is within the inhibition of the Act. The methods of inspection adopted by certain railroad companies, to detect and prevent underbilling are approved by the Commission, but can not be accepted as a substitute for the requirement that every carrier should itself be held, and in turn should itself hold every station agent, responsible for the correctness of the weight and classification of freight received, so far as the same can be practically ascertained. Re Underbilling, 1 I. C. C. 813.

(f) Underbilling, in its devices and its fruits, must necessarily be participated in by the owner of the goods; it can not be absolutely put down by imposing penalties upon the carriers alone. The complete termination of this practice is exceedingly to be desired, and there can be no doubt that this end will be greatly promoted by legislative recognition of the fact that not only the carrier but the shipper also, who both participate in the methods and the results of unjust discrimination, are each responsible to the public for the wrong which every such transaction involves. Re Underbilling, 1 I. C. C. 813, 821.

(g) Provisions against false billing not applicable to rebates.—The provision of the Interstate Commerce Act against false billing, classification, and weighing, does not cover such means of evasion of the Act as rebates, drawbacks, or special rates. United States v. Hanley, 7 I. C. C., App IX.

(h) Mistake of carrier's agent will not render shipper liable for false description of goods in bill of lading.—A shipper of goods who correctly describes their character to a contracting freight agent of the company over whose line they are shipped does not falsely describe them, within the meaning of the Interstate Commerce Act, although the agent describes them in the bill of lading as "gas reservoir materials," while they are intended for use in the construction of a malt house. Atchison, Topeka & Santa Fe Ry. Co. v. Goetz & Brada Manufacturing Co., 7 I. C. C. XIV.

(i) Complainant attacked the collection by defendants of charges in excess of the tariff rate on certain shipments of fruit from Michigan points to Chicago, and an unlawful contract with a delivering agent at Chicago, and thereupon complainant insisted that defendants had been guilty of penal offenses under the law which should be reported for prosecution. The complainant disclaimed at the hearing any demand for reparation or damages. The facts show errors in charges arising from lack of knowledge by the agent at Chicago, of the kind of package used, or the actual contents of the package shipped to complainant, the shipments having been unloaded by complainant, and also from a practice by the agent of the initial carrier at one point temporarily used as a receiving station for fruit, of making a charge in addition to the freight rate without the knowledge of the railroad company. The compensation paid to the delivering agent in Chicago for unloading and handling the freight was apparently reasonable. HELD, that defendants were not guilty of any wilful or intentional violation of the law. Davies v. P. M. R. R. Co., 10 I. C. C. 405.

(j) The defendants were not shown to be guilty of any wilful or intentional violation of the law, where it was charged that they imposed charges in excess

of the tariff rate on certain shipments of fruit from Michigan points to Chicago, and the facts showed the existence of errors in charges arising from lack of knowledge by the Chicago agent of the kind of package used, or the actual contents of the package shipped to complainant, the shipments having been unloaded by complainant, and that such errors also arose from a practice of the agent of the initial carrier at one point temporarily used as a receiving station for fruit, making a charge in addition to the freight rate, without the knowledge of the railroad company. Davis v. Pere Marquette R. Co., 10 I. C. C. 405.

IMPORTANT CASES SINCE 1908

(k) The law prohibits misbilling, and the carriers employ inspectors whose duty it is to see that the tariff regulations are complied with. National Association Waste Dealers v. A. A. R. R. Co., 68 I. C. C. 748, 752.

(l) If the carriers could lawfully base rates on ordinary livestock upon the values declared by shippers, the value declared would be a part of the description of the commodity and the shipper who, by undervaluing, secured a lower rate than he was entitled to would be guilty of violating section 10 of the act, and, by claiming full value in case of loss or damage, would subject himself to prosecution. North Packing & Provision Co. v. C. M. & St. P. Ry., 69 I. C. C. 235, 241.

(m) The law provides severe penalties for misdescription of traffic for purpose of obtaining lower rates, and it is not to be presumed that shippers will wilfully and knowingly violate the law. National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co., 80 I. C. C. 179, 183.

(n) Conviction of defendant, a refining company, on the charge of receiving concessions from a carrier in violation of the Interstate Commerce Act Feb. 19, 1903, §1, as amended by Act June 29, 1906, §2, by securing transportation of gasoline at less than the published rate as "unrefined naptha," held not sustained by the evidence, which showed by large preponderance that the product shipped could not be used as commercial gasoline without further refining, for which purpose the shipments were made to defendant's refinery, and that "unrefined naptha" correctly designated the product and "gasoline" did not; that while defendant had previously shipped the same product as gasoline, and other producers did so, that was because at the time there was no rate covering unrefined naptha, and the term "gasoline" was loosely applied to both the finished and unfinished product. Gulf Refining Co. v. United States, 284 Fed. 90.

ALL OTHER CITATIONS

Bannon v. Southern Express Co., 13 I. C. C. 516, 519; In Re Rates, Practices, Accounts and Revenues of Carriers, 13 I. C. C. 212; Ford Co. v. M. R. R. Co., 19 I. C. C. 507, 510; Beekman Lumber Co. v. L. Ry. & N. Co., 21 I. C. C. 280, 282; Radinsky v. O. S. L. R. R. Co., 21 I. C. C. 243, 245; Montpelier & W. R. R. R. v. U. S., 187 Fed. 271, 272; M. K. & T. R. R. Co. v. Harriman Bros., 33 Sup. Ct. 397, 400; 227 U. S. 657; Western Classification Case, 25 I. C. C. 442, 476; Nonotuck Silk Co. v. Adams Express Co. (Ill., 1912), 99 N. E. 893, 896; Nichols & Cox Lumber Co. v. United States, 212 Fed. 588, 590; Coal and Oil Investigation, 31 I. C. C. 193, 237; United States v. Union Mfg. Co., 36 Sup. Ct. 420, 412, 422, 240 U. S. 605, 60 L. Ed. 822; Natl. Society of Record Assn's. v. A. & R. R. R. Co., 40 I. C. C. 347, 354; U. S. Industrial Alcohol Co. v. Director General, 68 I. C. C. 389, 391, 392.

V. OVERCHARGES AND CLAIMS.

See Overcharges.

§5½. In General.

See Loss and Damage IV.

CASES 1887-1908

(a) When the refund of an excessive charge by a carrier has been unnecessarily delayed for a considerable period, the officials responsible therefor become fairly chargeable with willful intention to violate the law. Phelps v. Texas & P. R. Co. (Com.), 4 I. C. R. 363.

(b) Complainant alleged the collection by defendants of charges in excess of the tariff rate on certain shipments of fruit from Michigan points to Chicago, and an unlawful contract with a delivering agent in Chicago, and thereupon complainant insisted that defendants had been guilty of penal offenses under the law which should be reported for prosecution. The complainant disclaimed at the hearing any demand for damages or reparation. The facts show errors in charges arising from lack of knowledge by the agent at Chicago of the kind of package used, or the actual contents of the package shipped to complainant, the

shipments having been unloaded by complainant, and also from a practice by the agent of the initial carrier at one point temporarily used as a receiving station for fruit, of making a charge in addition to the freight rate without the knowledge of the railroad company. The compensation paid to the delivering agent in Chicago for unloading and handling the freight in that city was apparently reasonable. HELD, upon consideration of the evidence, that defendants were not guilty of any wilful or intentional violation of the law. Davies v. Pere Marquette R. Co. et al., 10 I. C. C. 405.

IMPORTANT CASES SINCE 1908

(c) A grain company filed a claim for loss and damage of a shipment of peaches in which it claimed that the invoice price at the place of shipment was $400, and that it had lost $175.19, when the invoice price of the peaches was really $320. The company was indicted on the ground that by making up this fictitious claim it attempted to get from the carriers more than its real damages and thereby rendered the compensation of the carriers for the transportation less than the regular established charges. HELD that an offense against the Interstate Commerce Act was committed. Laser Grain Co. v. United States, 250 Fed. 826.

ALL OTHER CITATIONS

U. S. v. T. & P. R. R. Co., 185 Fed. 820, 822, 823, 824; In Re Express Rates, 24 I. C. C. 380; New Orleans Shippers' Asso. v. I. C. R. R. Co., 34 I. C. C., 32 33; Laser Grain Co. v. United States, 250 Fed. 825; United States v. Ferger, 39 S. Ct. 445.

§6. False Claims.

IMPORTANT CASES SINCE 1908

(a) The Act provides: "nor shall any carrier charge, or demand, or collect, or receive a greater or less or different compensation for such transportation of passengers or property, or for any service in connection therewith, between the points named in such tariffs than the rates, fares, and charges which are specified in the tariff filed and in effect at the time." HELD, a railroad is criminally liable for merely demanding storage charges in excess of those lawfully applicable. U. S. v. T. & P. R. R. Co., 185 Fed. 820, 822, 824.

(b) Where a carrier willfully and knowingly demands and receives storage charges against a shipper for cars detained at a point other than the customary and usual place of delivery or point of destination, it is criminally liable under the Act to Regulate Commerce, although notice of the arrival of the car at point of detention was given by the carrier to the shipper. United States v. Texas & P. R. R. Co., 185 Fed. 820, 824.

(c) That carriers habitually overcharged complainant's members is a matter for criminal proceeding. New Orleans Shippers' Asso. v. I. C. R. R. Co., 34 I. C. C. 32, 33.

(d) That carriers habitually overcharged complainant's members is a matter for criminal proceeding. New Orleans Shippers' Asso. v. I. C. R. R. Co., 34 I. C. C., 32, 33.

ALL OTHER CITATIONS

In Re Express Rates, 24 I. C. C. 380; Laser Grain Co. v. United States, 250 Fed. 826; Laser Grain Co. v. United States, 250 Fed. 825, 826; United States v. Ferger, 39 S. Ct. 445.

VI. REBATING.

See Advertising II; Allowances VII; Crimes §18; Discrimination §5; Evidence §48; Water Carriers II.

A. Elements of Offense.

§7. In General.

See Lease.

CASES 1887-1908

(a) Upon an investigation by the Commission it appeared that the Grand Trunk Railway Company of Canada transports coal and coke under a schedule specifying a total rate from Buffalo, Black Rock, and Suspension Bridge, in the United States, to Hamilton, Dundas, and several other points in Canada; and that the published tariff rate for such transportation from that point named to Hamilton and Dundas is $1 a ton, but that it accepts a reduced charge, or allows a rebate of 25 cents a ton in favor of certain consignees at Hamilton, Dundas, and other points in Canada. HELD, that the reduced charge or rebate is illegal. Matter of Grand Trunk Railway Co. v. 2 I. C. R. 496.

(aa) Any benefit in relation to the shipment of goods, having a definite money value, conferred gratis by the carrier upon one shipper and not conferred upon another, is an undue reduction in the price of carriage to the former, and is illegal under the Interstate Commerce

Act, where the service to each is admittedly under substantially similar circumstances and conditions. Interstate Commerce Commission v. Detroit, G. H. & M. R. Co. (C. C. W. D. Mich), 4 I. C. R.

(ab) Interstate shipments only are affected by the United States Act of March 2, 1889, against obtaining transportation for property over railroads at less than regular rates. United States v. Howell, 4 I. C. R. 818.

(b) A railway company owning the entire stock of a development company, which had been organized for the purpose of holding the title to certain lands of the railway company, caused grain to be purchased in Kansas City in the name of the development company, transported over the lines of the railway company, to Chicago, and there sold upon the market. The development company had no bona fide interest in the transaction. Neither the railway company nor the development company purchased the grain for the purposes of ownership, the whole transaction being simply a device to secure its transportation at other than the published rate; and the only rate paid was the profit upon the transaction, which varied with each shipment. HELD, that this constituted a violation of the 2d, 3d and 6th sections of the Act to Regulate Commerce. Grain Rates of Chicago Great Western Ry. Co., 7 I. C. C. 33.

(c) The second section of the Act to regulate commerce, which prohibits rebates whereby one shipper is preferred to another, refers to a like and contemporaneous service performed under similar circumstances and conditions; and such section is not violated by the granting of divisions of rates to lumber mills owning or controlling short originating roads, while other carriers fail or refuse to allow like concessions to complainants located in a different section of the country. Central Yellow Pine Asso. v. Vicksburg, S. & P. R. Co., 10 I. C. C. 193.

(d) The Act, which requires carriers to publish and adhere to their tariffs, has been grossly and continuously violated by the Santa Fe during the last five years in the following respects: it published rates on interstate shipments of coal from mines in Colorado and New Mexico which, under the tariffs, applied only to the transportation therefor, but which for the Colorado Fuel & Iron Company were made by the railway company to include the price of the coal, and such price was paid to the fuel and iron company by the railway company. While giving rebates to the fuel and iron company from such tariff rates, it charged the full tariff rates on interstate shipments of coal by other shippers in not only the general coal region involved, but in the same coal field. This practice of the railway company resulted in closing markets for coal to shippers competing with the fuel and iron company. In the matter of alleged unlawful rates and practices in the transportation of coal and mine supplies by the A. T. & S. F. Ry. Co., 10 I. C. C. 473.

(e) Complainant attacked through rates charged on livestock from points in Indian Territory to Kansas City, Mo., as unreasonable to extent they exceeded the combination of locals on intermediate points. In some cases the defendant charged the combination of locals and in other cases the through rate. Refunds were made by carriers in some cases based on the combination, although that combination was not published in a tariff cancelling the through rate. HELD, the record should be referred to the department of prosecutions, cases dismissed. D. Morgan v. M. K. & T. Ry., 12 I. C. C. 525.

IMPORTANT CASES SINCE 1908

(f) The fact that the original Interstate Commerce Act, which made rebates unlawful, did not prescribe any punishment for a shipper who accepted rebates, does not affect the application of the construction of that act as not invalidating the contract of carriage because of the rebate provision to contracts made under subsequent amendments which did impose punishment on the shipper. Adams Express Co. v. Darden, 286 Fed. 61.

ALL OTHER CITATIONS

L. & N. R. R. v. Mottley, 219 U. S. 467, 477, 31 Sup. Ct. Rep. 265, 55 L. Ed. 297; Chi., Ind. & L. Ry. Co. v. U. S. 219 U. S. 486, 494, 497, 31 Sup. Ct. 272, 55 L. Ed. 305; American Express Co. v. U. S. 212 U. S. 522, 532, 29 Sup. Ct. 315, 53 L. Ed. 635; Armour Packing Co. v. U. S., 209 U. S. 56, 82, 28 Sup. Ct. 428, 52 L. Ed. 681; C. B. & Q. Ry. Co. v. U. S., 209 U. S. 90, 28 Sup. Ct. 439, 52 L. Ed. 698; Armour Packing Co. v. U. S., 209 U. S. 56, 82, 28 Sup. Ct. 428, S., 209, U. S. 90, 28 Sup. Ct.

439, 52 L. Ed. 698; U. S. v. Standard Oil Co. of Indiana, 183 Fed. 223, 226; C. B. & Q. Ry. Co. v. U. S., 157 Fed. Fed. 830, 833; Tap-line Case, 23 I. C. C. 277, 281; In Re Wharfage Charges at Galveston, 23 I. C. C. 535, 542, 545; Tap Line Case, 23 I. C. C. 549, 550; Alphons Custodis Chimney Construction Co. v. S. Ry. Co., 16 I. C. C. 584, 586; In Re Jurisdiction Over Water Carriers, 15 I. C. C. 205, 210; Louisville & N. R. R. Co. v. Coquillard Wagon Works, Assignees, (Ky. 1912), 144 S. W. 1080, 1082; U. S. v. Union Stock Yards & T. Co., 33 Sup. Ct. 83, 89; American Sugar Refining Co. v. D. S. & W. R. R. Co., 207 Fed. 733, 743; Duplain Silk Co. v. American & Foreign Marine Insurance Co., 205 Fed. 724, 726; In Re Express Rates, 24 I. C. C. 380; Hocking Valley Ry. Co. v. United States, 210 Fed. 735, 738; Mfrs. Rd. Co. v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 93, 101; N. Y. Cent. & H. Ry. Co. v. General Electric Co., 146 N. Y. Sup. 322, 326; C. of G. Ry. Co. v. Curtis (Ga. App. 1914), 82 S. E. 318; Coal and Oil Investigation, 31 I. C. 193, 202; Second Industrial Railways Case, 34 I. C. C., 596, 608; Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 239; Ellis v. I. C. C. 35 Sup. Ct. Rep. 646, 647; 237 U. S. 434, 59 L. Ed.; Watters-Pierce Oil Co. v. United States, 222 Fed. 69; United States v. Grand Trunk Ry. Co. of Canada, 225 Fed. 283, 285, 286; Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 245, 246; Allowances on Anthracite Coal, 36 I. C. C. 164, 171; Alleged Rebates to U. S. Steel Corp., 36 I. C. C. 557; Vandalia R. Co. v. United States, 226 Fed. 713, 716; Central R. Co. of New Jersey v. United States, 229 Fed. 501, 508; Mitchell Coal & Coke Co. v. P. R. R. Co., 38 I. C. C. 40, 43; Northampton & B. R. R. Co. Case, 41 I. C. C. 68, 74; United States v. Cleveland, C. C. & St. L. Ry. Co., 234 Fed. 178, 184, 185, 186; The Alaska Investigation, 44 I. C. C. 680, 705, 709; N. C. Ry. Co. v. U. S., 241 Fed. 25, 30; Michigan Cent. R. R. v. U. S., 246 Fed. 353; Pittsburgh, C., C. & St. L. Ry. Co. v. Fink, 40 Sup. Ct. 27; Lehigh Coal & Navigation Co. v. United States, 266 Fed. 457; Mobile & O. R. Co. v. Laclede Lumber Co., (Mo. 1919), 216 S. W. 798; Wertheim Coal & Coke Co. v. L. V. R. R. Co., 62 I. C. C. 211, 216; Cambia Steel Co. v. Director General, 64 I. C. C. 737, 740, 741.

§8. Intent and Knowledge.

IMPORTANT CASES SINCE 1908

(a) The Elkins Act originally made a carrier who should offer, grant, or give a rebate, concession or discrimination criminally responsible. This was amended by the Hepburn Act, so that the carrier, to be criminally liable, must knowingly offer, grant or give a rebate or concession or discrimination. United States v. Erie R. Co., 222 Fed. 444, 446.

(b) Under the Interstate Commerce Act the railroad company is held to know the tariffs which it has filed and published. It is also presumed to know that a departure from such tariffs constitutes a violation of law and subjects it to punishment. United States v. Erie R. Co., 222 Fed. 444, 448.

ALL OTHER CITATIONS

Armour Packing Co. v. U. S., 209 U. S. 56, 71, 85, 28 Sup. Ct. 428, 52 L. Ed. 681; C. B. & Q. R. R. v. U. S., 209 U. S. 90, 28 Sup. Ct. 439, 52 L. Ed. 698; U. S. v. Merchants' & Miners' Transp. Co., 187 Fed. 363, 366; U. S. v. T. & P. R. R. Co., 185 Fed. 820, 821, 824; A. T. & S. F. Ry. Co. v. U. S., 170 Fed. 250, 255, 256; Standard Oil Co. of N. Y. v. United States, 179 Fed. 614, 625; Standard Oil Co. of Indiana v. U. S., 164 Fed. 376, 382; United States v. Erie R. Co., 222 Fed. 444, 449, 450; Grand Trunk Ry. Co. v. United States, 229 Fed. 116, 117, 119; Central R. Co. of New Jersey v. United States, 229 Fed. 501, 509; Michigan Cent. R. R. v. United States, 246 Fed. 353.

§9. Payment.

IMPORTANT CASES SINCE 1908

(a) To warrant a conviction under the Elkins Act of Feb. 19, 1903, on a charge of accepting a rebate, concession, or rebate, it is unnecessary to charge or prove the payment or receipt thereof. It is sufficient if it is shown that the concession was offered by the carrier, or his agent, and by the shipper accepted. The fact that the carrier, after the offer had been made by it and accepted by the shipper refused to make payment of the rebates, did not prevent a conviction under an indictment charging the shipper with the acceptance of such an offer, the acceptance of the offer being the gist of the offense. U. S. v. Bunch, 165 Fed. 736, 738.

§10. Posting of Tariff.

See Infra §22, Tariffs III.

IMPORTANT CASES SINCE 1908

(a) It is unlawful to be engaged in interstate commerce by carriage of traffic in respect of which no rate has been published and filed. Maxwell v. W. F. & N. W. Ry. Co., 20 I. C. C. 197, 198.

(b) It is unlawful not to file a tariff stating storage charges and privileges. Goldenberg v. Clyde S. S. Co., 20 I. C. C. 527, 529.

(c) To a criminal prosecution under the Act as amended June 29, 1906, against railroads for accepting from a shipper less than the published rate filed with the Interstate Commerce Commission, it is no defense that defendants had spread broadcast among the shippers of the country an announcement of the lower rate accepted, when in fact such rate had not been filed and published as required by the Act, and the higher rate was the only one lawfully in effect. U. S. v. Merchants' & Miners' Transp. Co., 187 Fed. 363, 365.

(d) That the carrier failed to keep its rate sheet posted, as required by law, is no defense to a shipper who has, by accepting a settlement on the basis of a transit rate, when his shipment was only entitled to the local rate, been guilty of accepting a rebate. Nichols & Cox Lumber Co. v. United States, 212 Fed. 588, 593.

ALL OTHER CITATIONS

U. S. v. Standard Oil Co., 170 Fed. 988 1002, 1007; U. S. v. I. T. R. R. Co., 168 Fed. 546, 549; N. Y. C. & H. R. R. R. Co. v. U. S., 166 Fed. 267, 270; Camden Iron Works v. U. S., 158 Fed. 561, 564.

§11. Route and "Common Arrangement."

See Through Routes and Joint Rates §2.

Important Cases Since 1908

(a) A tariff filed with the Interstate Commerce Commission by the Penn. R. R. and concurred in by the N. Y. C. & H. R. R. R. fixed the rate on petroleum and its products from Olean, N. Y., to Norwood, N. Y., at 26½c, and stated that "the route should be in accordance with agreed percentages and as designated within." It did not, however, designate the route, and no percentage sheets were filed with the Commission. HELD, that the route to which the tariff applied was the natural and direct route from Olean to Norwood by way of Rochester, and not the roundabout route by Buffalo and that the tariff was therefore sufficiently definite to establish the rate specified over the former route, in a criminal prosecution under the Elkins Act for accepting a concession. Standard Oil Co. of N. Y. v. U. S., 179 Fed. 614, 623.

ALL OTHER CITATIONS

Standard Oil Co. of New York v. U. S., 179 Fed. 614, 622.

§12. Transportation.

IMPORTANT CASES SINCE 1908

(a) In a prosecution under the Elkins Act for receiving a rebate whereby property is transported at a less than the published rate, the transportation is an essential element of the offense and equally takes place over any and all of the route traveled and during transportation the crime is being continuously committed. Armour Packing Co. v. U. S. 209 U. S. 56, 76, 28 Sup. Ct. 428, 52 L. Ed. 681; C. B. & Q. R. R. v. U. S., 209 U. S. 90, 28 Sup. Ct. 439, 52 L. Ed. 698.

ALL OTHER CITATIONS

Langdon v. Penn. R. R. Co., 194 Fed. 486, 496.

B. Number of Offenses.

§13. Payment.

IMPORTANT CASES SINCE 1908

(a) Where a shipper makes a number of shipments and pays the full legal rate on each, and the carrier remits by various checks a portion of this rate, the offense is complete when the carrier remits a single check, and each remittance constitutes a separate offense. N. Y. C. & H. R. R. R. v. U. S., 212 U. S. 481, 498, 29 Sup. Ct. 304, 53 L. Ed. 613.

(b) In an indictment under the Elkins Act against a shipper for receiving concessions, the settlement between the carrier and the shipper of the difference betwen the concession and the legal rate is an essential part of the offense, and the number of offenses cannot therefore exceed the number of payments made by the carrier. U. S. v. Standard Oil Co., 170 Fed. 988, 997.

ALL OTHER CITATIONS

U. S. v. Stearns Salt & Lumber Co., 165 Fed. 735, 736; U. S. v. Bunch, 165 Fed. 736, 738, 739, 740, 741; Standard Oil Co. of Indiana v. U. S., 164 Fed. 376, 386; U. S. v. A. T. & S. F. Ry. Co., 163 Fed. 111, 113; U. S. v. Central Vt. Ry. 157 Fed. 291, 293; U. S. v. Gt. N. Ry. Co., 157 Fed. 288, 290.

§14. Shipments.

IMPORTANT CASES SINCE 1908

(a) Defendant was indicted under the Elkins Act for accepting and receiving a concession. The shipments in question were carried in 1,462 carloads and were settled for, and the charges thereon paid, upon 36 distinct days within the period in question. In the regular course of business, whenever an order came to defendant from a buyer (the order being in gallons or barrels, not cars), the order was translated by defendant's clerks into carloads according to the capacity of the cars, running all the way from 30,000 to 80,000 lbs. The oil was then loaded upon the cars, some single orders filling six or eight cars. The trial court, in imposing a fine, counted each single carload as a separate offense. HELD, such a method of computation of offenses was erroneous, since the offense charged was not committed until payment was made and the number of offenses should correspond with the number of settlements made. Standard Oil Co. of Indiana v. U. S., 164 Fed. 376, 386.

(b) Where an indictment, under the Elkins Act, charges as separate and distinct offenses, the acceptance of concessions, by a shipper on different days, each shipment constitutes a separate offense. U. S. v. Vacuum Oil Co., 158 Fed. 536, 539.

C. Liability.

§14½. In General.

CASES 1887-1908

(a) A railroad corporation is not subject to an indictment under the Interstate Commerce Act. United States v. Michigan C. R. Co. (D. C. N. D. Ill.), 3 I. C. R. 287.

§15. Act of Agent.

See Agency.

CASES 1887-1908

(a) When an agent of a railroad is prosecuted under the Interstate Commerce Act, it is not necessary either to allege or prove that the particular unlawful act complained of was done under authority conferred by its principal or by its direction; it is sufficient to show that the accused was in fact an and that the wrong was committed under transportation of officers and employes agent of a railroad subject to the Act, States v. Tozer (D. C. E. D. Mo.), 2 I. C. R. 422.

(b) If the agents or employes of a railroad, of whatever rank, make an unlawful contract, or if they knowingly aid and abet in the execution of an unlawful contract, they become liable to the penalties of the Act violated; but the proof, as in all criminal cases, should be clear and leave no reasonable ground for doubt as to their guilty knowledge of the illegality of the act. United States v. Michigan C. R. Co. (D. C. N. D. Ill.), 3 I. C. R. 287.

(c) Men who occupy merely clerical positions, who are only the instruments which carry out an unlawful action or contract made by their superior officers, which they do not concoct, should not be punished for violation of the Interstate Commere Act, except where the proof of guilty knowledge and participation is clear. United States v. Michigan C. R. Co. (D. C. N. D. Ill.), 3 I. C. R. 287.

(d) The Interstate Commerce Act was intended to punish only an active and willful violation of its provisions. Men who occupy merely clerical positions, who are only the instruments which carry out an unlawful action or contract made by their superior officers, which they do not concoct, should not be punished except where the proof of guilty knowledge and participation is clear. U. S. v. Mich. Central R. Co., 3 I. C. R. 287.

(ef) An indictment will lie against any officer, director, agent, or employe of a carrier who aids and abets in violation of the Interstate Commerce Law, as well as against the carrier, such officers and employes having knowledge that they were engaged in an illegal act. United States v. Cleveland, C. & S. R. Co., (C. C. N. D. Ohio), 3 I. C. R. 290.

(g) Unreasonable and unlawful preference may be given by a common carrier by granting free transportation over its lines from one State into another to one passenger while denying it to others. Such carrier is guilty of misdemeanor under the Interstate Commerce Act, and for such an offense an indictment will lie against any officer, director, agent or employe who aids and abets in such violation of the law, as well as against the an illegal act. This does not apply to carrier, such officers and employes having knowledge that they were engaged in color of this office or agency. United

of the carrier. The U. S. v. The Cleveland, Canton & Southern R. Co., 3 I. C. R. 291.

IMPORTANT CASES SINCE 1908

(h) The corporation which profits by the transaction of rebating, may be held punishable by fine, because of the knowledge and intent of its agents to whom it has intrusted authority to act in the subject matter of making and fixing rates of transportation, and whose knowledge and purposes may well be attributed to the corporation for which the agents act. N. Y. C. v. U. S., 212 481, 495, 29 Sup. Ct. 304, 53 L. Ed. 613.

(i) A conviction for rebating against a railroad can be sustained although an agent who was guilty of giving the rebate and jointly indicted with the company may be acquitted. United States v. Erie R. Co., 222 Fed. 444, 447.

(j) The Elkins Act makes the carriers' agents and officers, who come within its provisions, criminally responsible, as well as the carrier. An agent or officer can therefore properly be jointly indicted with his principal. United States v. Erie R. Co., 222 Fed. 444, 447.

ALL OTHER CITATIONS

Nicholis & Cox Lumber Co. v. United States, 212 Fed. 588, 593; United States v. Lehigh Valley R. Co., 222 Fed. 685; United States v. Cleveland, C. C. & St. L. Ry. Co., 234 Fed. 178.

§16. Connecting Carrier.

IMPORTANT CASES SINCE 1908

(a) The concluding part of section 1 of the Elkins Act brings all the carriers who have participated in any rate filed or published within the terms of the Act, as much so as if the tariff had been actually published and filed by such participating carrier, so that a connecting carrier may be convicted of rebating for accepting a lower rate than the one filed with the Commission by the initial carrier. U. S. v. N. Y. C. & H. R. R. R. Co., 212 U. S. 509, 515, 29 Sup. Ct. 313, 53 L. Ed. 629.

§16½. Giver of Rebate.

CASES 1887-1908

(a) Employers who knowingly permit their employes to obtain less than schedule rates for transportation of their property over railroads, and who receive the benefit of such conduct, either directly or indirectly, may be punished under the United States Act of March 2, 1889, against obtaining transportation at rates less than the schedule. United States v. Howell (D. C. W. D. Mo.), 4 I. C. R. 818.

(b) Receiving rebate not indictable. —Merely receiving a rebate will not subject a shipper to indictment under the section of the Interstate Commerce Act prohibiting false billing, weighing, classification, or representation of the contents of the package. United States v. Hanley, 7 I. C. C. App. IX.

(c) Shipper is in pari delicto in accepting illegal rate.—A shipper is in pari delicto with the carrier with reference to a contract of shipment which is illegal because it stipulates for a greater or less rate of transportation than is fixed by the Interstate Commerce Commission, although he did not in fact know that the contract was illegal. Miss. Kans., & Tex. R. R. Co. v. Bowles, 7 I. C. C. App LXII.

VII. INDICTMENT.

A. Charging Elements of Offense.

§17. In General.

CASES 1887-1908

(a) A count under the Interstate Commerce Act, §6, alleging the allowance of a rate less than the established and published rate which "was in force on that day," sufficiently negatives the inference that the rate might have been reduced by the carrier without notice, as permitted by that section. United States v. Tozer (D. C. E. D. Mo.), 2 I. C. R. 422.

(b) Counts under the Interstate Commerce Act, §6, for "undue and unreasonable preference," and "for undue or unreasonable prejudice or disadvantage," need not allege that the service for which a different rate was charged was rendered "under substantially similar circumstances and conditions,"—those words being found only in §4, in relation to greater charge for shorter haul. United States v. Tozer (D. C. E. D. Mo.), 2 I. C. R. 422.

(c) A count under the Interstate Commerce Act, §3, charging the subjection of a certain locality to an undue prejudice by charging its merchants a higher rate for transporting property to a certain point than was exacted from residents of a certain other locality, must show with precision that the lower rate was for transportation between the same

points as the higher rates. United States v. Tozer (D. C. E. D. Mo.), 2 I. C. R. 422.

(d) A count under the Interstate Commerce Act, §9, is sufficient if it shows with requisite certainty, by any apt language, that the accused has committed an act which gives one shipper or class of shippers an advantage, or subjects others to a disadvantage. United States v. Tozer (D. C. E. D. Mo.), 2 I. C. R. 422.

(e) A count under the third section is sufficient if it shows with requisite certainty by any apt language that the accused has committed an act which gives one shipper or class of shippers an advantage, or subjects others to a disadvantage. United States v. Tozer, 2 I. C. R. 422.

(f) Counts under the third section, for "undue and unreasonable preference" and for "undue or unreasonable prejudice or disadvantage," need not allege that the service for which a different rate was charged was rendered "under substantially similar circumstances and conditions"—those words being only found in the fourth section, in relation to greater charge for shorter haul. United States v. Tozer, 2 I. C. R. 422.

(g) A count under the third section, charging the subjection of a certain locality to an undue prejudice, by charging its merchants a higher rate for transporting property to a certain point than was exacted from residents of a certain other locality, must show with precision that the lower rate was for transportation between the same points as the higher rate. United States v. Tozer, 2 I. C. R. 422.

(h) A count under the sixth section, alleging the allowance of a rate less than the established and published rate which "was in force on that day," sufficiently negatives the inference that the rate might have been reduced by the carrier without notice, as permitted by that section. United States v. Tozer, 2 I. C. R. 422.

(i) An averment that an express company "was a corporation and a common carrier engaged in the transportation of property by railroad from one State of the United States to other States of the United States" tends to show simply that the company is an independent concern engaged in business for its own profit, and does not show that it is connected with any railroad company, hence it is insufficient to show that such company is within the purview of the Interstate Commerce Act; nor is it a sufficient description of a carrier delared by the Act to be subject to its provisions, as such carriers must be engaged in transportation of property "wholly by railroad." United States v. Herman Morsman, 3 I. C. R. 112.

(j) An indictment for violations of the Interstate Commerce Law in the transaction of a business which is subject to the provisions of that Law only when it is carried on in a particular manner must show that the particular business with respect to which complaint is made is so carried on as to be within the provisions of the Law. United States v. Herman Morsman, 3 I. C. R. 112.

(k) An indictment against an express company for violation of the Interstate Commerce Act, inasmuch as the liability of such companies under the Act must depend on the manner in which the business is conducted,—as, for instance, where it is conducted by railroad companies,—must show by proper averment the facts to bring the case within the law. United States v. Morsman (D. C. E. D. Mo.), 3 I. C. R. 112.

(l) The objection that an indictment under the long and short haul clause of the Interstate Commerce Act is an attempt by the government to interfere with the revenues of the railroad contrary to the terms of the contract under which it was built cannot be raised upon a motion to quash. United States v. Mellen (D. C. D. Kan.), 4 I. C. R. 247.

(m) Allegations of what was done in pursuance of an alleged conspiracy cannot enlarge the necessary allegations of an indictment for conspiracy under a particular statute, such as the Act of Congress against conspiracies in restraint of commerce. United States v. Pattson (C. C. D. Mass.), 4 I. C. R. 775.

(n) An indictment for conspiracy in restraint of trade or commerce, under the act of Congress of July 2, 1890, must declare the means by which it is intended to engross or monopolize the market; and it is not sufficient to declare the conspiracy in the words of the enactment. United States v. Patterson (C. C. D. Mass.), 4 I. C. R. 775.

(o) Insufficient allegations in an indictment, which alleges the offense with

reasonable precision are only surplusage under a general demurrer. United States v. Patterson (C. C. D. Mass.), 4 I. C. R. 775.

(p) To justify the finding of an indictment the evidence must satisfy the grand jury that a conviction of the accused by a petit jury would be warranted. Re Charge to Grand Jury 4 I. C. R. 784.

(q) Form of indictment for rebate on series of shipments.—In case of a rebate in a gross amount upon a series of shipments, the government, for the purpose of founding an indictment, may treat the whole series as one transaction, and the indictment need not specify the times of the respective shipments. United States v. Hanley, 7 I. C. C. App. IX.

(r) Injury from discrimination must be shown.—Merely alleging the wilful giving of a rebate to a shipper is insufficient in an indictment under a clause of the Interstate Commerce Act forbidding such act, without showing injury to a rival shipper therefrom. United States v. Hanley, 7 I. C. C. App. IX.

(s) Sufficiency of indictment for receiving special rates or rebates.—An indictment for unjust discrimination in giving or receiving special rates or rebates under the Interstate Commerce Act is insufficient unless it is shown that an advantage is given to one person over that obtained by another, where both, fairly considered, are upon an equality in the time, kind, and circumstance of their offering. United States v. Hanley, 7 I. C. C. App. IX.

(t) An indictment for unjust discrimination sufficient when charging that a specific charge was less than that charged another shipper.—An indictment for making unjust discrimination in freight rates against a shipper is sufficiently specific if it sets out the time, place, and circumstances under which the more valuable rate was received, and then alleges that the service was for less compensation than was received from another person "for doing for him a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions." U. S. v. De Coursey, 7 I. C. C. App. LVIII.

IMPORTANT CASES SINCE 1908

(u) An indictment for rebating, under the Elkins Act, describes the offense with sufficient particularity where it specifically states the elements of the offense so as to fully advise the defendant of the crime charged and to enable a conviction, if had, to be pleaded in bar of any subsequent prosecution for the same offense. N. Y. C. & H. R. R. R. v. U. S., 212 U. S. 481, 497; 29 Sup. Ct. 304, 53 L. Ed. 613.

(v) An indictment sufficiently charges failure to observe a published schedule of demurrage charges, where it charges that for two years defendant delivered to a certain consignee without collecting any demurrage charges or keeping record thereof, while making such charges and keeping such record as to other shippers and consignees. United States v. Erie Ry. Co., 209 Fed. 283, 285.

(w) An allegation in a complaint for violation of the Twenty-Eight Hour Law, §1 (Comp. St. §8651), that a shipment of live stock was made to a consignee in Denver, is to be construed as including the transportation to the point of final delivery to the consignee within the city, and not merely to the city limits. United States v. Chicago, B. & A. R. Co. (1923), 293 Fed. 185.

ALL OTHER CITATIONS

U. S. v. Sterling Salt Co., 200 Fed. 593, 596; Grand Trunk Ry. Co. v. United States, 229 Fed. 116, 117, 119; United States v. Philadelphia & R. Ry. Co., 232 Fed. 946, 953. United States v. P. K. Koenig Coal Co. (Mich., 1923), 219 Fed. 385.

§18. Concession or Rebate.

IMPORTANT CASES SINCE 1908

(a) An indictment under the Elkins Act which alleges the lawful rate to be $70 per car, and that defendant carrier charged and received only $64.75 a car, sufficiently charges a "concession," although the word "concession" is not mentioned in the count. A. T. & S. F. Ry. Co. v. U. S., 170 Fed. 250, 256.

§19. Description of Device.

CASES 1887-1908

(a) An indictment, under the Interstate Commerce Act, §2, for "Unjust discrimination," need not aver by what particular device the defendant managed to discriminate in favor of a particular shipper. United States v. Tozer (D. C. E. D. Mo.), 2 I. C. R. 422.

IMPORTANT CASES SINCE 1908

(b) An indictment against a shipper, under the Elkins Act, for receiving a rebate, whereby property is transported at

less than the published rate, is not insufficient on the ground of failing to set out the kind of device by which traffic was obtained, and of what the concession consisted, and how it was granted, where it distinctly and clearly charges each and every element of the offense, advises the defendant of what he is to meet at the trial, and where no objection is made to the indictment until after verdict by a motion in arrest of judgment. Armour Packing Co. v. U. S., 209 56, 83, 84; 28 Sup. Ct. 428, 52 L. Ed. 681; C. B. & Q. R. R. v. U. S. 209 U. S. 90, 28 Sup. Ct. 439, 52 L. Ed. 698.

(c) In an indictment for violation of the provision of Hepburn Act, making it unlawful to grant any rebate or concession whereby, "by any device whatever," any advantage is given or discrimination is practiced in favor of a shipper, it is not necessary to describe the device used. Dye v. United States, 262 Fed. 6.

ALL OTHER CITATIONS

C. St. P. M. & O. Ry. Co. v. U. S., 162 Fed. 835, 838; G. R. & I. Ry. Co. v. United States, 212 Fed. 577, 582; United States v. Erie R. Co., 222 Fed. 444.

§20. Language of Statute.

IMPORTANT CASES SINCE 1908

(a) While in pleading a criminal offense under the Elkins Act, as amended June 29, 1906, it is safe to employ the words of the statute, such action is not obligatory, and any language which is seen to be capable of apprising one of ordinary intelligence of the several essential ingredients of the crime meets every requirement. U. S. v. Sunday Creek Co., 194 Fed. 252, 254.

§21. Payment.

IMPORTANT CASES SINCE 1908

(a) In an indictment under section 1 of the Elkins Act against a shipper charging the acceptance of a concession, it is not necessary to aver that payment of the unlawful rate was made, since the charge being an acceptance of a concession, proof of payment is evidence not necessary to be pleaded. Standard Oil Co. of N. Y. v. U. S., 179 Fed. 614, 619.

ALL OTHER CITATIONS

U. S. v. Vacuum Oil Co., 158 Fed. 536, 538; U. S. v. Central Vt. Ry., 157 Fed. 291, 293.

§22. Posting of Tariff.

See Supra §10.

CASES 1887-1908

(a) To sustain an indictment for conspiracy to obtain less than established rates for the shipment of property over a railroad, it is not necessary that the rate should have been published by posting it as required by the interstate commerce law. United States v. Howell, 4 I. C. R. 818.

IMPORTANT CASES SINCE 1908

(b) An indictment against a shipper for obtaining rates lower than the lawfully published rate is not demurrable by reason of the fact that it fails to allege that the published rates were posted for public inspection as required by the Interstate Commerce Act as amended June 29, 1906. U. S. v. Miller 223 U. S. 599, 602, 32 Sup. Ct. 323, 56 L. Ed. 568, reversing 187 Fed. 375.

(c) An indictment for granting privileges not specified in the tariffs filed should allege that the tariffs were actually filed. United States v. Philadelphia & R. Ry. Co., 232 Fed. 946, 952.

ALL OTHER CITATIONS

U. S. v. N. Y. C. & H. R. R. R. Co., 157 Fed. 293, 294; U. S. v. Gt. N. Ry. Co., 157 Fed. 288, 290; U. S. v. Miller, 187 Fed. 375, 377.

§23. Route.

IMPORTANT CASES SINCE 1908

(a) An indictment, charging that the defendant carrier participated in the interstate transportation of coal over a route partly by rail and partly by water without having filed with the Interstate Commerce Commission tariffs for the rate of water transportation, averred that a shipment of coal from a point in Pennsylvania to a port in that state was from thence shipped by water to a point in the foreign state. The indictment further averred that defendant owned the railroad and the barge line by means of which the coal was transported. It was averred that the coal was rebilled at the port to the point of ultimate destination, but no consignor or consignee at that point was stated. HELD, that while the mere billing would not determine the character of the shipment, yet the indictment was insufficient to show an interstate shipment of coal over a route partly on land and partly by water; for, there being no averments showing that there were not two separate shipments, the original shipment between the two points in Pennsylvania may be taken as an in-

trastate shipment. United States v. Philadelphia & R. Ry. Co., 232 Fed. 946.

(b) The fact that the defendant was a carrier in interstate commerce over through routes part rail and part water is not sufficient to establish the fact that certain carloads involved in an indictment was carried in interstate commerce. If, for instance, a shipment were made over the railroad from the coal regions in Pennsylvania to a point in New Jersey to a certain consignee, and that consignee, after delivery, reshipped from the point in New Jersey to another point in New Jersey under a new consignment to a different consignee, the interstate through rate from the coal regions in Pennsylvania to the second point in New Jersey would not apply, but the intrastate rate would apply from the first to the second point in New Jersey. Gulf Colorado & Santa Fe Ry. Co. v. Texas, 204 U. S. 403, 27 Sup. Ct. 360, 51 L. Ed. 540; Chicago, Milwaukee & St. Paul Ry. Co. of Iowa, 233 U. S. 334, 34 Sup. Ct. 592, 58 L. Ed. 988; Pennsylvania R. Co. v. Mitchell Coal & Coke Co., 238 U. S. 251, 35 Sup. Ct. 787, 59 L. Ed. 1293. United States v. Philadelphia & R. Ry. Co., 232 Fed. 946, 949.

ALL OTHER CITATIONS

U. S. v. Vacuum Oil Co., 158 Fed. 536, 538; U. S. v. Vacuum Oil Co., 158 Fed. 536, 537; C. B. & Q. Ry. Co. v. U. S., 157 Fed. 830, 834; United States v. Grand Trunk Ry. Co. of Canada, 225 Fed. 283, 285.

§23½. Misrepresentation.

ALL CITATIONS

U. S. v. Sterling Salt Co., 200 Fed. 593, 595, 596, 597.

B. Joinder of Defendants.

§24. Principal and Agent.

IMPORTANT CASES SINCE 1908

(a) In indictments for rebating under the Elkins Act, a corporation and its agents may be legally joined as defendants in one indictment. N. Y. C. & H. R. R. R. Co. v. U. S., 212 U. S. 481, 497, 29 Sup. Ct. 304, 53 L. Ed. 613.

(b) An agent of a carrier charged with the duty of allotting coal cars, gave one mine entitled to receive five cars per day ten cars per day, alloting the excess five cars for fuel coal. The agent of said carrier then rebilled such cars after arrival at destination and sold the same as commercial coal. HELD, that although the agent received primarily the principal benefit from transaction, still the coal company could lawfully be indicted under the Elkins Act. Dye v. United States (1920) 262 F. 6.

§24½. Conspiracy.

CASES 1887-1908

(a) A contract between competing railroad companies is not necessarily "in restraint of trade" and illegal, within the meaning of the Anti-Trust Act of Congress, because it in some manner imposes a restriction upon competition. United States v. Trans-Missouri Freight Asso. (C. C. App. 8th C.), 4 I. C. R. 443.

(b) It is not unlawful for employes to associate, consult, or confer together with a view to maintain or increase their wages by lawful and peaceful means. Ames v. Union P. R. Co. (C. C. D., Neb.), 4 I. C. R. 619.

(c) Illegal combinations are not sanctioned in any degree by the Act of Congress of June 29, 1886, legalizing the incorporation of national trades unions. Arthur v. Oakes (C. C. App. 7th C.), 4 I. C. R. 744.

(d) A strike is not unlawful if it is merely a combination among employes having for its object their orderly withdrawal in large numbers or in a body from their employer's service, to accomplish some lawful purpose. Arthur v. Oakes (C. C. App. 7th C.), 4 I. C. R. 744.

(e) Violence and intimation are as much within the mischief of the Act of Congress against conspiracies in restraint of trade or commerce as negotiations, contracts, or purchases, if such means are used for the purpose of engrossing, monopolizing, or grasping a particular trade. United States v. Patterson (C. C. D. Mass.), 4 I. C. R. 775.

(f) A conspiracy to drive certain competitors out of the field by violence, annoyance, intimidation, or otherwise, is not within the prohibition of the Act of Congress against conspiracies in restraint of trade, where there is no aim to engross, monopolize, or grasp the market. United States v. Patterson (C. C. D. Mass.), 4 I. C. R. 775.

(g) A combination or conspiracy to obstruct or retard the passage of the mail, or to interfere or restrain commerce between the states, is unlawful. Re Charge to Grand Jury (No. 1) (D. C. S. D. Cal.), 4 I. C. R. 777.

(h) The corrupt or wrongful agreement of two or more persons with each

other, the employes of several railroads carrying mails and interstate commerce shall quit, and that successors shall by threats, intimidation, or violence, be prevented from taking their places, will constitute a conspiracy against interstate trade or commerce. Re Charge to Grand Jury (No. 2) (D. C. N. D. Ill.), 4 I. C. R., 781.

(i) Any concerted action upon the part of others to demand or insist, under any effective penalty or threat, upon railroad employes quitting to the injury of the mail service or the prompt transportation of interstate commerce, is a conspiracy, unless such demand or insistence is in pursuance to a lawful authority conferred upon them by the men themselves, and is made in good faith in the execution of such authority. Re Charge to Grand Jury (No. 2) (D. C. N. D. Ill.), 4 I. C. R. 781.

(j) To constitute an insurrection against the United States, it is not necessary that there should be blood shed, or that its dimensions should be so portentous as to insure probable success, but it is necessary that the rising should be in opposition to the execution of the laws of the United States, and should be formidable as for the time being to defy the authority of the United States. Re Charge to Grand Jury, 4 I. C. R. 781.

(k) Men who gather together to resist the civil or political power of the United States, or to oppose the execution of its laws in such force that the civil authorities are inadequate to put them down, and a considerable military force is needed to accomplish that result, become, with every person who knowingly incites, aids or abets them with whatever motives, insurgents. Re Charge to Grand Jury, 4 I. C. R. 781.

(l) Proof of demand and insistence under effective penalty or threat that railroad employes quit their service, and of consequent injury to the transportation of the mails or interstate commerce, imposes the burden upon those making such demand or insistence of showing lawful authority conferred by the men themselves, and good faith in its execution. Re Charge to Grand Jury, 4 I. C. R. 781.

(m) Insurrection is a rising against civil or political authority, the open and active opposition of a number of persons to the execution of law in a city or state. Re Charge to Grand Jury 4 I. C. R. 781.

(n) Opposition to the arrest of persons who have willfully obstructed or retarded the mails, by such a number of persons as would constitute a general uprising in that particular locality, and threatens for the time being the civil and political authority constitutes an insurrection. Re Charge to Grand Jury 4 I. C. R. 781.

(o) One who by speech, writing, or other inducements assists in setting on foot an insurrection or carrying it along, or who gives it aid or comfort, is guilty of a violation of law. Re Charge to Grand Jury (No. 2) (D. C. N. D. Ill.), 4 I. C. R. 781.

(p) Any combination or conspiracy on the part of any class of men who by violence and intimidation prevent the passage of railroad trains engaged in transporting the interstate commerce of the country is a violation of the Act of Congress of July 2, 1890, declaring illegal every combination or conspiracy in restraint of trade or commerce among the several states. Re Charge to Grand Jury (No. 3.) (D. C. N. D. Cal.), 4 I. C. R. 784.

(q) A combination or conspiracy that will interrupt the transportation of commodities from one state to another is within the Act of Congress of July 2, 1890, declaring illegal every combination or conspiracy in restraint of trade or commerce among the several states. Re Charge to Grand Jury (No. 3) (D. C. N. D. Cal.), 4 I. C. R. 784.

(r) Declarations by one of the parties to a conspiracy during the pendency of the illegal enterprise is evidence against all the others when the combination is proved. Re Charge to Grand Jury (No. 3) (D. C. N. D. Cal.), 4 I. C. R. 784.

(s) A combination of railroad employes to quit employment for the purpose of preventing their employers from running certain cars, with the intent to stop mail trains as well as others, is an unlawful conspiracy under U. S. Rev. Stat. § 3995, imposing a penalty for obstructing or retarding the passage of the mail. Thomas v. Cincinnati, N. O. & T. P. R. Co. (C. C. S. D. Ohio), 4 I. C. R. 788.

(t) A combination between railroad employes with the purpose of paralyzing the interstate commerce of the country

by refusal of such employes to perform their duties is an unlawful conspiracy under the Act of Congress of July 2, 1890, declaring illegal every combination or conspiracy in restraint of trade or commerce among the several states. Thomas v. Cincinnati, N. O. & T. P. R. Co. (C. C. S. D. Ohio), 4 I. C. R. 788.

(u) The right of assembly and free speech secured by the constitution of Ohio cannot be used to carry out an unlawful and criminal conspiracy to obstruct the operation of a railroad by a receiver. Thomas v. Cincinnati, N. O. & T. P. R. Co. (C. C. S. D. Ohio), 4 I. C. R. 788.

(v) A conspiracy is a combination of two or more persons by concerted action to accomplish a criminal or unlawful purpose, or some purpose not in itself criminal or unlawful, by criminal or unlawful means. Thomas v. Cincinnati, N. O. & T. P. R. Co. (C. C. S. D. Ohio), 4 I. C. R. 788.

(w) A combination of railroad employes to compel railroad companies to injure the manufacturer of cars by breaking their contracts with him is an unlawful conspiracy. Thomas v. Cincinnati, N. O. & T. P. R. Co. (C. C. S. D. Ohio), 4 I. C. R. 788.

(xy) Boycotts are unlawful though unaccompanied by violence or intimidation. Thomas v. Cincinnati, N. O. & T. P. R. Co., 4 I. C. R. 788.

(zaa) A combination of railroad employes to quit their employment, to compel their employer to withdraw from a mutually profitable relation with a third person, for the purpose of injuring the latter, when such relation has no effect on the character or reward of their services,—is an unlawful conspiracy. Thomas v. Cincinnati, N. O. & T. P. R. Co. (C. C. S. D. Ohio), 4 I. C. R. 788.

(bb) A combination whose professed object is to arrest the operation of interstate railroads until they accede to certain demands, whether such demands are reasonable or unreasonable, just or unjust, is an unlawful conspiracy in restraint of commerce among the states, under the Act of Congress of July 2, 1890, declaring every conspiracy in restraint of trade or commerce among the several states illegal. United States v. Elliott (C. C. E. D. Mo.) 4 I. C. R. 798.

(cc) An agreement between two or more men connected with a railroad company, that for the purpose of creating public sympathy in a strike they will discharge men from their employ who would otherwise not have been discharged, intending that such discharge shall stop the running of mail or interstate commerce trains and thereby raise public indignation, constitutes a conspiracy. Re Charge to Grand Jury (No. 4) (C. C. N. Ill.), 4 I. C. R. 801.

(dd) A wrongful and corrupt agreement between two or more men connected with a railroad, whatever their position, for the purpose of creating public sympathy in a threatened strike, or any other purpose, to cause the mail trains carrying interstate commerce to be stopped, with acts in pursuance of such agreement,—constitutes a conspiracy. Re Charge to Grand Jury (No. 4) (C. C. N. D. Ill.), 4 I. C. R. 801.

(ee) An agreement between two or more men connected with a railroad, in view of a threatened strike, that will not employ men to take the place of those who quit their service, but will allow mail and interstate commerce trains to stand still, for the purpose merely of creating public sympathy or indignation against the strikers,—constitutes conspiracy, unless the circumstances and situation were such the employment of new men, reasonably viewed, would lead to danger to them or to the railroad property or to any public interest. Re Charge to Grand Jury (No. 4) (C. C. N. D. Ill.), 4 I. C. R. 801.

(ff) Residence within the territorial jurisdiction of a court is not necessary to render one punishable by such court for a conspiracy committed there. United States v. Howell (D. C. W. D. Mo.), 4 I. C. R. 818.

(gg) A conspiracy may be established by circumstantial evidence. United States v. Howell (D. C. W. D. Mo.), 4 I. C. R. 818.

(hh) But one overt act need be proved to sustain an indictment for conspiring to violate the United States Act of March 2, 1889, against obtaining transportation for property over railroads at less than regular rates. United States v. Howell (D. C. W. D. Mo.), 4 I. C. R. 818.

(ii) Conspiracy is an agreement, combination, or undertaking entered into between two or more persons to do something which is against the law of the country. United States v. Howell (D. C. W. D. Mo.), 4 I. C. R. 818.

(jj) One who joins a conspiracy for the purpose of furthering its design is punishable as though he had been a party to it from the beginning. United States v. Howell (D. C. W. D. Mo.), 4 I. C. R. 818.

(kk) A conspiracy may be established by circumstantial evidence. United States v. Howell, 4 I. C. R. 818.

(ll) To sustain an indictment for conspiring to obtain less than established rates for the shipment of property over a railroad, it is not necessary that the rate should have been published by posting it, as resquired by the Interstate Commerce Law. United States v. Howell (D. C. W. D. Mo.), 4 I. C. R. 818.

(mm) Circumstantial evidence which is equal in proving power to the testimony of one positive, uncontradicted, creditable eyewitness, is sufficient to sustain a conviction of conspiracy to violate the United States Act against obtaining illegal shipping rates. United States v. Howell (D. C. W. D. Mo.), 4 I. C. R. 818.

(nn) The stopping of transportation of goods and merchandise in transit from state to state and to and from foreign countries, which is caused by a strike of all the members of labor organizations in a certain city, in all kinds of business, in an attempt to compel the employment of none but union men in a certain business,—is an unlawful restraint of commerce in violation of the Act of Congress. United States v. Workingmen's Amalgamated Council (C. C. E. D. La.), 4 I. C. R. 831.

(oo) The interdiction by Act of Congress, of contracts or combinations in restraint of trade or commerce among the several states or with foreign nations, applies to combinations of labor as well as of capital, which are in restraint of such trade or commerce. United States v. Workingmen's Amalgamated Council (C. C. E. D. La.), 4 I. C. R. 831.

(pp) An unlawful combination in restraint of interstate or foreign commerce may exist among labor organizations, although their original purpose and general character is lawful. United States v. Workingmen's Amalgated Council (C. C. E. D. La.), 4 I. C. R. 831.

(qqrr) Persons who, in combination with a union of railway employes and others, are engaged in a conspiracy in restraint of interstate commerce over railroads, in furtherance of which design those actively engaged use threats, violence, and unlawful means of interference, from which they are commanded to desist by injunction, are guilty of contempt in persisting in their purpose without essential change of conduct until compelled to yield to superior force. United States v. Debs (C. C. N. D. Ill.), 5 I. C. R. 163.

(ss) The conspiracies in restraint of trade or commerce among the several states, declared illegal by the act of Congress of July 2, 1890, § 1, embrace all which are contrived with intent, or of which the necessary or probable effect shall be to restrain, hinder, interrupt, or destroy interstate commerce, embracing all instrumentalities and subjects of transportation among the states. United States v. Debs (C. C. N. D. Ill.), 5 I. C. R. 163.

(tt) All members of a union of railway employees which has conspired to restrain interstate commerce by preventing the operation of railroads engaged therein, and all who join in the movement, are each criminally responsible for the acts of others done in furtherance of the common purpose, whether they intend them or not. United States v. Debs (C. C. N. D. Ill.), 5 I. C. R. 163.

(uu) Members of a labor organization, employees of a railroad company, and the officers of such organization though not such employees, who, by threatening to withhold their labor from such company unless it violates the Interstate Commerce Act by refusing to accept cars containing interstate freights from another road with which such organization is in conflict, cause it to refuse to accept such freights,—are civilly liable to the latter road for any loss inflicted in pursuance of their conspiracy. Toledo, A. A. & N. M. R. Co. v. Pennsylvania Co. (C. C. N. D. Ohio), 5 I. C. R. 522.

(vv) While an employee may bestow or withhold his labor as he will, if he uses the benefit which his labor is or will be to another by threatening to withhold or agreeing to bestow it, or by actually withholding it or bestowing it, for the purpose of inducing, procuring or compelling that other to commit an unlawful and criminal act, such withholding or bestowing his labor is itself an unlawful and criminal act. Toledo, A. A. & N. M. R. Co. v. Pennsylvania Co. (C. C. N. D. Ohio), 5 I. C. R. 522.

(ww) Members of a labor organization who procure railroad companies to refuse to handle interstate freight from a company with which such organization is in conflict violate the provision of the interstate commerce law declaring any carrier or any director, officer, receiver, agent, or person acting for or employed by an incorporated carrier, who, alone or with any other corporation, person, or party, shall wilfully fail or omit to do any act, or cause or willingly suffer or permit any act, required by such act to be done or not to be done, or aid or abet such omission or failure, to be guilty of a misdemeanor. Toledo, A. A. & N. M. R. Co. v. Pennsylvania Co. (C. C. N. D. Ohio), 5 I. C. R. 522.

(xx) All persons combining to carry out the rule of the Brotherhood of Locomotive Engineers which requires employees on one road to refuse to handle property belonging to a connecting road on which a strike of engineers is pending are, in case such roads are subject to the interstate commerce law, punishable under U. S. Rev. Stat. § 5440, relating to conspiracies to commit offenses against the United States, if any one of them does an act in furtherance of the combination. Toledo, A. A. & N. M. R. Co. v. Pennsylvania Co. (C. C. N. D. Ohio), 5 I. C. R. 522.

(yy) A combination of railroad employees to act concertedly in quitting their employment, in a way to injure their employer, aid in enforcing a boycott, injure the public, and oppress other employees,—is criminal. Toledo, A. A. & N. M. R. Co. v. Pennsylvania Co. (C. C. N. D. Ohio), 5 I. C. R. 545.

(zz) A combination of persons, without regard to their occupation, which will have the effect to defeat the provisions of the interstate commerce law inhibiting discriminations in the transportation of freight and passengers, and further, to restrain the trade or commerce of the country,—will be obnoxious to the penalties therein prescribed. Waterhouse v. Comer (C. C. S. D. Ga.), 5 I. C. R. 564.

(3a) Rule 12 of an association of locomotive engineers, styled "The Brotherhood of Locomotive Engineers," which provides: "That hereafter when an issue has been sustained by the grand chief, and carried into effect by the Brotherhood of Locomotive Engineers, it shall be recognized as a violation of obligations if a member of the Brotherhood of Locomotive Engineers, who may be employed on a railroad run in connection with or adjacent to said road, handle the property belonging to said railroad or system in any way that may benefit said company with which the Brotherhood of Locomotive Engineers are at issue, until the grievances or issues or differences of any nature or kind have been amicably settled,"—is plainly a rule or agreement in restraint of trade or commerce, and violative of the act of Congress of July 2, 1890, §1. Waterhouse v. Comer (C. C. S. D. Ga.), 5 I. C. R. 564.

(3b) Illegal act by railroad company no justification for interference with interstate commerce.—It is no defense to a prosecution of railroad employees for conspiring to interfere with the United States mails or interstate commerce, that the railroad company obstructed and retarded the passage of the mails, or entered into a conspiracy in restraint of trade and commerce. United States v. John Cassidy, 7 I. C. C. App IX.

(3c) Concerted action to induce railroad employees to quit work illegal.—Concerted action by several members of an organization of railroad employees in sending telegrams advising all its members to quit work until a controversy between a sleeping-car company and its employees shall be settled will become a criminal conspiracy if such action is knowingly and wilfully directed by the parties to it for the purpose of obstructing and retarding the passage of the United States mails, or in restraint of trade and commerce among the States. United States v. John Cassidy, 7 I. C. C. App. IX.

(3d) Combination to interrupt interstate commerce illegal.—A combination or conspiracy that will interrupt the transportation of commodities from one state to another is within the act of Congress of July 2, 1890, declaring illegal every combination or conspiracy in restraint of trade or commerce among the several states; but the doing of some act in pursuance of the conspiracy is a necessary element of the offense. United States v. John Cassidy, 7 I. C. C. App. IX.

ALL OTHER CITATIONS

Burgess Bros. Co. v. Stewart, 184 N. Y. S. 199.

C. Proof and Variance.

See Evidence I.

§25. In General.

CASES 1887-1908

(a) Variance between allegations and proof as to the point of shipment of property for which less than schedule rates was obtained is immaterial, if both points were within the same state and subject to the same rates for shipment to the points of destination in another state. United States v. Howell (D. C. W. D. Mo.), 4 I. C. R. 818.

IMPORTANT CASES SINCE 1908

(b) Where in a prosecution under the Elkins Act the indictment avers that the defendant carrier over whose line the shipment was made had established and published rate over its line of 19½c, and the proof shows that the tariffs and schedules filed specify 18c over the defendant's route, and show that the 19½c rate is made up by adding to the 18c rate the 1½c rate of another independent carrier, there is a fatal variance between the allegations and the proof. U. S. v. Standard Oil Co., 170 Fed. 988, 1002.

(c) In an action for the value of nitrate of soda stolen from the government and sold to defendants, where it was shown by other evidence that certain cars were loaded with nitrate belonging to the United States, entries by railroad officers in the due course of the railroad's business, showing that such cars were consigned to defendants, were admissible; the verity of the books on this point not depending on information furnished by the thief. Whitehurst v. United States, 272 Fed. 46.

ALL OTHER CITATIONS

A. T. & S. F. Ry. Co. v. U. S., 170 Fed. 250, 254; G. R. & I. Ry. Co. v. United States, 212 Fed. 577, 581, 582.

D. Venue.

§26. In General.

CASES 1887-1908

(a) U. S. Const.. art. 3, providing for the trial of all crimes in the State where they were committed, applies only to trials in federal courts, and not to trials in state courts. Nashville, C. & St. L. R. Co. v. Alabama (U. S. Sup. Ct.), 2 I. C. R. 238.

(b) Residence within the territorial jurisdiction of the court is not necessary to render one punishable by such court for a conspiracy committed there. United States v. Howell, 4 I. C. R. 818.

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(c) Where a shipper in sending products from Kansas City, Kan., to New York City, N. Y., the course of transportation being through the Western District of Missouri, secures concessions from the lawfully published rate, it may be prosecuted in the Western District of Missouri under the provision of the Elkins Act conferring jurisdiction to prosecute in any criminal court in the United States in the district through which the transportation may have been conducted. Armour Packing Co. v. U. S., 209 U. S. 56, 74, 28 Sup. Ct. 428, 52 L. Ed. 681; C. B. & Q. R. R. v. U. S., 209 U. S. 90, 28 Sup. Ct. 439, L. ed. 698.

ALL OTHER CITATIONS

U. S. v. Ill. Term. R. R. Co., 168 Fed. 546, 548; N. Y. C. & H. R. R. R. Co. v. U. S., 166 Fed. 267, 269; N. C. Ry. v. U. S., 241 Fed. 25.

VIII. DEFENSES.

See Courts §2.

§26½. In General.

CASES 1887-1908

(a) A conviction for criminal violation of the section of the Interstate Commere Act which prohibits undue or unreasonable preferences or advantages cannot be sustained upon the finding of a jury that a certain charge was an unreasonable preference, if no standard of comparison is established by which such unreasonableness is shown with definiteness and certainty. Tozer v. United States (C. C. N. D. Mo.), 4 I. C. R. 245.

(b) The objection that an indictment under the long and short haul clause of the Interstate Commerce Act is an attempt by the government to interfere with the revenues of the railroad, contrary to the terms of the contract under which it was built, cannot be raised upon a motion to quash. United States v. Mellen, 4 I. C. R. 247.

(c) An answer under oath does not preclude an injunction in the Federal courts, where the oath of the respondent is waived in the bill according to Equity Rule 41. United States v. Workingmen's Amalgamated Council, 4 I. C. R. 831.

(d) Where it appears that a complainant has invoked the aid of the law for the purpose of securing what he, with the acquiescence of the carrier, had previously obtained in apparent contravention of the law, such acquiescing carrier will not be held entitled to plead violations of the law by complainant in

bar of a decision on the merits, nor will the individual interests of the complainant be taken into consideration; but the Commission will examine the evidence and make such report thereon as, under the provisions of the law, the rights of other shippers and the public generally may require. If, independently of any action or interest of complainants, the conduct of defendants with reference to the transportation which is the subject of the proceeding is shown by the evidence to be unlawful, it is the duty of the Commission to execute and enforce the statutory provisions applicable thereto. Alanson S. Page v. D. L. & W. R. R. Co., et al, 6 I. C. C. 148.

IMPORTANT CASES SINCE 1908

(e) On a trial of a railroad company under an indictment for rebate it would not be proper to convict the defendant on bare suspicion or assumption of facts, which the evidence did not disclose. United States v. Erie R. Co., 222 Fed. 444, 452.

(f) In prosecution of a Coal Company for knowingly accepting rebates and concessions from a railroad, to which it had leased its own lines, in violation of the Elkins Act, as amended June 29, 1906, coal company had a right to offer in the evidence that the allowance to it by the railroad, referred to in the railroad's filed tariffs, but not specified in figures therein, was received under the honest belief that it was lawfully established by the tariffs, and that in receiving it the company was not disregarding what it believed to be the provisions of the tariffs; misunderstanding in supposing the allowances could be justified by a footnote to the tariffs not being a misunderstanding of the statute itself, instead of the tariffs. Lehigh Coal & Navigation Co. v. United States, 40 Sup. Ct. 24.

(g) That defendant in obtaining delivery of a car of grain from a railroad company by fraud and deception acted in the name and for the benefit of a corporation of which he was the principal owner held not a defense, but to render both defendant and the corporation chargeable. Boyd v. United States, 275 Fed. 16.

§27. Former Jeopardy.

IMPORTANT CASES SINCE 1908

(a) Defendant shipper was formerly indicted and convicted for accepting concessions on shipments of petroleum from Olean, N. Y., to Bellows Falls, and to Rutland, Vt. Defendant was again indicted for accepting concessions on shipments transported under separate bills of lading and shipping orders from Olean, N. Y., to Burlington, Vt., upon different days, over three railroads involved in the haul of the shipments covered by the former indictment, and also over another carrier. The same tariff rate on the shipment specified in both indictments was paid by the defendant monthly, upon bills rendered by the carrier covering all the transportations of petroleum during the preceding month, and such payments and settlements included, not only the transportations contained in the indictment upon which the defendant was formerly convicted, but also the specific transportations included in the second indictment. HELD, the second indictment covered offenses separate and distinct from those included in the first indictment, and defendant's plea of a former conviction should be denied, since, although the payment of charges by the shipper was essential to the completion of the offense, the separate shipments, nevertheless, constituted separate offenses. U. S. Standard Oil Co. of New York, 192 Fed. 438, 440.

§27½. Liability as Corporation.

ALL CITATIONS

Boyd v. United States, 275 Fed 16.

§28. Statute of Limitations.

IMPORTANT CASES SINCE 1908

(a) Defendant carrier in 1902 agreed with a shipper to transport sugar at less than the published rate. The transportation was made and the rebates were paid by defendant in May, 1904. The indictment was found in February, 1907, charging defendant with the acceptance of rebates in violation of the Elkins Act. HELD, the rebate was not given or accepted until the amount thereof was paid, and defendant was liable under the Elkins Act, despite the fact that the indictment was found after the effective date of the Hepburn Act of June 29, 1906. U. S. v. Gt. N. Ry. Co., 157 Fed. 288, 289.

(b) Section 1044, Rev. St. U. S., fixing the period of limitation for crimes, applies to misdemeanors for rebating under the Elkins Act, and the period of limitation is not governed by section 721 of the Rev. St. U. S., making the period of limitation fixed by the laws of the states determinative in certain instances. U. S. v. Central Vt. Ry., 157 Fed. 291, 292.

§28½. Mistake.

CASES 1887-1908

(a) A reasonable doubt which will require acquittal must be a real and substantial one and not a mere conjecture or a surmise as to the possibility of innocence. United States v. Howell, 4 I. C. R. 818.

(b) Although a conviction may be had on the testimony of accomplices if it produces on the minds of the jury a full and complete conviction of its truthfulness, it is a prudential rule that such witnesses should be corroborated by circumstances or otherwise as to some material point of their testimony. United States v. Howell (D. C. W. D. Mo.), 4 I. C. R. 818.

(c) The provision of the interstate commerce act, that no person testifying as to its violation shall be prosecuted on account of any matter or transaction concerning which he may testify or produce evidence, is not unconstitutional as an infringement of the pardoning power vested by the Constitution in the Executive. Brown v. Walker (C. C. W. D. Pa.), 5 I. C. R. 300.

(d) Protection against the infamy and disgrace which may result from a witness' disclosures is not afforded by U. S. Const. amendment 5, protecting from self-incrimination. Brown v. Walker, 5 I. C. R. 300.

(e) Protection to a witness against self-crimination, as broad as that afforded by U. S. Const. amendment 5, is given by act of Congress of Feb. 11, 1893, requiring a person to testify in proceedings growing out of alleged violations of the Interstate Commerce Act, but absolving him from prosecution on account of any matter concerning which he may testify, so that he can no longer refuse to testify in such cases. Brown v. Walker, 5 I. C. R. 300.

(f) The pardoning power of the Executive is not infringed by a statute exempting a witness from prosecution for any offense disclosed by his testimony in a proceeding against another person. Brown v. Walker, 5 I. C. R. 300.

(g) The vesting of pardoning power in the President by the Constitution does not take from Congress the power to pass acts of general amnesty, such as the provision in the act of Congress of February 11, 1893, that no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may give evidence before the Interstate Commerce Commission or in obedience to its subpoena. Brown v. Walker, 5 I. C. R. 369.

(h) The fact that witness cannot be shielded by statute from the personal disgrace or approbrium attaching to the exposure of his crime does not render a statute exempting him from prosecution therefor insufficient to satisfy the constitutional guaranty of protection against being compelled to be a witness against himself. Brown v. Walker, 5 I. C. R. 369.

(i) The immunity from prosecution on account of any matter concerning which evidence is given before the Interstate Commerce Commission or in obedience to its subpoena under the act of Congress of February 11, 1893, is not limited to prosecutions in Federal courts but is applicable in state courts as well. Brown v. Walker, 5 I. C. R. 369.

(j) The constitutional guaranty of protection against being compelled in any criminal case to be a witness against one's self is sufficiently satisfied by the provision of the act of Congress of February 11, 1893, that no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may give evidence before the Interstate Commerce Commission or in obedience to its subpoena. Brown v. Walker, 5 I. C. R. 369.

(kl) The bare possibility that by disclosure a witness may be subjected to the criminal laws of some other sovereignty, and that he may be put to the annoyance and expense of pleading his immunity by way of confession and avoidance, notwithstanding the law has given him immunity from prosecution therefor, is not sufficient to render such immunity insufficient to satisfy the constitutional guaranty of protection against being compelled to be a witness against himself. Brown v. Walker (U. S. Sup.), 5 I. C. R. 369 Aff'g. (C. C. W. D. Pa.), 5 I. C. C., 300, and Overruling (D. C. N. D. Ill.), 5 I. C. R., 578.

(m) The fact that a witness cannot be shielded by statute from the personal disgrace or approbation attaching to the exposure of his crime does not render a statute exempting him from prosecution therefor insufficient to satisfy the

constitutional guaranty of protection against being compelled to be a witness against himself. Brown v. Walker (U. S. Sup.) 5 I. C. R., 369, Aff'g. (C. C. W. D. Pa.), 5 I. C. C. 300, and Overruling (D. C. N. D. Ill.), 5 I. C. R., 578.

(n) The immunity from prosecution on account of any matter concerning which evidence is given before the Interstate Commerce Commission or in obedience to its subpoena under the act of Congress of February 11, 1893, is not limited to prosecutions in Federal courts, but is applicable in state courts as well. Brown v. Walker (U. S. Sup.), I. C. R., 369, Aff'g. (C. C. W. D. Pa.), 5 I. C. C., 300, and Overruling (D. C. N. D. Ill.), 5 I. C. R. 578.

(o) The constitutional guaranty of protection against being compelled in any criminal case to be a witness against one's self is sufficiently satisfied by the provision of the act of Congress of February 11, 1893, that no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may give evidence before the Interstate Commerce Commission or in obedience to its subpoena. Brown v. Walker (U. S. Sup.), 5 I. C. R. 369, Aff'g. (C. C. W. D. Pa.), 5 I. C. C. 300, and Overruling (D. C. N. D. Ill.), 5 I. C. R. 578.

(p) A witness cannot be deprived of the protection of United States Constitution, Amendment 5, that no person shall be compelled to be a witness against himself, by exempting him from liability to punishment for acts disclosed by him. United States v. James, 5 I. C. R. 578.

IMPORTANT CASES SINCE 1908

(q) In an indictment under the Elkins Act against a carrier for charging less than the published rate, evidence offered by it to show that it understood such rate was not intended to apply as specified in the schedule filed is properly rejected. Merchants' and Miners' Transp. Co. v. U. S., 199 Fed. 902, 904.

IX. PROCEDURE.

§28½a. In General.

CASES 1887-1908

(a) An instruction was proper, that as defendant resisted the payment of the sum claimed as rebate, on the sole ground that no such contract had been made, the jury might infer that the amounts claimed to have been paid had been received by defendant, where there was evidence of such payment and the presentation of the bills therefor to the defendant. Christie v. Missouri Pacific R. Co., 2 I. C. R. 22.

(b) A carrier which has conformed to the ruling of the Commission should not be prosecuted for alleged violation of law in that respect, which occurred before such ruling was made and under a construction of the law then approved by the carrier's counsel. Slater v. Northern P. R. Co. (Com.), 2 I. C. R. 243.

(c) On a motion for the issue of a distress warrant to compel an appearance of the defendant railroad company, which was considered as a motion to quash the indictment as to said company, HELD, that a railroad corporation was not subject to an indictment under the Interstate Commerce Act. U. S. v. Mich. Central R. Co., 3 I. C. R. 287.

(d) Section 860 of the Revised Statutes does not supply a complete protection from all the perils against which the constitutional prohibition was designed to guard, and is not a full substitute for that prohibition. Counselman v. Hitchcock, 3 I. C. R. 317.

(e) No statute which leaves the party or witness subject to prosecution after he answers the criminating question put to him, can have the effect of supplanting the privilege conferred by the Constitution of the United States. Counselman v. Hitchcock, 3 I. C. R. 317.

(f) A claim of exemption from discovery on the ground that it would fix a penal liability upon the party cannot be sustained where a prosecution for the penalty is already barred by the Statute of Limitations. Manchester L. R. Co. v. Concord R. Co. (N. H.), 3 I. C. R. 319.

(g) While under the Fifth Amendment of the Constitution of the United States a person cannot be compelled to disclose facts before a court or grand jury which might subject him to a criminal prosecution or his property to forfeiture, yet the protection of section 860, U. S. Rev. Stat., is co-extensive with it, and the witness is entitled to no privilege under the law. Re Counselman v. 3 I. C. R. 326.

(h) Habeas corpus will not be granted in favor of one who is held for contempt of court in refusing to answer questions put to him by a grand jury in an investigation of a complainant against another, when such answers or admis-

sions could never be used against him or his property in any subsequent proceeding. Re Counselman 3 I. C. R. 326.

(i) If a witness cannot claim the privilege for himself he cannot for another. The Interstate Commerce Act contains nothing upon which an officer of a railroad company can base a refusal to produce papers on the ground that it would tend to criminate the company. Re Peasley 3 I. C. R. 333.

(j) Writ of habeas corpus will not issue in favor of one who is an officer of a railroad company, to wit: vice-president and treasurer, and who is under arrest for contempt in refusing to answer questions put to him by or before the grand jury or to produce papers and documents of his company and under his control, ordered by subpoena duces tecum and by order on arrest for contempt, on the ground that such answers and production would tend to incriminate himself and his company, the investigation being based upon no charges against himself and his own testimony showing that they would not incriminate him. Re Peasley 3 I. C. R. 333.

(k) In an investigation of a criminal charge against an agent of a railroad company for violation of the Interstate Commerce Act, if it appear that the testimony and production of papers might incriminate himself,he cannot claim privilege of immunity under the Fourth and Fifth Amendments to the Constitution of the United States. Re Peasley 3 I. C. R. 333.

(l) The privilege given by U. S. Const. 5th amend., that no person shall be compelled in any criminal case to be a witness against himself, extends to a proceeding before a grand jury. Counselman v. Hitchcock (U. S. Sup. Ct.), Following cases in 3 I. C. R. 816, Reversing Re Counselman, 3 I. C. R. 326 and Overruling Re Peasley, 3 I. C. R. 333.

(m) The provision of U. S. Rev. Stat. § 860, that the evidence of a person shall not be used against him in any proceeding for a crime or penalty or forfeiture, does not take away the constitutional privilege of a person that he shall not be compelled in any criminal case to be a witness against himself. Counselman v. Hitchcock (U. S. Sup. Ct.), 3 Inters. Com. Rep., 3 I. C. R., 816, Reversing Re Counselman, 3 I. C. R., 326, and also Overruling Re Peasley, 3 I. C. R., 333.

(n) A statutory enactment must afford absolute immunity against future prosecution for the offense to which a criminating question relates, in order to supplant the constitutional privilege of a person to refuse to be a witness against himself. Counselman v. Hitchcock (U. S. Sup. Ct.), 3 Inters. Com. Rep., 3 I. C. R., 816, Reversing Re Counselman, 3 I. C. R., 326, and also overruling Re Peasley, 3 I. C. R., 333.

(o) In an investigation by a grand jury of alleged violations of the Act of Congress to Regulate Commerce of Feb. 4, 1887, against a railway company, a person engaged in commission business is privileged, under U. S. Const. 5th amend. from answering as a witness as to whether he had obtained a rate of transportation of grain on any railroad coming from a point outside of the State, less than the tariff or open rate, and questions of a similar character, if he declines to answer on the ground that his answer might tend to criminate him. Counselman v. Hitchcock (U. S. Sup. Ct.), 3 Inters. Com. Rep. 3 I. C. R., 816, Reversing Re Counselman, 3 I. C. R., 326, and Also Overruling, Re Peasley, 3 I. C. R. 333.

(p) An agreement by a common carrier to give one shipper a favor and advantage over others by a rebate is illegal at common law. Fitzgerald v. Grand Trunk R. Co., 3 I. C. R. 633.

(q) A witness is protected by the constitutional provision from being compelled to disclose the circumstances of his offense, or the sources from which or the means by which evidence of its commission, or of his connection with it, may be obtained or made effectual for his conviction. Counselman v. Htichcock, 3 I. C. R. 816.

(r) Section 800 of the Revised Statutes, which provides that the evidence of a person shall not be used against him in any proceeding for a crime or penalty, or forfeiture, does not take away his privilege, given by the Constitution, that he shall not be compelled in any criminal case to be a witness against himself. Counselman v. Hitchcock, 3 I. C. R. 816.

(s) In an investigation by a grand jury of alleged violations of the Act of Congress to Regulate Commerce of February 4th, 1887, against a railway company, a person engaged in commission business is privileged, under the Fifth Amendment to the Constitution, from

answering as a witness as to whether he had obtained a rate of transportation of grain on any railroad company from a point outside of the State, less than the tariff or open rate, and questions of a similar character, if he declines to answer on the ground that his answer might tend to criminate him. Counselman v. Hitchcock, 3 I. C. R. 816.

(t) The privilege given by the Fifth Amendment to the Constitution that no person shall be compelled in any criminal case to be a witness against himself extends to a proceeding before a grand jury. Counselman v. Hitchcock, 3 I. C. R. 816.

(u) In view of the constitutional provision, a statutory enactment, to be valid, must afford absolute immunity against future prosecution for the offense to which the question relates. Counselman v. Hitchcock, 3 I. C. R. 816.

(v) To impeach a witness the evidence must reflect the opinions of the people in the community in which he lives. United States v. Howell, 4 I. C. R. 818.

(w) The testimony of defendants is to be considered in the light of their relation to the case. United States v. Howell, 4 I. C. R. 818.

ALL OTHER CITATIONS

Kennedy v. United States, 275 Fed. 182.

§29. Province of Court.

IMPORTANT CASES SINCE 1908

(a) In a prosecution under the Elkins Act against a shipper for the acceptance of a concession, it is for the court, and not for the jury, to determine whether documents filed with the Interstate Commerce Commission are sufficiently definite to establish the rate in question between the points in question. Standard Oil Co. of New York v. U. S., 179, Fed. 614, 624.

§30. Province of Jury.

CASES 1887-1908

(a) Although a conviction may be had on the testimony of accomplices, if it produces on the minds of the jury a full and complete conviction of its truthfulness, it is a prudential rule that such witnesses should be corroborated by circumstances or otherwise as to some material point of their testimony. United States v. Howell, 4 I. C. R. 818.

IMPORTANT CASES SINCE 1908

(b) It is questionable whether charges in a criminal prosecution, the effect of which is to submit to a jury the determination of the question of comparison of rates upon shipments of anthracite coal with those of bituminous coal, and to permit it to pass upon questions of reasonableness of rates and all the circumstances affecting differences in rates and practices at different periods of time and under different circumstances not covered by any tariff can be sustained. It is doubtful whether these questions are not primarily for the determination of the Interstate Commerce Commission, rather than for the determination of a common-law jury in a criminal trial. United States v. P. & A. Railway & Navigation Co., 228 U. S. 87, 33 Sup. Ct. 443, 57 L. Ed. 742; Minnesota Rate Case, 230 U. S. 352, 33 Sup. Ct. 729, 57 L. Ed. 1151, 48 L. R. A. (N. S.), 1151, Ann. Cas. 1916A, 18; Loomis v. Lehigh Valley R. Co., 240 U. S. 43, 36 Sup. Ct. 228, 60 L. Ed.—, opinion by Mr. Justice McReynolds, January 24, 1916. United States v. Philadelphia & R. Ry. Co., 232 Fed. 946, 952.

ALL OTHER CITATIONS

U. S. v. P. & R. Ry. Co., 184 Fed. 543, 545; U. S. v. Bethlehem Steel Co., 184 Fed. 546; U. S. v. Lehigh Valley Ry. Co., 184 Fed. 546; Merchants' and Miners' Transp. Co. v. U. S., 199 Fed. 902, 904.

§31. Conviction and Verdict.

CASES 1887-1908

(a) A conviction for criminal violation of the Interstate Commerce Act, which prohibits undue or unreasonable preferences or advantages, cannot be sustained upon the finding of a jury that a certain charge was an unreasonable preference, if no standard of comparison is established by which such unreasonableness is shown with definiteness and certainty. Tozer v. United States of America, 4 I. C. R. 245.

(b) A reasonable doubt which will require acquittal must be a real and substantial one, and not a mere conjecture or a surmise as to the possibility of innocence. United States v. Howell (D. C. W. D. Mo.), 4 I. C. R. 818.

(c) To sustain a conviction the proof must be sufficient to establish all the material allegations in issue, so that reasonable men upon a matter of importance or concern would be satisfied of

their being true. United States v. Howell (D. C. W. D. Mo.), 4 I. C. R. 818.

(d) Rebate not unjust discrimination. —Showing merely a rebate or variation from the usual rate in force is not sufficient to sustain an indictment under the Interstate Commerce Act for unjust discrimination. United States v. Hanley, 7 I. C. C. App IX.

IMPORTANT CASES SINCE 1908

(e) In a prosecution under the Elkins Act against a carrier for making concessions to a shipper, each count of an indictment consisting of many counts charged that defendant had made a concession as to the carload shipment mentioned in the count. The evidence indicated that the concession had been made on all the shipments during the period in question by one settlement, made by defendant, in which it simply canceled all the demurrage charges standing against the shipper, and that the amount of charges so canceled was large enough to cover the sum total of all the concessions alleged to have been made on all of the cars mentioned in the different counts. HELD, a verdict finding defendant guilty of all the counts should be sustained. U. S. v. Phil & R. Ry. Co., 184 Fed. 543, 545; U. S. v. Bethlehem Steel Co., 184 Fed. 546; U. S. v. Lehigh Valley Ry. Co., 184 Fed. 546.

X. PENALTIES.

§32. Excessive Fine.

IMPORTANT CASES SINCE 1908

(a) In an indictment under the Elkins Act against the Standard Oil Co. of Indiana for accepting and receiving a concession, a fine of $29,240,000, imposed by the trial court on the basis of one offense for every carload shipped, is excessive, where the defendant had not before been convicted of the same offense, where its assets were not in excess of $1,000,000, and where the trial court considered the Standard Oil Co. of New Jersey the real offender in imposing the sentence. Standard Oil Co. of Indiana v. U. S., 164 Fed. 376, 386.

(b) The trial court, in deciding what penalty to impose for a carrier's failure to charge $60 demurrage on 12 cars, for which it was convicted, could consider any discrimination disclosed, for which there should be no conviction till the Interstate Commerce Commission had passed on it, or even if it did not violate the letter of any demurrage or other tariff. Michigan Cent. R. R. v. United States, 246 Fed. 353.

XI. STATE REGULATION.

§33. In General.

ALL CITATIONS

Adams Express Co. v. Charlottesville Woolen Mills, (Va. 1908), 63 S. E. 8, 9.

XII. ALLIED OFFENSES.

See Interstate Commerce §1.

§34. In General.

CASES 1887-1908

(a) Collecting and receiving freight charges does not subject one who had nothing to do with fixing the rates to indictment under the long and short haul clause of the Interstate Commerce Act, although the rates are within prohibitions of that Act. United States v. Mellen, 4 I. C. R. 247.

(b) An alleged violation of the Anti-Trust Act of Congress must be clearly within its provisions, as the statute is a criminal one. United States v. Trans-Missouri Freight Asso. (C. C. App. 8th C,), 4 I. C. R. 443.

(c) Woodcock, ruffled grouse, or quail need not have been killed for the purpose of conveying them out of the State in order to make it an offense under Gen. Stat. § 2546, to have such birds in possession with intent to procure their transportation out of the state. State of Conn. v. Geer., 3 I. C. R. 732.

(d) Opposition to the arrest of persons who have wilfully obstructed or retarded the mails, by such a number of persons as would constitute a general uprising in that particular locality, and as threatens for the time being the civil and political authority, constitutes an insurrection. Re Charge to Grand Jury (No. 2), (D. C. N. D. Ill.), 4 I. C. R. 781.

(e) To constitute an insurrection against the United States, it is not necessary that there should be blood shed, or that its dimenisons should be so portentious as to insure probable success; but it is necessary that the rising should be in opposition to the execution of the laws of the United States, and should be so formidable as for the time being to defy the authority of the United States. Re Charge to Grand Jury (No. 2), (D. C. N. D. Ill.), 4 I. C. R. 781.

(f) Men who gather together to resist the civil or political power of the United

States or to oppose the execution of its laws, in such force that the civil authorities are inadequate to put them down, and a considerable military force is needed to accomplish that result, become, with every person who knowingly incites, aids or abets them ,with whatever motives, insurgents. Re Charge to Grand Jury (No. 2), (D. C. N. D. Ill.), 4 I. C. R. 781.

(g) Insurrection is a rising against civil or political authority,—the open and active opposition of a number of persons to the execution of law in a city or state. Re Charge to Grand Jury (No. 2) (D. C. N. D. Ill.), 4 I. C. R. 781.

(h) One who by speech, writing, or other inducements assists in setting on foot an insurrection or carrying it along, or who gives it aid or comfort, is guilty of a violation of law. Re Charge to Grand Jury 4 I. C. R. 781.

(i) Wilful failure of railroad companies to carry the mails is within U. S. Rev. Stat. § 3995, making it an offense to unlawfully and willfully retard or obstruct the passage of the mail, although their employes refuse to move trains having certain sleeping cars thereon, where the situation is of an extraordinary character, and the interruption to commerce has been serious and long continued and the employes are willing to move trains without such cars. Re Charge to Grand Jury 4 I. C. R. 784.

(j) Imprisonment for six months was imposed as a punishment for contempt of court in interfering with the operation of a railroad by a receiver, where, after the service of the restraining order, the defendant continued in his unlawful course, and aggravated his contempt by speeches to the employes of the receiver. Thomas v. Cincinnati, N. O. & T. P. R. Co., 4 I. C. R. 788.

(ja) All persons combining to carry out the rule of the Brotherhood of Locomotive Engineers which requires employees on one road to refuse to handle property belonging to a connecting road on which a strike of engineers is pending are, in case such roads are subject to the interstate commerce law, punishable under U. S. Rev. Stat. §5440, relating to conspiracies to commit offenses against the United States, if any one of them does an act in furtherance of the combination. Toledo, A. A. & N. M. R. Co. v. Pennsylvania Co., 5 I. C. R. 522.

IMPORTANT CASES SINCE 1908

(k) A shipment of alcohol, which had been loaded into a car consigned to another state and was on the track of a belt line, which performed only switching services in delivering to the carrier which was to haul it to destination, was already in "interstate shipment," within Act Feb. 13, 1913, relating to larceny of goods in interstate commerce. Sharp v. United States, 280 Fed. 86.

(l) A shipment originating in one state and consigned to a point in the same state, but moving in its course through another state, constitutes an "interstate shipment," within the meaning of the Act Feb. 13, § 1 providing for punishable of larceny of goods in interstate commerce. Yohn v. United States, 280 Fed. 511.

(m) In actions by government against stockyards company for violations of Twenty-Eight Hour Law (Comp. St. §§8651-8654), evidence not showing that defendant knew or could have known for what period of time the cattle had been held in the cars by connecting carriers before delivery to defendant without having been unloaded for food, water, and rest, and showing that defendant handled the shipments after they came into its hands with all possible diligence, was insufficient to show that defendant knowingly and willfully violated the act. United States v. Union Stockyards Co. 291 Fed. 366.

ALL OTHER CITATIONS

Chicago, R. I. & P. Ry. v. Gage, (Ark. 1918), 286 S. W. 141; Great Northern Pac. S. S. Co. v. Ranier Brewing Co., 255 Fed. 762; United States v. Kambeitz, 256 Fed. 247; Copertino v. United States, 256 Fed. 519; Anderson v. United States, 260 Fed. 557; Block v. United States, 261 Fed. 321; Dye v. United States, 262 Fed. 6. Robinson & Reynolds v. Atlantic Coast Line R. Co., (Ga., 1922), 112 S. E. 389.

§35. False Accounts.

IMPORTANT CASES SINCE 1908

(a) The Interstate Commerce Act makes it a criminal offense for any person to make a false entry in any book of account or in any record or memorandum kept by a carrier whether such record is prescribed by the Interstate Commerce Commission or not. Kennedy v. United States, 275 Fed. 182, 183.

§35a. Violation of Section 1.

CASES 1887-1908

(a) Officers of an interstate railroad company may be indicted under the Interstate Commerce Act, § 4, for fixing and charging a local freight rate upon the same kind of merchandise under substantially similar circumstances and conditions, greater in amount between two points on the main line than that fixed between one of them and a point also on the main line lying in the same direction but farther away than the other. United States v. Mellen (D. C. D. Kan.), 4 I. C. R. 247.

(b) Collecting and receiving freight charges does not subject one who had nothing to do with fixing the rates, to indictment under the long and short haul clause of the Interstate Commerce Act, although the rates are within the prohibitions of that Act. United States v. Mellen (D. C. D. Kan.), 4 I. C. R. 247.

IMPORTANT CASES SINCE 1908

(c) The car clerk of a carrier entrusted with the duty of certifying whether shipments arriving at its terminals are order notify or could be delivered without surrender of the bill of lading, and who makes out false manifests by which order notify cars are entered otherwise and conspires with the consignee by which the latter obtains order notify cars without surrendering the bill of lading, and who makes such entries in his own memorandum in his office to enable such consignee in getting these cars without paying the drafts and producing the bills of lading, such fraud is properly found guilty under section 20, paragraph 7 of the Interstate Commerce Act of wilfully making false entries, and wilfully neglecting to make full, true and correct entries of facts appurtaining to the carriers business. Kennedy v. United States, 275 Fed. 182.

§36. Theft.

IMPORTANT CASES SINCE 1908

(a) Act Feb. 13, 1913, §1, making it an offense against the United States to steal "goods or chattels moving as * * * an interstate or foreign shipment of freight or express," is complementary to the general regulation of railroads, and covers such commerce as the Interstate Commerce Act itself covers, which includes a shipment between points in the same state. United States v. Yohn, 275 Fed. 232.

CROSS COUNTRY COMPETITION

See Evidence §14 (1½); Long and Short Hauls §7½; Wagon Competition.

CUBA

IMPORTANT CASES SINCE 1908

(a) The Commission has no jurisdiction over traffic from a point in the United States to a point in Cuba. Hill v. N., C. & St. L. Ry., 44 I. C. C. 582, 588.

CUMMINS AMENDMENT

See Loss and Damage I; §2½; Released Rates.

CURRENCY

IMPORTANT CASES SINCE 1908

(a) While media of exchange in Canada and in United States carry same designations and are intended to represent substantially same purchasing value, tariffs of carriers engaged in transportation of passengers and property between the two countries, publishing charges therefor in amounts specified in dollars and cents, mean only lawful money of United States, when filed with this commission. Koine v. M. C. R. R. Co., 83 I. C. C. 407, 408.

(b) Commission can not undertake to pass upon proposed rules concerning payment of charges in United States currency and prepayment of charges on shipments into Canada is so far as they affect charges for transportation beyond borders of United States. Payment of Charges in United States Currency, 59 I. C. C. 263. Boston Wool Trade Asso. v. A., T. & S. F. Ry. Co., 83 I. C. C. 445, 449.

CUSTOM

See Blanket Rates §5.

CUSTOM BROKERS

IMPORTANT CASES SINCE 1908

(a) Complainants, customs brokers at Newport, Vt., attacked the refusal of the carrier to allow the customs duties paid through them, together with their brokerage fees, to be "expensed forward" on the waybills to ultimate consignee, as subjecting them to unjust discrimination. The carrier's agent at Newport was also a customs broker. If the shipper named him as broker, the carrier permitted the customs duties and broker's fees to be "expensed for-

ward" to the ultimate consignee. If the shipper, however, named some other broker as his agent, the carrier refused to expense forward these charges. HELD that the practice complained of resulted in preference of shippers who made use of the services of the carrier's agent as a customs broker and prejudice to shippers who employed other customs brokers. Reparation denied. Emery & Co. v. B. & M. R. R., 47 I. C. C. 200.

(b) Where a carrier paid to the United States customs authorities a duty on goods after delivery had been made to consignee, carrier was a mere volunteer, and cannot recover from consignee the amount paid. American Ry. Exp. Co. v. Heilbrunn, 198 N. Y. S. 801.

(c) Where carrier paid or promised the customs authorities to pay the duty to prevent the goods from being held by the government officials at the point of entry, carrier is entitled to reimbursement from consignees. American Ry. Exp. Co. v. Heilbrunn, 198 N. Y. S. 801.

(d) Where goods had passed the point of entry without payment of duty, consignee, and not carrier, was liable for duties thereafter imposed. American Ry. Exp. v. Heilbrunn, 198 N. Y. S. 801.

(e) In action by carrier against consignee for duty on goods, which carrier had paid after delivery to consignee, an allegation that "plaintiff was compelled to pay and did pay the said amount to the United States customs authorities" held a conclusion of law. American Ry. Exp. Co. v. Heilbrunn, 198 N. Y. S. 801.

ALL OTHER CITATIONS

Emery & Co. v. B. & M. R. R. 47 I. C. C. 200, 201, 202.

CUSTOM DUTIES

See Evidence §19¾.

DAMAGES

See Actions at Law; Allowances VI; Bills of Lading VI; Cars and Car Supply §6; VI; §33; Discrimination §15; §17; Loss and Damage §10½; §10¾; Reparation; Tariffs §12; Telephone and Telegraph Companies IV; Special Contracts §4.

DANGEROUS COMMODITY

See Demurrage §2½; Evidence §52; Explosives.

DEFENSES

See Crimes VIII; Procedure Before Commission VIII; Special Contracts §6.

DELIVERY

See Allowances §8 (5); Express Companies §2; §7½; Spotting; Transportation §5.

DEMURRAGE

I. CONTROL AND REGULATION.
§1. Jurisdiction of Commission.
§1½. State regulation.
II. RIGHT TO ASSESS.
§2. In general.
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§6. One shipment in two cars.
§7. Order-notify shipments.
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§8½. Pooled shipments.
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§16. Placement or arrival notices.
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§18. Reciprocal demurrage.
§18¼. Switching reclaims.

§18½. Uniform demurrage code.
§19. Weather interference.
§20. Advance in demurrage during transit.
V. REPARATION.
§21. In general.
§22. Actions at law.
VI. LIABILITY TO PAY.
§23. In general.

CROSS REFERENCES

See Detention Charges; Embargoes; Export Rates and Facilities VI; Lighterage VI; Storage; Track Storage.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Jurisdiction of Commission.

See Interstate Commerce Commission; Jurisdiction of Commission.

CASES 1887-1908

(a) While it is held by the Supreme Court in Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co. 167 U. S. 479, 42 L. ed. 243, 17 Sup. Ct. Rep. 896, that the Commission has no power to prescribe rates, "maximum, minimum, or absolute," the Commission may order the carriers to "desist from the continuance of an unlawful practice." (Interstate Commerce Commission v. East Tennessee, V. & G. R. Co. 85 Fed. Rep. 110). The Commission may therefore after investigation find a particular rate to be unlawful and prohibit the exaction of that rate, or find the time allowed for loading or unloading unlawful, or, in other words, unreasonably small, and forbid the charging of demurrage at the expiration of that time and before the expiration of a reasonable time. Pa. Millers States Asso. v. Phila. & R. Ry. Co., 8 I. C. C. 53.

(aa) The rule of §4 of the law, forbidding a greater charge for a shorter than for a longer haul, based on distance relates to actual transportation charges, and not to demurrage charges, which are in the nature of charges for storage in the cars of the carrier. Pennsylvania Millers' State Asso. v. Philadelphia & R. R. Co., 8 I. C. C. 531.

(b) The Commission is without authority to fix rules or regulations for reciprocal demurrage. Mason v. C. R. I. & P. Ry. Co., 12 I. C. C. 61.

IMPORTANT CASES SINCE 1908

(c) It is well settled that the Commission may require the carriers to maintain reasonable demurrage charges which are in part compensation to the carriers for the use of their equipment and in part penalties imposed on shippers for detention of cars. American Wholesale Lumber Ass'n v. Director General, 66 I. C. C. 393, 396.

(d) The Interstate Commerce Commission, and not a court, is the tribunal to which complaint should be made of any unreasonableness in a local tariff of demurrage charges filed with it. Chesapeake & Ohio Coal & Coke Co. v. Toledo & O. C. Ry., 245 Fed. 917.

(e) Under the rule established by the Interstate Commerce Commission, demurrage charges for the detention of cars must be exacted and collected by the carrier in accordance with the tariffs on file, and where certain exceptions or exemptions are specified therein, no others can be permitted. The validity of such rule as to demurrage charges upon interstate traffic, adopted and applied by the Interstate Commerce Commission, is not open to question in state courts. Swift & Co. v. Hocking Valley Ry. Co., 93 Ohio St. 143, 112 N. E. 212, L. R. A. 1917E, 916, approved and followed. Anthony Carlin Co. v. Hines, (Ohio 1923), 140 N. E. 99.

ALL OTHER CITATIONS

Erie R. R. Co. v. Wanaque Lumber Co., 75 N. J. L. 881, 878, 69 A. 168; Wilson Produce Co. v. Penn. R. R. Co., 14 I. C. C. 170, 174; Peale, Peacock & Kerr v. C. R. R. Co. of N. J., 18 I. C. C. 25, 33, 35; C. R. R. Co. of N. J. v. Hite, 166 Fed. 976, 979; Alan Wood Iron & Steel Co. v. P. R. R. Co., 24 I. C. C. 27; Lumber Rates from Memphis and Other Points to New Orleans, 27 I. C. C. 471, 479; Neustadt v. Lehigh Valley Ry. Co., 144 N. Y. Supp. 911, 915; Northern Central Coal Co. v. Wabash R. R. Co., Unrep. Op. A-707; Coe v. Wrrol, 116 U. S. 517; Swift & Co. v. Hocking Valley Ry. Co. (Ohio 1915), 112 N. E. 212, 213; Car Supply Investigation, 42 I. C. C. 657, 673; Northern Pac. Ry. Co. v. Carstens Packing Co., 158 Pac. (Wash. 1916), 721; Keystone Warehouse Co. v. P. R. R. Co., 53 I. C. C. 335, 337; Northport Smelting & Refining Co. v. G. N., 53 I. C. C. 641, 642; Zelnicker Supply Co. v. Director General, 53 I. C. C. 700; Held Brothers v. E. P. & N. E. Ry., 55 I. C. C. 416; Quintal & Lynch, Ltd., v. F. E. C. Ry., 57

I. C. C. 289; Daugherty & Company v. Director General, 58 I. C. C. 589, 590; Mount Hood R. R. Co. v. Director General, as Agent, 60 I. C. C. 116; Waters v. Becker, (Wisc.), 1921, 186 N. W. 167.

§1½. State Regulation.

See State Rates and Regulation.

ALL CITATIONS

Sargent v. Rutland R. R. (Vt. 1913), 85 A 654, 659; Chicago M. & St. P. Ry. Co. Rock County Sugar Co. (Wis. 1916), 156 N. W. 607; Sunderland Bros. v. M. P. Ry., (Neb. 1917), 162 N. W. 494; State v. Public Service Commission of Washington, (Wash. 1917), 162 Pac. 523.

II. RIGHT TO ASSESS.

§2. In General.

CASES 1887-1908

(a) If demurrage charges, when added to transportation charges, result in greater aggregate charges in certain cases than in other cases involving longer hauls, these may constitute undue preference as between different localities, under § 3. Pennsylvania Millers' State Asso. v. Philadelphia & R. R. Co., 8 I. C. C., 531.

(b) If demurrage charges are made to commence before the expiration of a reasonable time for loading or unloading, this may be a violation of the provision of § 1 of the law, which directs that "charges made for any service rendered or to be rendered in the transportation of property, or in connection therewith, or for the receiving, delivering, storage or handling of such property, shall be reasonable and just." Pennsylvania. Miller State Asso. v. Philadelphia .R R. Co., 8 I. C. C. 531.

(c) Complainant attacked demurrage charges assessed on hay from Terre Haute, Ind., to points in the southeast. The only testimony introduced by complainant was that it was unreasonable for the defendants to charge them $1.00 per day demurrage at the same time only being charged 20 cents per day by the car owner for the use of the car. If the reasonableness of the demurrage charge depended upon the fair rental value of a freight car the Commission would be disposed to hold with the complainants. It is the duty of the consignee to receive his freight within a reasonable time and if he neglects to do so the liability of the railroad company as a common carrier ceases and it becomes simply a warehouseman. It is not only proper but highly essential that railroads should make and enforce uniformly such reasonable demurrage requirements as will insure the prompt receipt by the consignee of his freight. The demurrage charge which is imposed for that purpose is not based upon the fair rental value of a car; it is rather in the nature of a penalty. The Commission could not hold upon the testimony in this case that $1.00 per day is an unreasonable charge and while a more general investigation might alter that opinion, it is the present impression that it is just and reasonable for the purpose intended. HELD, complaint dismissed. T. M. Kehoe & Company v. C. & W. C. R. Co., 11 I. C. C. 166.

(d) It is not only proper but highly essential that railroad companies should make and enforce uniformly such reasonable demurrage requirements as will insure the prompt receipt by the consignee of his freight. The demurrage charge which is imposed for that purpose is not, however, based upon the fair rental value of the car; it is rather in the nature of a penalty. Kehoe v. C. & W. C. R. Co., 11 I. C. C. 166, 170.

IMPORTANT CASES SINCE 1908

(e) Carriers are justified in establishing car service rules which will insure the prompt release of equipment; demurrage charges represent in part compensation to the carrier for the use of its equipment, and in part a penalty imposed upon shippers for the detention of cars; carriers are not obliged to provide storage in cars, but if they do so they are entitled to reasonable compensation for the service; a consignee has no legal right to use a car as a warehouse; the business of a railroad is transportation, not storage; storage at destination is a service not embraced in the rate, and for which additional compensation may be exacted; it is to the interest of both carriers and shippers that cars be promptly released; and an obligation rests upon the carrier to so conduct its business that all of its patrons shall be accorded the fullest and freest use of its equipment. Pittsburgh & Ohio Min. Co. v. B. & O. R. R. Co., 40 I. C. C. 408, 409.

(f) The Commission has found that demurrage was properly assessed against the shipper where detention occurred through no fault of the carrier,

even though the shipper was not at fault, as in case of nonarrival of an expected vessel. American Smelting & Refining Co. v. Director General, 69 I. C. C. 229, 232.

(g) The clearing of carriers terminals is the primary object of a storage charge, and a charge which goes no further than is necessary to accomplish this end is not unreasonable from the mere fact that it is higher than would be just if the value of the storage service were the only element to be considered. Dashields & Co. v. Director General, 73 I. C. C. 225, 227.

(ga) Demurrage is not an appropriate charge by which to obtain compensation for switching services. L. E. & Ft. W. R. R. Co., 78 I. C. C. 475, 491.

(h) The primary purpose of imposing demurrage is to promote the prompt release of cars in the general interest of the public. Hawkins & Sons v. Director General, 80 I. C. C. 225, 226.

(i) That shipments to a consignee are unauthorized, and that the consignee does everything in its power to prevent the shipments, does not justify its refusal to pay demurrage charges, if it has accepted and unloaded the cars. Davis v. Timmonsville Oil Co., 285 Fed. 470.

(j) Demurrage is in part penalty for detention of carriers' equipment and to be effective as such must be controlled by tariffs in effect contemporaneously with such detention. Carolina Portland Cement Co. v. Director General, as Agent, 83 I. C. C. 388, 391.

(k) The primary purpose of imposing demurrage is to promote the prompt release of cars in the general public interest. McGarry & Company v. Wabash R. R., 88 I. C. C. 301, 302.

ALL OTHER CITATIONS

Nebraska Transfer Co. v. C. B. & Q. R. R. Co. (Nebr. 1912), 134 N. W. 163, 166; Follmer & Co. v. N. P. Ry. Co., Unrep. Op. 458; N. Y. Hay Exchange v. Penn. R. R., 14 I. C. C. 178, 184, 187; Lynah & Read v. B. & O. R. R. Co., 18 I. C. C. 38, 44; In Re Demurrage Investigation, 19 I. C. C. 496, 498; Peale, Peacock & Kerr v. C. R. R. Co. of N. J., 18 I. C. C. 25, 33, 35; Wilson Produce Co. v. Penn. R. R. Co., 16 I. C. C. 116, 121, 122; Big Muddy Coal & Iron Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-73; In Re Advances in Demurrage, 25 I. C. C. 314, 315, 324; Galveston Commercial Assn. v. A. T. & S. F. Ry. Co., 25 I. C. C. 216, 223, 231; Beekman Lumber Co. v. L. Ry. & N. Co., 25 I. C. C. 171, 173; Deeves Lumber Co. v. A. & V. Ry. Co., 25 I. C. C. 42, 43; Hollingshead & Blei Co. v. Pennsylvania Co., 25 I. C. C. 38; Alexander v. S. Ry. Co., 25 I. C. C. 32, 34; Justice v. P. R. R. Co., 26 I. C. C. 478, 479; Lumber Rates from Memphis and other Points to New Orleans, 27 I. C. C. 471, 478, 479; Duhlmeier Bros. v. P. Co., 27 I. C. C. 4; United States v. Erie Ry. Co., 209 Fed. 283, 284; Charles Becker v. P. M. Ry. Co., 28 I. C. C. 645, 655; American Hay Co. v. B. & M. R. R., A-286; Industrial Railway Case, 29 I. I. C. 212, 237; American Hay Co. v. C. V. Ry. Co., 29 I. C. C. 659, 660; Spring Coal Co. v. N. & W. Ry. Co., Unrep. Op. A636; Ramsey-Wheeler Co. v. S. A. L. Ry., Unrep. Op. A541; Michigan Mfrs. Asso. v. P. M. R. R. Co., 31 I. C. C. 329, 332, 336; Currie Co. v. C. & N. W. Ry. Co. v. C. & N. W. Ry. Co., Unrep. Op. A-635; Minter & Co. v. A. C. L. R. R. Co., Unrep. Op. A-635; International Agrl. Corp. v. A. & W. P. R. R. Co., 32 I. C. C. 199, 201; National Casket Co. v. S. Ry. Co., 31 I. C. C. 678, 692, 693; Mobile Chamber of Commerce v. M. & O. R. R. Co., 32 I. C. C. 272, 281; Central R. Co. of New Jersey v. Anchor Line Ltd., 219 Fed. 716, 718; Eastern Talc. Co. v. C. & E. I. R. R. Co., Unrep. Op. A-816; Landergin Bros. v. A. E. R. R. Co., Unrep. Op. 1965; Providence Fruit & Produce Exch. v. M. C. R. R., 36 I. C. C. 307, 309; Obermeyer & Liebmann v. N. Y. C. R. R., 36 I. C. C. 315; American Coal & Coke Co. v. M. C. R. R. Co., 36 I. C. C. 195, 197; Red Ash Coal Co. v. C. R. R. Co. of N. J., 37 I. C. C. 460, 462; Woolson Spice Co. v. P. Co., 39 I. C. C. 583, 585; Gunderson v. G. & S. I. R. R. Co., 39 I. C. C. 747, 751; Kirk v. M. K. & T. Ry. Co. of Tex., 39 I. C. C. 755, 756; Robinson Clay Product Co. v. A. C. & Y. Ry. Co., 40 I. C. C. 177; Pittsburgh & Ohio Mining Co. v. B. & O. R. R. Co., 40 I C. C. 408, 409; Deere & Co. v. C. M. & St. P. Ry., 40 I. C. C. 533; The Car Peddling Case, 45 I. C. C. 494, 503; Famechon Co. v. C. B. & Q. R. R., 45 I. C. C. 598, 600; Meeker v. C. R. R. Co. of N. J., 46 I. C. C. 657, 659; Tidewater Demurrage, 46 I. C. C. 677, 680; Michigan Cent. R. R. v. United States, 246 Fed. 353; Export Freight Free Time, 47 I. C. C. 162, 177; Freight Free Time,

47 I. C. C. 162, 179, 196; Coal from Arkansas and other States, 49 I. C. C. 727, 731; Bay Bros Lumber Co. v. L. & A Ry., 50 I. C. C. 369; Lalance & Grosjean Mfg. Co. v. L. T. R. R., 50 I. C. C. 374; In the Matter of Private Cars, 50 I. C. C. 652, 705; Lalance & Grosjean Manufacturing Co. v. L. I. R. R. 50 I. C. C. 374; Barber & Co. v. C. C. C. & St. L. Ry., 51 I. C. C. 194, 196; Chattanooga Sewer Pipe & Fire Brick Co. v. B. Ry., 51 I. C. C. 447, 448; American Smelting & Refining Co. v. L. V. Ry., 56 I. C. C. 195, 201; Hammer Lumber Co. v. Seaboard Air Line Ry., (N. C. 1920), 102 S. E. 508; Lowry Lumber Co. v. Director General, 58 I. C. C. 113, 116, 117; Louisville & N. R. Co. v. Camody, Ala., (1919), 82 So. 648; Louisville & N. R. Company v. Camody (Ala. 1919), 84 So. 824; Armour Grain Co. v. Director General, 57 I. C. C. 398, 404, 408; Currie & Campbell v. Director General, 57 I. C. C. 450; California Citrus League v. Director General, 58 I. C. C. 373, 380; Wholesale Coal Trade Assn. v. Director General, as Agent, 58 I. C. C. 15, 26, 27, 28, 29; Lehigh Valley Coal Sales Co. v. Director General, as Agent, 58 I. C. C. 76, 80; Lowry Lumber Co. v. Director General, as Agent, 58 I. C. C. 113, 116; Lowry Lumber Co. v. Director General, as Agent, 59 I. C. C. 90; New York Board of Trade v. Director General, 59 I. C. C. 205, 209; Wharton Steel Co. v. Director General, as Agent, 59 I. C. C. 613, 615; Delph Grain Co. v. Director General, as Agent, 59 I. C. C. 755; Mount Hood R. R. Co. v. Director General, 60 I. C. C. 116, 117; Penick & Ford v. Director General, 61 I. C. C. 173, 176, 177; Illinois Northern Ry., 61 I. C. C. 629, 634; American Smelting & Refining Co. v. Director General, 62 I. C. C. 583, 587, 588; Virginia Iron, Coal & Coke Co. v. Director General, 61 I. C. C. 200, 201; Lowry Lumber Co. v. B. & M. R. R. Co., 60 I. C. C. 739, 740; Birmingham Southern R. R. Co. v. Director General, as Agent, 61 I. C. C. 551, 554; Alpirn v. Director General, as Agent, 62 I. C. C. 486; American Wholesale Lumber Asso. v. Director General, as Agent, 66 I. C. C. 393, 396, 397; Dashields & Co. v. Director General, 73 I. C. C. 225, 226; Norfolk & W. Ry. Co. v. Emmons Coal Mining Co., 287 Fed. 168; Lexington Compress & Oil Co. v. Yazoo & M. V. R. Co., (Miss. 1923), 95 Sou. 92; Davis v. Carroll-Porter Boiler & Tank Co., (Pa. 1923), 119 Atl. 742.

§2¼. Commandeering of Vessels.

IMPORTANT CASES SINCE 1908

(a) Tack plate shipped from Vandergrift, Pa., to Baltimore, Md., for export, but due to vessel for which originally intended being commandeered by one of the nations then at war, was reconsigned to New York, N. Y., or Philadelphia, Pa., and exported from those ports. HELD: Domestic demurrage charges accruing at Baltimore found not unreasonable following Lowry Lumber Co., 58 I. C. C. 113, and Heid Brothers, 55 I. C. C., 416. British United Shoe Machinery Co. (Ltd.), v. P. R. R. Co., 66 I. C. C. 661.

ALL OTHER CITATIONS

American Smelting & Refining Co. as Agent, 69 I. C. C. 229.

§2½. Dangerous Commodity.

See Explosives.

IMPORTANT CASES SINCE 1908

(a) If it is shown that consignees can in normal times unload a dangerous commodity within the prescribed free time, there is presented reason why the commodity should be unloaded within that time. International Agrl. Corpn. v. A. & W. P. R. R. Co., 32 I. C. C. 199, 201.

§3. Discrimination.

See Discrimination.

IMPORTANT CASES SINCE 1908

(a) But it has been held that demurrage charges occasioned by detention of a car of barrel heading at Cincinnati, O., awaiting payment of freight charges thereon prior to a switching movement, not found to have been unlawful or unreasonable. Hollingshead & Blei Co. v. P. Co., 25 I. C. C. 38.

(b) Demurrage charges of $1 per car per day held not unreasonable where the carrier's equipment was used for storage purposes. Thompson v. A. T. & S. F. Ry. Co., 25 I. C. C. 174, 178.

(c) Traffic conditions throughout the United States do not differ to such an extent as to necessitate a diversity in demurrage rules. Michigan Mfrs. Asso. v. P. M. R. R. Co., 31 I. C. C. 329, 331.

(d) To allow the assessing of demurrage on inbound shipments to depend upon the furnishing of cars for outbound movement, a separate transaction, would open the way of abuses not necessary in order

to protect a shipper from unlawful acts of the carrier. Armour Grain Co., v. Director General, 57 I. C. C. 398, 404.

ALL OTHER CITATIONS

Lynah & Read v. B. & O. R. R. Co., 18 I. C. C. 38, 44; Friend Paper Co. v. C. C. C. & St. L. Ry. Co., 18 I. C. C. 178, 179; Galveston Commercial Asso. v. A. T. & S. F. Ry. Co., 25 I. C. C. 216, 227, 232; Benisch Bros. v. L. I. R. R. Co., 25 I. C. C. 439; American Hay Co. v. C. V. Ry. Co., 29 I. C. C. 659; Industrial Railways Case, 29 I. C. C. 212, 213, 237; Anderson-Tulle Co. v. M. L. & T. R. R. & S. S. Co., 30 I. C. C. 140; Advance Lumber Co. v. A. B. & A. R. R. Co., 40 I. C. C. 82, 83; Pittsburgh & Ohio Mining Co. v. B. & O. R. R. Co., 40 I. C. C. 408, 410; N. Y. & N. J. Produce Co. v. N. Y. N. H. & H. R. R., 51 I. C. C. 399; Armour Grain Co. v. Director General, 57 I. C. C. 389, 408.

§3½. Embargo as Reason.

See Embargoes.

IMPORTANT CASES SINCE 1908

(a) Demurrage does not accrue, under a general demurrage tariff, against a car which has been offered for reconsignment to an embargoed point upon the general principle that demurrage is assessable for detention for which the shipper is directly responsible and can avoid or abate while an embargo is placed by reason of the carriers' disability. Higgins Lumber & Export Co. v. N. O. G. N. Ry., 51 I. C. C. 214, 215.

(b) Demurrage charges found illegal due to the destination being embargoed, where the tariff made no restrictions against reconsignment to embargoed points, or for detention charges on shipments so reconsigned. Reparation awarded. Ferguson Lumber Co. v. Director General, 55 I. C. C. 335.

(c) Demurrage accruing on a shipment held by initial carrier on its rails at request of shipper after having been refused by connecting line because of embargo at billed destination, found lawfully assessed as shipper could have avoided demurrage by promptly unloading after being notified of existing embargo and advice given that shipment could not move in accordance with instructions. La Fayette Box Board & Paper Co. v. Director General, as Agent, 59 I. C. C. 105.

(d) Where an embargo in effect prohibits movements to a point except upon special permits and carrier accepts shipments from connections in addition to those for which permits were issued, and complainants are unable to unload within free time, demurrage accruing is not unreasonable or otherwise unlawful. Timken Roller Bearing Co. v. W. & L. E. Ry. Co., 59 I. C. C. 149.

(e) The forwarding of cars to an embargoed point does not of itself operate to relieve a consignee from demurrage charges. John E. Murray v. Director General, 69 I. C. C. 477, 479.

(f) Demurrage does not accrue, under a general demurrage tariff, against a car which has been offered for reconsignment to an embargoed point upon the general principle that demurrage is assessable for detention for which the shipper is directly responsible and can abate, while an embargo is placed by reason of the carriers disability. But if the carrier specifically provides in its tariff that it will not reconsign to an embargoed point it does not hold itself out to perform such service while an embargo is in effect, and the shipper must either resort to a service that the carrier does hold itself out to perform, such as reconsignment to a point not embargoed, or must hold the car at the expense of demurrage, a possibility which he assumed under the published tariffs when the car left point of origin. John E. Murray v. Director General, 69 I. C. C. 477, 482.

(g) Intrastate shipments were held on tracks of delivering carrier which refused to perform switching service because of an embargo at complainant's plant. HELD: Demurrage charges assessed found illegal as the applicable tariff did not provide for the assessment of demurrage until cars were placed accessible for unloading. Newton Oil Mill v. Dir. Gen., as Agent, 74 I. C. C. 113.

(h) Under the Hepburn Act of 1906, amending the Interstate Commerce Act, a carrier can not at the request of a consignee who is under contract to receive shipments declare an embargo and refuse to furnish cars for shippers; that if it temporarily does so and then removes the embargo, the latter act is but a return to its duty under the act; and failure to notify consignee of such removal does not relieve the latter from liability for demurrage provided by the published tariff. Menasha Co. v. Chicago & Northwestern Ry., 241 U. S., 55. New-

ton Oil Mill v. Director General, as agent, 74 I. C. C. 113, 115.

(i) An interstate carrier can not at the request of a consignee who is under contract to receive shipments declare an embargo on the shipments and refuse to furnish cars for the shippers; that if it temporarily does so and then removes the embargo, the latter act is but a return to its duty under the act; and that failure to notify the consignee of such removal does not relieve the latter from liability for demurrage provided by the published tariff. Newton Oil Mill v. Director General, 74 I. C. C. 113, 115.

(j) Upon shipper's order, without specifying destination of loaded movement, car delivered and loaded. Embargo prevented movement of car, and Federal regulation prohibited return of contents to shipper's plant. Shipper unable to dispose of shipment locally because of contract for entire output. Car remained on sidetrack and demurrage charges accrued. HELD: Partial interference of Federal regulations with disposition of contents of car does not constitute ground for ordering refund of demurrage. Brennan Packing Co. v. Director General, as Agent, 77 I. C. C. 307.

(k) Cars were ordered by shipper without specifying destination of shipments. Embargo having been placed on traffic to intended destination, empty cars remained on sidetrack at shipper's plant and demurrage charges accrued. HELD: Cars were ordered by shipper, and carrier was under no obligation to remove them unless instructed to do so. No such instructions having been given, demurrage charges were applicable during time cars were held by shipper. Brennan Packing Co. v. Director General, as Agent, 77 I. C. C. 307.

(l) Due to embargo impelled by strike conditions on trunk line connections defendant short line declared embargo and notified shippers accordingly. Subsequent to such notice, complainant ordered cars from defendant and loaded them, after which they were removed by defendant to its hold tracks where they remained until its connections would accept them. Demurrage assessed during this period found applicable and not unreasonable. Cars were placed for loading at instance of complainant and apparently for its convenience. United Paperboard Co. v. M. & E. R. R. Co., 80 I. C. C. 640.

(m) Shipment moved under permit during existence of embargo. Prior to arrival at original billed destination reconsignment requested and denied. Shipment arrived at original billed destination where demurrage accrued and subsequently upon instructions from shipper was forwarded to destination requested in reconignment instructions. HELD: Following Skilton case, 56 I. C. C., 251, and Wool case, 53 I. C. C., 183, demurrage charges, and combination rates to extent they exceeded joint rates to ultimate destination, found illegal. Effective reconsignment tariff did not prohibit reconsignment to embargoed points, and fact that shipment moved into embargoed territory under permit did not make tariff inapplicable. Reparation awarded. American Lumber & Mfg. Co. v. G. R. R. 80 I. C. C. 759.

(n) Upon completion of loading, complainant tendered bill of lading to carrier showing as destination embargoed point. Carrier refused to accept shipment because of embargo, and demurrage charges accrued pending ultimate movement to another destination. Contention that carrier should have informed complainant of existence of embargo before car was spotted for loading, not sustained. Complainant did not avail itself of means of ascertaining embargo situation prior to tendering shipment to carrier, and in absence of inquiry with respect thereto, or of knowledge by carrier of intended destination, no duty rested upon carrier to notify complainant of embargo until tender of shipment. Demurrage charges found not unreasonable or otherwise unlawful. Kaw Boiler Works Co. v. Director General, as Agent, 83 I. C. C. 399.

(o) The obligation to accept articles tendered for transportation is governed by the general principles of law, while the obligation to reconsign is determined by rules lawfully on file with the Commission. The Commission has repeatedly held that when tariffs contain no restriction against reconsignment to embargoed points, demurrage charges may not be assessed for the car detention resulting therefrom. Krauss Lumber Co. v. Director General, 87 I. C. C. 707, 708.

ALL OTHER CITATIONS

Chicago & N. W. Ry. Co. v. Pulp Wood Co., (Wis., 1916), 159 N. W. 734; Union Hay Co. v. C. St. P. M. & O. Ry., 45 I. C. C. 597; Schaeffer & Son v. L. I.

R. R., 48 I. C. C. 25, 30; Union Hay Co. v. C. & N. W. Ry., 48 I. C. C. 691; Cady Lumber Co. v. G. & W. Ry., 49 I. C. C. 165; Smith v A C. L. R. R., 50 I. C. C. 227; Youngblood (Inc.) v. C. R. R. of N. J., 50 I. C. C. 217; Smith v. A. C. L. R. R., 50 I. C. C. 227; Wood v. A. C. L. R. R., 50 I. C. C. 227; Lalance & Grosjean Mfg. Co. v. L. I. R. R., 50 I. C. C. 374; Wood v. N. Y., P. & N. R. R. Co., 53 I. C. C. 183; Held Brothers v. E. P. & N. E. Ry., 55 I. C. C. 416; Eugene A. Skilton v Director General, 56 I. C. C. 251; Lowry Lumber Co. v. Director General, 57 I. C. C. 12; Trantum & Danzer Inc. v. N. Y. P. & N. 57 I. C .C. 281, 182; Currie & Campbell v. Director General, 57 I. C. C. 450; Sellen v. L. V. R. R., 55 I. C. C. 117; Skilton v. Director General, 56 I. C. C. 251; Atlantic Lumber Co. v. N. Y. P. & N. Ry., 57 I. C. C. 129, 130; Trantum & Danzer (Inc.), v. N. Y., P. & N. R. R. R. Co., 57 I. C. C. 281; Cleveland Cooperage Co. v. Director General, 57 I. C. C. 423-424, 425; Atlantic Refining Company, v. Director General, 57 I. C. C. 627; Wholesale Coal Trade Association v. Director General, as Agent, 58 I. C. C. 15, 33; Lowry Lumber Co. v. Director General, as Agent, 58 I. C. C. 12, 113, 117. 118, 190, 199; Halfpenny v. Director General, as Agent, 58 I. C. C. 268; Hines Lumber Co. v. Director General, 58 I. C. C. 365; Dougherty & Co. v. Director General, 58 I. C. C. 589; R. E. Duvall & Co. v. Director General, 59 I. C. C. 142, 442; Lowry Lumber Co. v. Director General, 59 I. C. C. 510; Lieberman v. C. & N. W. Railway Company, 59 I. C. C. 599, 600; Union Bag & Paper Co. v. Director General, as Agent, 61 I. C. C. 424, 427; McGowin Lumber & Export Co. v. Director General, 64 I. C. C. 694, 697; Schaefer v. L. V. R. R. Co., 66 I. C. C. 549, 551; Maguire & Co. v. Director General, as Agent, 61 I. C. C. 658; Krauss Bros. Lumber Co. v. Director General, as Agent, 66 I. C. C. 637, 639; American Lumber & Mfg. Co. v. G. R. R., 80 I. C. C. 759; Davis v. Hilton Lumber Co., (N. C. 1923), 117 S. E. 50; Menasha Co. v. Chicago & Northwestern Ry., 241 U. S. 55; Person v. I. C. R. R., 88 I. C. C. 21; Empire Lumber Co. v. Director General, 88 I. C. C. 424.

§4. Failure of Consignee to Accept.

See Infra §9½; Consignee; Consignor; Demurrage §9½.

IMPORTANT CASES SINCE 1908

(a) Demurrage on coal consigned to a railroad consignee, which accrued on account of that carrier's embargo, is not necessarily unlawful. Crescent Coal & Mining Co. v. B. & O. R. R. Co., 23 I. C. C. 81.

(b) The shipper or consignee who, at a time of demand for transportation which taxes the facilities of the carriers, delays cars and occupies tracks beyond the free time contemplated in the freight rate, inflicts loss not only upon the carrier, but upon other shippers or receivers who desire to use the carrier's facilities. In re Advances in Demurrage, 25 I. C. C. 314, 315.

(c) When the consignee is responsible for the detention en route, his shipments should be placed under the regular demurrage regulations or other charges should be assessed to compensate the carriers for the detention of the equipment and the expense incurred incident thereto. Iron Ore Rate Cases, 41 I. C. C. 181, 206.

(d) Tariff provided that "Notice shall be sent or given consignee in writing, or as otherwise agreed to," but made no provision for notice to consignor when shipment refused at destination. Order-notify consignee notified by telephone and in person, and when it became apparent that he was not going to accept shipment consignor was notified by letter and disposition orders were given. Demurrage accruing found lawfully assessed. Hewitt-Lea-Funck Co. v. Director General, as Agent, 61 I. C. C. 49.

(e) Demurrage and storage charges accruing on unclaimed order notify shipments, due to refusal of carrier to comply with shipper's instructions to place in public warehouse without surrender of bill of lading and payment of accrued charges, found not unreasonable or unlawful as there was no specific tariff provision requiring carrier to place shipment in public storage and carrier was legally bound to collect such charges in accordance with the applicable tariff rules and regulations. Vim Motor Truck Co. v. Director General, as Agent, 64 I. C. C. 588.

(f) Demurrage charges at Detroit, Mich., computed from time of placement on complainant's tracks when cars could not be spotted for unloading because of complainant's inability to receive at unloading point, found applicable and not

unreasonable or otherwise unlawful. Sibley Lumber Co. v. Director General, as Agent, 77 I. C. C. 415.

(g) If the consignee failed to receive or remove a shipment the railroad was bound to exercise reasonable care for its safety and preservation until it could be legally sold in satisfaction of accrued charges. The carrier, however, is under duties other than those which it owes to a particular shipper. It owes a duty to the community, which cannot be efficiently and properly performed if its cars and terminal facilities are cluttered with uncalled for freight. This fact is important in fixing terminal rates. The rate must be large enough to yield reasonable compensation for the service rendered—for the use of cars, tracks and storage space; but to this must be added an amount sufficient to stimulate and even coerce, the speedy removal of freight after the carriage is complete. Hence a demurrage charge has been held to be in part compensation and in part penalty to secure the release of equipment and tracks. Horton v. Tonopah & Goldfield R. Co., 225 Fed. 406, 410 .

(h) That a carrier, having tendered certain cars of cotton seed oil to a consignee, who was unable to receive them because of want of unloading facilities, failed to make present demand for payment of demurrage charges while the cars remained on its tracks, did not create an estoppel against the Director General of Railroads operating the carrier to bring action against the consignee to recover them, since as a carrier could not lawfully waive the charges directly, it could not do so by indirection; mistake, inadvertence, honest agreement, or good faith alike being, under such circumstances, unavailing. Davis v. Timmonsville Oil Co., 285 Fed. 470.

(i) The term "unclaimed" implies, in the absence of an actual refusal, the failure of the consignee of the shipment to claim or accept it; that the mere advice to the carrier that it expects to accept sometime is not the equivalent of claiming the shipment, which would contemplate a demand for delivery and a readiness to pay the charges. Person v. I. C. R. R., 88 I. C. C. 21, 23.

(j) The term "unclaimed" in the demurrage tariff implies, in the absence of an actual refusal, the failure of the consignee of the shipment to claim or accept it and that mere advice to the carrier that it expects to accept sometime is not equivalent of claiming the shipment, which would contemplate a demand for delivery and readiness to pay the charges. Marfield Grain Co. v. A. & W. Ry., 88 I. C. C. 125, 128.

ALL OTHER CITATIONS

Caddell & Sons v. C. & S. Ry. Co., Unrep. Op. 177; Hutchinson McCandlish Coal Co. v. B. & O. R. R. Co., 16 I. C. C. 360, 362; Reiter, Curtis & Hild v. N. Y., S. & W. R. R. Co., 19 I. C. C. 290, 292; Riverside Mills v. C. & W. C. Ry. Co., 20 I. C. C. 153, 155; Corporation of the Cathedral of the Incarnation v. L. I. R. R. Co., 25 I. C. C. 399; Horton, Trustee v. E. R. R. Co., Unrep. Op. A-87; Scattergood & Co. v. P. M. R. R. Co., Unrep. Op. A511; Ohio & Michigan Coal Co. v. D. L. & C. R. R. & T. Co., Unrep. Op. A518; Ramsey-Wheeler Co. v. S. A. L. Ry., Unrep. Op. A541; Corporation Commission of Oklahoma v. W. F. & N. W. Ry. Co., Unrep. Op. A-828; Chestnutt Lumber Co. v. N. O. & N. E. R. R. Co., Unrep. Op. 1857; Buchanan Coal Co. v. C. R. I & P. Ry. Co., Unrep. Op. 2018; Atlas Portland Cement Co. v. C., B. & Q. R. R. Co., Unrep. Op. 2047; Horton v. Tonopah & Goldfield R. Co., 225 Fed. 406, 408; Heyser Lum. Co. v. K. & W. V. R. R., 37 I. C. C. 609; Sanders & Barnett v. L. V. R. R., 42 I. C. C. 603; Lee v. Erie R. Co., 158 N. Y. 730; Webster v. N. O. & N. E. R. R., 45 I. C. C. 566; Union Hay Co. v. C. St. P. M. & O. Ry., 45 I. C. C. 597; Central Pennsylvania Lumber Co. v. T. V. Ry., 51 I. C. C. 465; Schroeder Lumber Co. v. N. Y. C. R. R., 51 I. C. C. 473; Piqua Milling Co. v. Erie Railroad, 55 I. C. C. 239; Lowry Lumber Co. v. B. & M., 60 I. C. C. 739; Kirk & Co. v. C. & N. W. Ry. Co., 60 I. C. C. 491; Fred G. Clark Co. v. N. Y. C. R. Co., 81 I. C. C. 500; Republic Coal Co. v. C. & N. W. Ry. Co., 78 I. C. C. 375; Republic Coal Co. v. C. M. & St. P. R. Co., 87 I. C. C. 415; National Lumber Co. v. N. & W. Ry., 88 I. C. C. 357; Wallingford Coal Co. v. Director General, 89 I. C. C. 353.

§5. Fault of Shipper.

IMPORTANT CASES SINCE 1908

(a) Demurrage may properly be assessed for a detention for which the shipper is directly responsible and can avoid or abate. Lafayette Box Board & Paper Co. v. Director General, 59 I. C. C. 105, 107.

ALL OTHER CITATIONS

Tioga Coal Co. v. C., R. I. & P. Ry. Co., 18 I. C. C. 414, 415; Sage & Co. v. O. C. R. R. Co., 18 I. C. C. 16 195; Drummond & S. W. Ry. Co. v. C., St. P. M. & O. Ry. Co., 21 I. C. C. 567, 568; Metropolitan Lumber Co. v. C. R. R. Co. of N. J., Unrep. Op. A-60; Galveston Commercial Asso. v. A. T. & S. F. Ry. Co., 25 I. C. C. 216, 222; Duhlmeier Bros. v. Pennsylvania Co., 27 I. C. C. 4; Miller & Co. v. C. & N. R. R. Co., Unrep. Op. 1872; Lowry Lumber Co. v. B. & M., 60, I. C. C. 739, 740.

§5½. Heater Cars.

See Heater Cars.

IMPORTANT CASES SINCE 1908

(a) Complainant attacked the charges maintained for detention at Providence, R. I. of Eastman heater cars and lined box cars during the winter months as unreasonable and discriminatory. The charges, after the two-day free demurrage period, were $1.00 per car per day for two days, and $2.00 per car per day thereafter, in addition to demurrage at $1.00 per day. Irregularity in original shipment and delay in unloading resulted in delay averaging 4.44 days per car. HELD, that carriers had justified the charges assailed, which were neither unreasonable nor discriminatory. Complaint dismissed. Providence Fruit & Produce Exch. v. M. C. R. R., 36 I. C. C. 307.

§5¾. Late Diversion Orders.

See Reconsignment §5½.

IMPORTANT CASES SINCE 1908

(a) Complainant attacked the demurrage charged on 3 carloads of lumber forwarded from certain points in Louisiana and held in transit at Ramsey, Ill., for reconsignment, as unreasonable and illegal. Reconsignment orders were furnished within the free time allowed by the tariff for that purpose, directing shipment to Toronto, Ont., but as Toronto was at that time under a freight embargo, the carrier refused to reconsign though the tariff made no provision for the imposition of demurrage charges for detention of cars reconsigned to embargoed points. HELD, that the reconsignment should have been executed at once in accordance with the tariff and that the collection of demurrage was unreasonable and illegal. Reparation awarded. Higgins Lumber & Export Co. v. N. O. G. N. Ry., 51 I. C. C. 214.

(b) Demurrage accruing due to failure of complainant to give disposition orders in answer to telegraphic request after arrival of car at originally billed destination, found not unreasonable or otherwise unlawful. Lowry Lumber Co. v. B. & M. R. R., 60 I. C. C. 739.

ALL OTHER CITATIONS

Memphis Freight Bureau v. St. L. S. W. Ry. Co., 41 I. C. C. 470, 471; Parry v. L. & N. R. R. Co., 41 I. C. C. 623; Middle West Coal Company, v. C. & O. Railway, 41 I. C. C. 723; Webster v. N. O. & N. E. R. R., 45 I. C. C 566, 567; National Lumber Co. v. A. F. & S. R. R., 50 I. C. C. 133; Smith v. A. C. L. R. R., 50 I. C. C. 227; Schroeder Lumber Co. v. N. Y. C. R. R., 51 I. C. C. 473; L. H. Wheeler v. Hines, 55 I. C. C. 149; Northern Brokerage Co. v. Director General, as Agent, 60 I. C. C. 182, 184; Watters-Tonge Lumber Co. v. Director General, as Agent, 83 I. C. C. 512.

§6. One Shipment in Two Cars.

See Bills of Lading §5; Cars and Car Supply §7; Follow-Lot Shipments.

IMPORTANT CASES SINCE 1908

(a) Under a tariff rule which provides for the carload rate on any shipment which is more than one carload and less than two, under certain conditions, if the shipment is sent forward in two cars under a single bill of lading and it should happen that one car should be delayed so that it might be held for some time at destination awaiting the arrival of the other, demurrage charges will not accrue until the entire shipment covered by the bill of lading is delivered. Scudder v. T. & P. Ry. Co., 21 I. C. C. 60, 61, 62.

(b) But it has also been held in cases where delivery of less than an entire shipment is tendered, consignee has alternative of either releasing equipment by unloading portion offered for delivery or of paying charges prescribed for its detention. Darling & Co. v. P. C. C. & St. L. Ry. Co., 37 I. C. C. 401, 402.

ALL OTHER CITATIONS

Kay Co. v. D. & R. G. R. R. Co., 21 I. C. C. 238, 239; Hartford Canning Co. v. C., M. & St. P. Ry. Co., Unrep. Op. 288; Minter & Co. v. A. C. L. R. R. Co., Unrep. Op. A-635; Red Cedar Shingle Mfrs. Asso. v. M. & St. L. R. R. Co.,

Unrep. Op. A-880; Roy & Roy Mill Co. v. B. & M. R. R., 44 I. C. C. 523, 524.

§7. Order-notify Shipments.

See Bills of Lading V.

IMPORTANT CASES SINCE 1908

(a) In a typical case complainant had shipped to it canned tomatoes in carloads from Troutville, Va., to Birmingham, Ala., under an "order-notify' bill of lading containing the provision that "the surrender of this original order bill of lading, properly indorsed, shall be required before the delivery of the property." Upon arrival at destination consignee was given notice, but did not surrender the bill of lading for four days. Demurrage tariffs contained a provision that forty-eight hours' free time "when cars are held for loading or unloading, and but twenty-four hours free time "when cars are hel l for reconsignment or switching orders." HELD, demurrage was collectible after the expiration of twenty-four hours, because the free time for unloading was still allowable after the car had been placed in position for unloading at complainant's warehouse. Roden Grocery Co. v. A. G. S. R. R. Co., 21 I. C. C. 469.

(b) The placing of a car containing an order-notify shipment on a team track and the giving of notice to the consignee amounts to a discharge of the carrier's obligation in the matter of delivery, at least until the bill of lading is surrendered. Roden Grocery Co. v. A. G. S. R. R. Co., 21 I. C. C. 469, 471.

(c) Demurrage charges assessed on order-notify shipments found not unreasonable where cars were held pending receipt of other disposition orders and surrender of bills of lading and not for unloading on public team tracks, thus requiring an additional switching movement within the switching limits. Carrier was justified in declining to accept dsposition orders until bills had been surrendered or other satisfactory assurance given as complainant's title depended upon possession of the bills of lading properly indorsed. Alpirn v. Director General, as Agent, 62 I. C. C. 486.

(d) Order notify shipment went forward as straight shipment consigned to complainant, through carrier's error; complainant having no office at destination point. Several days after arrival, error discovered and correct consignee notified by delivering carrier. Consignee did not object to delay in delivery, but ultimately refused shipment, complainant afterward ordering shipment reconsigned to itself at another point. HELD: Proximate cause of accrual of demurrage, reconsignment, and charges for subsequent movement, was rejection of shipment by consignee and not error of defendants. Clark Co. v. N. Y. C. R. R. Co., 81 I. C. C. 500.

ALL OTHER CITATIONS

Harlow, Trustee, v. W. S. Ry. Co., 26 I. C. C. 511; Arnold & Co. v. T. & P. Ry. Co., 69 I. C. C. 81.

§7½. Penalty Charges.

IMPORTANT CASES SINCE 1908

(a) Penalty charges of $10 per car per day on lumber held for reconsignment beyond 48 hours after 7 a. m. of day following notice of arrival found not unreasonable or otherwise unlawful in the past. However, under present conditions with a great number of idle freight cars, and an entire absence of congestion throughout the country, the charge is, and while present conditions continue will be, unreasonable. American Wholesale Lumber Asso. v. Director General, as Agent, 66 I. C. C. 393.

ALL OTHER CITATIONS

Hollingshead Co. v. N. Y. C. R. R. Co., 73 I. C. C. 640; Central Wisconsin Supply Co. v. C., C. C. & St. L. Ry. Co., 74 I. C. C. 485; Lake Erie & Ft. Wayne R. R. Co., 78 I. C. C. 475, 488, 489.

§8. Pending Dispute or Demanding Advanced Charges.

See Infra §9.

CASES 1887-1908

(a) Defendant's railroad connects at Janesville, Wisconsin, with the Chicago, Milwaukee & St. Paul Railway. Complainant is a merchant doing business at that point and having coal yards on the line of the latter road, but receiving shipments from points on the line of the defendant road, and his financial responsibility is not questioned in this proceeding. Carriers operating in that section of the country are members of a car service association, which has established a rule requiring the payment of demurrage charges when cars are retained by shippers more than forty-eight hours after receiving notice that such cars are in position to reload. HELD, the action of the defendant in refusing to switch cars to complainant unless he would

agree to pay on advance any demurrage charges that might be assessed: whether enforceable or not was illegal. Reparation awarded. Macloon v. Chicago & Northwestern R. Co. 3 I. C. R. 711.

(aa) Defendants' established charge of $1 per day for car demurrage, HELD upon the record to be just and reasonable. T. M. Kehoe & Co. v. Charleston & W. C. R. Co., 11 I. C. C. 166.

IMPORTANT CASES SINCE 1908

(ab) Where the reasonableness of established rates is disputed the complainant is not entitled to a refund of demurrage charges which have accrued because of his refusal to accept delivery pending the settlement of the dispute. But if the delivering carrier demands more than the lawfully established rate the consignee is released from the obligation to pay demurrage while the dispute continues and reparation may be awarded to the extent of the demurrage charges so paid. Peller v. Penn. R. R. Co., 40 I. C. C., 84, 85.

(b) However it also has been held that demurrage charges on lumber consigned to Norfolk, Va., for "Belt Line delivery," but held short of destination by line-haul carrier for payment of freight charges and disposition orders before turning over to switching line, found unlawful. Cars were not delivered to the Belt Line to whom disposition orders were given and line-haul carrier failed to make inquiry of such Belt Line in respect thereto. Reparation awarded. Excelsior Shook & Lumber Co. v. S. A. L. Ry. Co., 66 I. C. C. 241.

(c) Where no rule is published requiring payment of transportation charges prior to turning shipments over to a delivering line, shippers are not on notice of any such practice or requirement. A shipper does all that is required when he notifies the delivering line shown in the billing, of such disposition of the cars as is desired, and to escape responsibility for failure to effect delivery called for, the line-haul carrier must clearly and unequivocally show that the delivering line had knowledge of the arrival of the cars and that they were being held for its account. Excelsior Shook & Lumber Co. v. S. A. L Ry. Co., 66 I. C. C., 241, 243, 244.

(d) Demurrage charges accruing during pendency of dispute as to the legal rate may be waived. Birmingham Commission Co. v. Director General, 74 I. C. C. 693, 694.

(e) Following Conf. Ruling 32, shipper released from the obligation to pay demurrage charges which accrued during the pendency of a dispute as to the legal rate. Birmingham Commission Co. v. Director General, as Agent, 74 I. C. C. 693, 694.

(f) Car moved with charges "collect." Before arrival at destination, consignor paid charges at origin point, but carrier failed to notify agent at destination of such payment, resulting in accrual of demurrage. HELD: Freight charges were prepaid in ample time for agent at destination to have been notified of this fact prior to arrival of car, and it was delivering carrier's refusal to release car until freight charges had been paid a second time, which resulted in accrual of demurrage. Refund directed. Central Wisconsin Supply Co. v. C., M. & St. P. Ry. Co., 80 I. C. C. 763.

(g) Where there is a dispute between the railroad company and the consignee of a car of goods consigned to the consignee, as to the amount of freight due by the consignee thereon, and the railroad company offers to deliver the car to the consignee on payment of the amount of freight admitted by him to be due, the consignee, in order to relieve himself of liability for delay in receiving and unloading the car, must pay the freight in accordance with the company's offer and a tender thereof by him to the company conditioned upon a promise by it not to thereafter attempt to collect from him any additional freight will not relieve him from liability for demurrage in event the company declines to make the promise and he, for that reason, declines to receive and unload the car. Lexington Compress & Oil Mill Co. v. Yazoo & M. V. R. Co., (Miss. 1923), 95 Sou. 92.

ALL OTHER CITATIONS

Dodds Lumber Co. v. C. R. I. & P. Ry. Co., Unrep. Op. 14; Beekman Lumber Co. v. St. L. S. W. Ry. Co., 14 I. C. C. 532, 534, 535; Coomes v. C., M. & St. P. Ry. Co., 13 I. C. C. 192, 195; Porter v. St. L. & S. F. R. R. Co., 15 I. C. C. 1, 5; Northern Lumber Mfg. Co. v. T. & P. Ry. Co., 19 I. C. C. 54, 55; Fisk & Sons v. B. & M. R. R., 19 I. C. C. 299, 300; Schulz Co. v. C., M. & St. P. Ry. Co., 20 I. C. C. 403; Jones Bros. Co. v. M. & W. R. R. R. Co., 21 I. C. C. 577, 580; Wheeler-Holden Co. v. L. & N. R. R. Co., 21 I. C. C. 237, 238; Platten Produce Co. v. C. & N. W. Ry. Co., 25 I. C. C. 30; In re

Weighing of Freight by Carriers, 28 I. C. C. 736; Charles Becker v. P. M. R. R. Co., 28 I. C. C. 645, 658, 659; Pine Belt Lum. Co. v. G .& S. I. R. R., 33 I. C. C. 117; Berrm v. I. H. B. R. R. Co., Unrep. Op. A-959; Independent Cooperage Co. v. N., C. & St. L. Ry. Unrep. Op. 2088; Foster Lumber Co. v. G. C. & S. F. Ry., 36 I. C. C. 241; Beekman Lum. Co. v. M. P. Ry., 37 I. C. C. 400; Natl. Clay Works v. M. & St. L. R. R., 38 I. C. C. 353; Fort Worth Elevators Co. v. A. T. & S. F. Ry. Co., Unrep. Op. 2235; Advance Lumber Co. v. A. B. & A. R. R., 40 I. C. C. 82; Godwin Lumber Co. v. I. C. R. R. Co., 42 I. C. C. 343, 344; Currie & Campbell v. C. R. R. of N. J., 45 I. C. C. 3; Alexander Brothers Lumber Co. v. P. M. R. R., 47 I. C. C. 69; Ewing & Co. v. Spokane Internat. Ry., 48 I. C. C. 415; Trexler Lumber Co. v. N. O. & N. E. R. R., 49 I. C. C. 121; Dulaney Brothers v. C. & A. R. R., 51 I. C. C. 579; Humphreys-Goodwin Co. v. V. S. & P. Ry. Co., 52 I. C. C. 148; Ruddock Orleans Cypress Co. v. Director General, 55 I. C. C. 236, 238; Central R. R. of N. J. v. Anchor Line, 219 Fed., 716; Whole Coal Trade Association of New York v. Director General, 58 I. C. C. 15, 16; Penick & Ford (Inc.) v. Director General, 61 I. C. C. 173, 176. New York Board of Trade v. Director General, 59 I. C. C. 205, 209; Lane Co. v. N. S. R. R. Co., 59 I. C. C. 715; A. B. Alpirn v. Director General, 62 I. C. C. 486.

§8½. Pooled Shipments.

See Pooling.

IMPORTANT CASES SINCE 1908

(a) The pool agreement provided that the demurrage assessed against each pool would be prorated among the members upon basis of the tonnage loaded into vessels. Later the demurrage on soft coal shipments was prorated on the basis of the tonnage standing to the credit of the various members of the pool. In some instances the demurrage charges thus apportioned against certain shippers were in excess of those which would have accrued in the absence of the pooling arrangements, and it is contended that such charges are not legally collectible from such shippers. When shippers became parties to the pools they lost their identity from a demurrage standpoint, and so far as the defendants are concerned they need not look beyond the billed consignee, the exchange, in determining the amount of the charges due. Wholesale Coal Trade Association of New York v. Director General, 58 I. C. C. 15-26.

ALL OTHER CITATIONS

Penick & Ford (Inc.), v. Director General, 61 I. C. C. 173, 176.

§9. Prior to Actual Delivery.

See Infra §12.

IMPORTANT CASES SINCE 1908

(a) Demurrage does not accrue, under a general demurrage tariff, against a car which has been offered for reconsignment to an embargoed point upon the general principle that demurrage is assessable for detention for which the shipper is directly responsible and can abate, while an embargo is placed by reason of the carriers' disability. But if the carrier specifically provides in its tariff that it will not reconsign to an embargoed point it does not hold itself out to perform such service while an embargo is in effect and the shipper must either resort to a service that the carrier does hold itself out to perform, such as reconsignment to a point not embargoed, or must hold the car at the expense of demurrage, a possibility which he assumed under the published tariffs when the car left point of origin. Reconsignment Case, 47 I. C. C. 590, 634.

(b) Demurrage does not accrue under a general demurrage tariff, against a car which has been offered for reconsignment to an embargoed point upon the general principle that demurrage is assessable for detention for which the shipper is directly responsible and can avoid or abate, while an embargo is placed by reason of the carrier's disability. Higgins Lumber & Export Co. v. N. O. & N. R. R., 51 I. C. C. 214, 215.

(c) It is a part of the implied contract duty of the carrier to place a car on the consignee's private track if he has one, and until it does so it has not performed its contract, and no freight or demurrage charges, although previously earned, are collectible. The contract of transportation by a common carrier includes placing the cars conveniently for loading and unloading. The incidental consignee can require the car to be placed at a convenient point for unloading and a reasonable opportunity therefor. When the consignee has his own track, and requires the car to be placed thereon for unloading, it is the duty of the transportation company to comply with

his requirement. In New York Central & Hudson River Railroad Company v. General Electric Company, 167 App. Div. 726, at page 732, 153 N. Y. Supp. 478, at page 482, it was said by this court, speaking through Mr. Justice Woodward: "We believe it may be laid down broadly that transportation by railroad of carload lots, under present day conditions, requires the convenient placing of the car for loading, and an equally convenient placing of the car for unloading, and that the mere question of whether the tracks are upon the property of the shipper or upon the right of way of the transportation company is of no consequence upon this point. Primarily it is the duty of the transportation company to afford sidings and a convenient place of loading or unloading, and a proper placing of the cars. If the shipper furnishes the sidings, it does not relieve the transportation corporation of the duty of conveniently placing the cars." Even if demurrage has accrued the carrier can not insist on its payment, or enforce its lien therefor until it has performed its contract by depositing on the track of the consignee the car, which until so deposited has not fully arrived at its destination. Lee v. Erie R. R. Co., 158 N. Y. S. 730, 733.

(d) Cars of coal consigned to Conneaut Harbor, O., on Lake Erie were held at Albion about 14 miles inland, due to congestion of freight there, and pending delivery to the consignee, HELD, that demurrage could not be charged on the cars held at Albion as they were held short of destination, in the absence of a tariff approved by the Interstate Commerce Commission authorizing such charge, and circumstances justifying it. Bessemer & L. E. R. Co. v. Ford Collieries Co., (Pa. 1922), 116 Atl. 802.

(e) Where a carrier under a rule of the Interstate Commerce Commission entitling it to demurrage on cars of coal held at a certain harbor at the terminus of its line "or intermediate storage yards for transshipment," sues for demurrage on cars consigned to such place, but held in transit at storage yards 14 miles therefrom, it must plead and prove such a rule, and that consignee did not have facilities at the dock to receive the freight during the time for which demurrage was claimed, demurrage ordinarily not beginning to accrue until after freights reached destination. Bessemer & L. E. R. Co. v. Ford Collieries Co., (Pa. 1922), 116 Atl. 802.

ALL OTHER CITATIONS

Carrizzo v. N. Y. S. & W. R. R. Co., 66 Misc. 243, 248, 123 N. Y. Sup. 173; Nebraska Transfer Co. v. C. B. & Q. R. R. Co., (Nebr. 1912), 134 N. W. 163, 166; Peale, Peacock & Kerr v. Central R. R. Co. of. N. J., 18 I. C. C. 25, 30; Munroe & Sons v. M. C. R. R. Co., 17 I. C. C. 27, 28; Crescent Coal & Mining Co. v. B. & O. R. R. Co., 20 I. C. C. 559; Kilburn Mills v. N. Y. N. H. R. R. Co., 22 I. C. C. 21, 22; Central R. R. of N. J. v. Hite, 166 Fed. 976, 978, 979; Ramsey-Wheeler Co. v. S. A. L. Ry., Unrep. Op. A-541; N. Y. N. H. & H. R. R. v. Porter, (Mass. 1915), 108 N. E. 499; Pittsmans & Dean v. G. T. Ry. Co. of Canada, Unrep. Op. 1930; Este. Co. v. A. C. L. 34 I. C. C. 469; Trexler Lumber Co. v. N. O. & N. E., 49 I. C. C. 121; Foster Lumber Co. v. G. C. & S. F. Ry. Co., 36 I. C. C. 241, 242; Terminal Freezing & Heating Co. v. P. R. R. Co., Unrep. Op. 2183; Iron Ore Rate Cases, 41 I. C. C. 181, 206; United States v. D. & R. G. R. R., 41 I. C. C. 712; Demurrage, 42 I. C. C. 126; Hudson Motor Car Co. v. M. C. R. R., 42 I. C. C. 1; United States v. Philadelphia & R. Ry. Co., 232, Fed. 953, 956; New York & New Jersey Produce Co. v. N. Y. C. R. R., 45 I. C. C. 203, 204; Hunter v. N. Y., N. H. & H. Ry., 166 N. Y. Sup. 237; Nichols & Cox Lumber Co. v. N. Y. C. R. R., 51 I. C. C. 174; Barber & Co. v. C. C. C. & St. L. Ry., 51 I. C. C. 194; Grain & Hay Exchange of Pittsburg v. P. Co., 51 I. C. C. 723; American Petroleum Products Co. v. Director General, 53 I. C. C. 427; Butterfield Co. v. N. O. N. E., 55 I. C. C. 741, 743; Holland Aniline Co. v. P., M. Ry., 55 I. C. C. 617; Butterfield Co. v. N. O. & N. E. R. R., 55 I. C. C. 741, 743; Empire Steel & Iron Co. v. Director General, 56 I. C. C. 158, 190; Roessler & Hasslacher Chemical Co. v. Director General, 56 I. C. C. 441; Texas Co. v. Director General, 57 I. C. C. 48; Wholesale Coal Trade Association of New York v. Director General, 58 I. C. C. 15, 26; George H. Ulary v. Pa. R. R. Co., 58 I. C. C. 430, 439, 440; Lane Co. v. N. S. R. R. Co., 59 I. C. C. 715; Kirk & Co. v. C. & N. W. Ry. Co., 60 I. C. C. 491; Union Bag & Paper Co. v. Director General, as Agent, 61 I. C. C. 424, 426, 427; Excelsior Shook & Lumber Co. v. S. A. L. Ry. Co., 66 I. C. C. 241, 243, 244; Oregon-Washington R. & Nav. Co. v. McGoldbrick Lumber Co., (Wash. 1922), 204 Pac. 1059; Farrin

Lumber Co. v. Director General, 68 I. C. C. 127; Vickers Petroleum Company v. Sand Springs Ry., 87 I. C. C. 676.

§9½. Refused Shipments.

See Demurrage §4.

IMPORTANT CASES SINCE 1908

(a) Upon arrival of shipment defendant wired complainant that consignee had refused delivery, and was advised to store. Defendant did not store promptly. HELD, demurrage should have terminated upon receipt of notice to store, and charges for storage under car demurrage rules the same as if the freight had remained in the car, found illegal. Piqua Milling Co. v. E. R. R., 55 I. C. C. 239.

§10. Private and Trap Cars.

See Private Cars; Trap Cars.

CASES 1887-1908

(a) Right to exact demurrage charges on cars used in transporting complainant's traffic while the cars are standing on a siding owned and operated by defendant, which was constructed by it for the sole use of complainant, is not affected by the fact that the cars are owned by the latter. Cudahy Packing Co., v. C. & N. W. Ry. Co., 12 I. C. C. 446

(b) Defendant's right to exact demurrage charges from complainant on cars used by defendant in transporting complainant's traffic while the cars are standing on a siding owned and operated by defendant, which was constructed by it for the sole use of complainant, is not affected by the fact that the cars are owned by the latter. Cudahy Packing Co. v. Chi. & Northwestern Ry. Co., 12 I. C. C. 446.

(c) Complainant attacked as unreasonable demurrage charges assessed on cars owned by complainant while on side track used by complainant. Complainant, at Deadwood, S. D., is on a spur track about 170 feet in length, which was constructed by defendant for the accommodation of complainant and which is maintained entirely at the expense of the railroad company. No other shipper desires to or could conveniently make use of this spur track, it really being a part of defendants facilities at Deadwood. Complainant desires to retain its refrigerator cars upon this spur track both before and after they are unloaded for an indefinite time without the payment of demurrage. The demurrages rules of defendant are duly filed and published. The fact that the track was constructed and maintained entirely at defendant's expense for the exclusive use of complainant would be no reason why the complainant should be relieved from payment. The construction and maintenance of this track is rather in the nature of a gift to the complainant, and certainly could not be made the basis of any exception in its favor. The more serious question is whether the Cudahy Company should be charged demurrage upon its own cars while standing upon this track. The purpose of demurrage is to compel the prompt unloading and release of cars, and this is not only for the purpose of securing the use of the equipment, but also of relieving the track upon which that equipment must stand. Indeed, the congestion of the terminal is often a more serious matter for the railway than the mere loss of the use of the car. It would appear reasonable, therefore, that railways should be allowed to charge demurrage upon private cars when standing upon the tracks of the railway, AND THE COMMISSION SO HOLDS. Cudahy Packing Company v. C. & N. W. Ry., 12 I. C. C. 446.

(d) The purpose of a demurrage charge is to compel the prompt unloading and release of cars, and this is not only for the purpose of securing the use of the equipment, but also of relieving the track upon which that equipment must stand. It would appear reasonable, therefore, that railways should be allowed to charge demurrage upon private cars when standing upon the tracks of the railway. Cudahy Packing Co. v. C. & N. W. R. Co., 12 I. C. C. 446, 447.

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(e) Private cars standing on tracks of owners shall not be subject to demurrage charges. In re Private Cars, 50 I. C. C. 652, 705, 710.

(f) But private cars standing on the private tracks of owners are not subject to demurrage charges. Western Petroleum Refiners Association v. A. & R. R. R., 66 I. C. C. 58, 59.

(g) The provision in the "Uniform Demurrage Code" permitting a railroad to make a demurrage charge against the private cars of the shipper after they have been delivered to him and are standing on his private tracks, is sustainable as a reasonable regulation to prevent a shipper from withdrawing such cars from service and thereby disturbing the car

supply of the carriers, which have relied upon the private cars as a part of their equipment. Proctor & Gamble Co. v. U. S., 188 Fed. 221, 228, sustaining 19 I. C. C. 556; reversed on other grounds, 225 U. S. 282, 32 Sup. Ct. 761, 56 L. ed. 1091. Hooker Knapp, 225 U. S. 302, 32 Sup. A. 769, 56 L. ed. 1099.

(h) Where private cars are still in railroad service while under lading and on a switch track owned by the railway the "transportation," within the meaning of the Act to Regulate Commerce, has not ended. It cannot be said that a charge for detention of a private car and use of a railroad track under such circumstances is unreasonable. Even before the adoption of the Uniform Demurrage Code such a charge had been upheld by the Interstate Commerce Commission. Cudahy Packing Co. v. Chicago & N. W. R. R., 12 Inters. Com. Rep. 446. Swift & Co. v. Hocking Valley Ry., 37 Sup. Ct. 287, 290, 291.

(i) A private switch track, which however is connected with the main line of a trunk line carrier, and is at all times under the control of the railway company, is not a "private track," and private cars on such track are in railroad service and subject to demurrage. Swift & Co. v. Hocking Valley Ry., 37 Sup. Ct. 287, 243 U. S. 281, 61 L. Ed. 122.

(j) Within a freight tariff provision making subject to demurrage charges private tracks of the owners of the cars, even when engaged in transportation of commodities produced by their owners, if they are then "in railroad service," such cars of defendant on a switch track, which under its contract with plaintiff railroad is to be considered as that of the railroad, are "in railroad service," and subject to such charges; they not only standing to interfere with the use of the track by the railroad allowed by the contract, but the railroad's obligation with respect to them not having ceased, in that it was obliged to haul them to the initial point, and pay wheelage thereon to defendant. St. Louis, I. M. & S. Ry. Co. v. National Refining Co., 226 Fed. 357, 358.

ALL OTHER CITATIONS

In Re Demurrage Charges on Privately Owned Cars, 13 I. C. C. 378, 381: Cambria Steel Co. v. B. & O. R. R. Co., 15 I. C. C. 484, 495; Proctor & Gamble v. C. H. & D. Ry. Co., 19 I. C. C. 556, sustained, 188 Fed. 221, 228, reversed on other grounds, 225 U. S. 282, 32 Sup. Ct. 761, 56 L. ed. 1091; Central Commercial Co. v. G. & S. I. R. R. Co., 23 I. C. C. 532; Lewis Mfg. Co. v. D. & R. G. R. R. Co., 32 I. C. C. 488, 489; Swift & Co. v. Hocking Valley Ry. Co. (Ohio 1915), 112 N. E. 212, 213; Woolson Spice Co. v. P. Co., 39 I. C. C. 583, 584, 585; National Refining Co. v. St. Louis, I. M. & S. Ry., 237 Fed. 347, 350; Pittsburgh C. C. C. & St. L. Ry. Co. v. Freedom Oil Works, 247 Fed. 573, 577; Swift & Co. v. Hocking Valley R. R., 37 Sup. Ct. 287, 243 U. S. 281, 61 L. Ed. 175.

§10½. Reasonableness.

CASES 1887-1908

(a) If the time allowed at Philadelphia, or other terminals, for loading or unloading is reasonable and that allowed at interior points is unreasonably small, then an undue prejudice to interior points in violation of section 3 of the law might result; and, if demurrage charges are made to commence before the expiration of a reasonable time for loading or unloading, this may be a violation of the provision of section 1 of the law, which directs "that charges made for any service rendered or to be rendered in the transportation of passengers or property, or in connection therewith, or for the receiving, delivering, storage, or handling of such property, shall be reasonable and just." Pa. Millers' State Asso. v. Phila. & R. Ry. Co., 8 I. C. C. 531.

IMPORTANT CASES SINCE 1908

(b) Demurrage charges should be prescribed sufficiently high to prevent congestion or to compensate carriers for such congestion. Mobile Chamber of Commerce v. M. & O. R. R. Co., 32 I. C. C. 272, 281.

(c) A demurrage charge in part represents compensation to the carrier for service and in part a penalty to prevent the undue detention of cars. Considered primarily as a penalty, charge of $2 can not be regarded as unreasonable. Wholesale Coal Trade Asso. v. Director General, as Agent, 58 I. C. C. 15, 29.

(d) The mere fact that in exceptional instances demurrage charges on cars held for loading but not used are greater than charges which would accrue for detention and transportation if loaded and switched to a destination a short distance beyond the loading point does not prove that the rule or charges thereunder are

unreasonable. Chattanooga Sewer Pipe & Fire Brick Co. v. B. Ry. Co. of C., 51 I. C. C. 447, 448.

(e) A penalty charge should not be so high as to work an undue hardship upon the shipper who must occasionally pay it, yet it should be sufficient in amount to accomplish the purpose for which it is intended. American Wholesale Lumber Assn. v. Director General, 66 I. C. C. 393, 397.

(f) Complainant attacked charges collected for storage from Dec. 15, 1919, to Feb. 29, 1920, at Bolton Station, Baltimore, Md., of fruits and vegetables arriving over the lines of the Pennsylvania as unjust, unreasonable and unduly prejudicial. About 70 per cent of the fruits and vegetables destined to Baltimore move by rail, practically all in carloads and over the Pennsylvania to its Bolton station. Prior to Feb. 15, 1919, the storage charge was 0.5c per 100 pounds for each day after 48 hours free time. On that date, this charge was increased to 2c per 100 pounds for each of the first five days after 48 hours free time, and 3c per 100 pounds for each day thereafter. Bolton station is a facility used by the carrier as an incident to its transportation service. Complainants shipments were stored in or on railroad premises. HELD, charges attacked not unreasonable or otherwise unlawful, complaint dismissed. Dashields & Co. v. Director General, 73 I. C. C. 225.

(g) The action of a terminal carrier, after it knew that the shipper was unlikely to give any orders for the disposition of the shipment, in keeping the goods on a flat car at a demurrage charge of $1 per day for 86 days was unreasonable and unnecessary, and it should have unloaded the shipment and released the car after a demurrage charge of not over 26 days. No. Pac. Ry. v. Pleasant River Granite Co., (Me. 1917), 102 Atl. 298.

ALL OTHER CITATIONS

In Re Advances in Demurrage, 25 I. C. C. 314, 325; Berwind-White Coal Mining Co. v. C. & E. R. R., 35 Sup. Ct. Rep. 131; 235 U. S. 371; 59 L. ed.; International Agricultural Corp. v. A. & W. P. R. R. Co., 32 I. C. C. 199, 201; Basin Supply Co. v. T. & F. S. Ry., 33 I. C. C. 157; Horton v. Tonopah & Goldfield R. Co., 225 Fed. 406, 411; Cabin Creek Consolidated Coal Co. v. C. H. & D. Ry. Co., et al., 52 I. C. C. 181; Lowry Lumber Co. v. Director General, 57 I. C. C. 145; Cumberland Glass Mfg. Co. v. Director General, 57 I. C. C. 439; Lowry Lumber Co. v. Director General, 58 I. C. C. 113; Wholesale Coal Trade Assn. v. Director General, as Agent, 58 I. C. C. 15, 26, 32, 34; Lowry Trade Assn. v. Director General, as Agent, 58 I. C. C. 113, 116; Lowry Lumber Co. v. Director General, as Agent, 59 I. C. C. 90; New York Board of Trade v. Director General, 59 I. C. C. 205, 211; Wharton Steel Co. v. Director General, 59 I. C. C. 613, 615.

§10⅝. Strikes.

See Strikes.

IMPORTANT CASES SINCE 1908

(a) The Commission has uniformly held that strikes which prevent shippers from loading or unloading cars afford no basis for relief from demurrage charges. Wholesale Coal Trade Assn. v. Director General, 58 I. C. C. 15,33.

ALL OTHER CITATIONS

Lehigh Valley Coal Sales Co. v. Director General, as Agent, 58 I. C. C. 76; Schaefer v. L. V. R. R. Co., 66 I. C. C. 549.

III. PUBLICATION AND TARIFFS.

See Storage §3; Tariffs.

§10¾. In General.

IMPORTANT CASES SINCE 1908

(a) The Commission is in duty bound to give full effect to every applicable tariff provision in determining whether demurrage charges in question accrued. United States v. D. & R. G. R. R. Co., 41 I. C. C. 712, 713.

(b) Demurrage can not be assessed unless specially provided for in tariffs. Schuhle's Pure Grape Juice Co. (Inc.), v. Director General, as Agent, 63 I. C. C. 129, 132.

ALL OTHER CITATIONS

New Orleans Storage Rules and Regulations, 28 I. C. C. 605, 607; Miller & Co. v. P. M. R. R. Co., Unrep. Op. A309; General Equipment Co. v. A. C. L. R. R. Co., 37 I. C. C. 620, 621; Higgins Lumber & Export Co. v. N. O. G. N. R. R., 51 I. C. C. 214; National Tube Co. v. P. C. C. & St. L. R. R. Co., 61 I. C. C. 590, 598; Sinclair Refining Co. v. Schaff, 275 Fed. 769; Southern Ry. Co. v. Buckeye Cotton Oil Co., (Miss., 1921), 89 Sou. 228; Davis v.

Greensboro Warehouse & Storage Co. (N. C., 1923), 120 S. E. 462.

§11. Obligation to File.

IMPORTANT CASES SINCE 1908

(a) Where a carrier provides in its tariff for reconsignment without any requirement for prepayment of freight or guaranty of the same, it may not lawfully charge demurrage for time during which it holds the shipment while parleying with its connections as to advancement of its freight charges. Beekman Lumber Co. v. St. L. S. W. Ry. Co., 14 I. C. C. 532, 534.

(b) Demurrage assessed without tariff authority on car detained at intermediate point through no fault of shipper, wrongfully imposed. Germain Co. v. N. O. & E. R. R. Co., 17 I. C. C. 22; Monroe & Sons v. Mich. Cent. R. R. Co., 17 I. C. C. 27.

(c) Where demurrage charges are imposed for detention of cars at a point other than that specified in the bill of lading, there must be definite tariff authority therefor. U. S. v. D. & R. G. R. R. Co., 18 I. C. C. 7, 9.

(d) It has been uniformly held by the Commission that a shipper or consignee may not be required to pay a demurrage charge, unless the carrier's tariffs provide for the same in clear and specific form and manner. Crescent Coal & Mining Co. v. B. & O. R. R. Co., 20 I. C. C. 559, 569.

(e) Demurrage charges assessed on fuel oil, in tank-car loads, held at Chicago, Ill., pending litigation respecting the right of possession thereof, found not to have been authorized by the defendant carrier's tariff and therefore were illegal and reparation awarded. Great Northern Refining Co. v. I. C. R. R. Co., 53 I. C. C. 431.

(f) Demurrage can not be assessed unless specifically provided for in the tariffs. Schuhle Pure Grape Juice Co. v. Director General, 63 I. C. C. 129, 132.

(g) Demurrage is a terminal charge for transportation within the meaning of section 6 of the Act of 1887, as amended by the Act of 1889, and of the Act of 1906, which requires the filing with the Interstate Commerce Commission and printing and keeping open for public inspection of schedules showing all the rates, fares, and charges for transportation. Lehigh Valley R. R. Co. v. U. S., 188 Fed. 879, 885.

(h) So terminal charges being part of transportation and demurrage charges being included in the term "terminal charges," the failure by a carrier to observe demurrage tariffs filed and published by it and the soliciting and receiving of concessions with respect to demurrage charges are misdemeanors for which a prosecution will lie under the Elkins Act of February 19, 1903, and the Hepburn Act of June 29, 1906. Lehigh Valley R. R. Co. v. U. S., 188 Fed. 879, 886.

(i) And where demurrage charges have been duly filed and published with the Interstate Commerce Commission, the carrier and the shipper can not by agreement between themselves cancel such charges on the ground that the carriers' tracks were torn up and the shippers' tracks were in bad condition, thereby causing delays, or on the ground that such charges were discriminatory between competing shippers, and where the carrier and shipper knowing the published demurrage charges cancel the same, they are criminally liable under the Interstate Commerce Act as amended by the Elkins Act of February 19, 1903, and the Hepburn Act of June 29, 1906. Lehigh Valley R. R. Co. v. U. S., 188 Fed. 879, 887.

(j) Demurrage charges should not have been assessed, under rule that carload freight for delivery to terminal carriers in Chicago switching district will not be delivered until freight charges are paid where joint through rate is in effect. Miller & Co. v. P. M. R. R. Co., Unrep. Op. A309.

ALL OTHER CITATIONS

U. S. v. D. & R. G. R. R. Co., 18 I. C. C. 7, 9; Peale, Peacock & Kerr v. Central R. R. Co. of New Jersey, 18 I. C. C. 25, 33; Tioga Coal Co. v. G. R. I. & P. Ry. Co., 18 I. C. C. 414, 415; Beekman Lumber Co. v. Louisiana Ry. & N. Co., 19 I. C. C. 343, 347; Crutchfield & Woolfolk v. S. P. Co., 24 I. C. C. 651, 655; General Equipment Co. v. A. C. L. R. R., 37 I. C. C. 620; Middle West Coal Co. v. C. & O. Ry. Co., 41 I. C. C. 723; Herb Bros. & Martin v. P. C. C. & St. L. Ry., 42 I. C. C. 583; Holland Aniline Co. v. P. M. Ry., 55 I. C. C. 617; Roessler & Hasslacher Chemical Co. v. Director General, 56 I. C. C. 441; Delp Grain Co. v. Director General, 59 I. C. C. 755.

IV. DEMURRAGE RULES.

§12. Construction in General.

IMPORTANT CASES SINCE 1908

(a) The primary object of demurrage regulations is to release cars after a certain period, not to reward a shipper for releasing them in less than that period. Peale, Peacock & Kerr v. C. R. R. Co. of N. J., 18 I. C. C. 25, 32.

(b) In the framing of demurrage regulations the object sought is the prompt release of cars. It is not intended that they should be so liberal as to defeat the end sought to be attained, but their purpose is to stimulate a shipper to aid the carrier in serving all shippers. Peale, Peacock & Kerr v. C. R. R. Co. of N. J., 18 I. C. C. 25, 36.

(c) The average agreement provided for termination "if payment unnecessarily delayed or declined." By reason of a flood at Dayton, embargo was placed. When embargo lifted, cars were bunched and could not be unloaded within free time. Demurrage accrued and payment refused, whereupon agreement was terminated. HELD, as rules made no provision for detention on account of bunching resulting from an act of God, charges lawfully accrued and carrier justified in terminating agreement. Davis Sewing Machine Co. v. P. C. C. & St. L. R. R., 51 I. C. C. 191.

(d) Demurrage charges assessed on order-notify shipments found not unreasonable where cars were held pending receipt of other disposition orders and surrender of bills of lading and not for unloading on public team tracks, thus requiring an additional switching movement within the switching limits. Carrier was justified in declining to accept disposition orders until bills had been surrendered or other satisfactory assurance given as complainant's title depended upon possession of the bills of lading properly indorsed. Alpirn v. Director General, as Agent, 62 I. C. C. 486, 488.

(e) Demurrage and storage charges on cars specifically ordered to public delivery tracks but held in storage yard because public delivery tracks occupied, found to have been illegally assessed. Tariffs made no provision for constructive placement of cars ordered to public delivery tracks and there were no other tracks available to consignee upon which delivery could have been made as contemplated by the tariff rules. Refund directed. Schuhle's Pure Grape Juice Co. (Inc.) v. Director General, as Agent, 63 I. C. C. 129.

(f) Shipment arrived and was unloaded and stored on ground at carrier's yards. Demurrage assessed after expiration of free time pending written request to unload, as provided in tariff. Contention that assessment of demurrage charges when shipment was stored on ground was unreasonable and that storage charges should have applied, not sustained, following Kidston & Co., 74 I. C. C. 135. International Steel Corp. v. P. R. R. Co., 77 I. C. C. 381.

(g) Demurrage charges at Detroit, Mich., computed from time of placement on complainant's tracks when cars could not be spotted for unloading because of complainant's inability to receive at unloading point, found applicable and not unreasonable or otherwise unlawful. Sibley Lumber Co. v. Director General, as Agent, 77 I. C. C. 415.

(h) Assessment by line-haul carriers of demurrage on cars delivered or placed for loading at complainant's plant at Pittsburgh & Ohio Valley Ry., herein found a common carrier subject to the act, computed from time cars are placed on Valley's interchange tracks until returned thereto, found unlawful. Demurrage rules and charges of the Valley found applicable. Carnegie Steel Co. v. Director General, as Agent, 80 I. C. C. 269, 274.

(i) Following Birmingham Southern case, 61 I. C. C., 551, assessment of demurrage under uniform demurrage code against Valley & Siletz R. R. Co., for use or detention of foreign cars on its line found unreasonable and basis for payment prescribed. Valley & Siletz R. R. Co. v. S. P., 80 I. C. C. 724.

(j) Where storage tracks of a railroad for cars billed to Chicago for reconsignment are at Hammond, Ind., a considerable distance from the terminals of the company nearer the center of the city, but convenient to the Belt Line by which cars can be transported to any desired new destination, and the holding on such tracks of cars consigned is in accordance with contracts which had existed for more than twenty years, the contention that the cars have not reached their destination so as to be subject to the demurrage charge is frivolous. Berwind-White Coal Mining Co. v. C. & E. R. R., 35 Sup. Ct. Rep., 131, 132, 235 U. S. 371, 59 L. Ed.

(k) Tariff containing provision that carload freight for delivery on connecting lines which performs a switching service only will not be delivered to such connecting line until all charges are paid, found unreasonable and reparation awarded. Iglehart v. P. R. R. Co., Unrep. Op. A228.

ALL OTHER CITATIONS

Fish & Solomon v. P. R. R. Co., Unrep. Op. A-99; Michigan Mfrs. Assn. v. P. M. R. R. Co., 31 I.C.C. 131,132; Scattergood & Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-865; Jewett v. C. B. & Q. R. R. Co., Unrep. Op. A-878; Basin Supply Co. v. T. & F. S., 35 I. C. C. 157, 159; Fitzgerald Co. v. B., R. & P. Ry. Co., Unrep. Op. 1985; New Jersey Zinc Co. v. C. Ry., of N. J., 36 I. C. C. 289; Jewett, Bigelow & Brooks v. C. H. & D. Ry., 36 I. C. C., 655; Standard Lbr. Co. v. A. & W. P. R. R., 37 I. C. C. 716; Levenson Wrecking Co. v. New York Cent. & H. R. R. Co. (Sup. Ct. 1915), 156 N. Y. 656, 657; Beekman Lumber Co. v. M. P. Ry. Co., 37 I. C. C. 400; Heyser Lumber Co. v. K. & W. V. R. R. Co., 37 I. C. C. 609; Reiss Coal Co. v. A. A. R. Co., 38 I. C. C. 337; National Clay Works v. M. & St. L. R. R. Co., 38 I. C. C. 353, 354; Pittsburgh & Ohio Mining Co. v. B. & O. R. R. Co., 40 I. C. C. 408, 409; American Creosote Works v. I. C. R. R. 41 I. C. C. 751; New York & N. J. Produce Co. v. N. Y. C. R. R., 45 I. C. C. 203; Bayway Chemical Co. v. C. R. R. Co. of N. J., 46 I. C. C. 424; Alexander Lumber Co. v. P. M. R. R., 47 I. C. C. 69; Michigan Cent. R. R. v. United States, 246 Fed. 353; Lunham & Moore v. C. R. R. of N. J., 48 I. C. C. 611; N. Y. & N. J. Produce Co. v. N. Y. N. H. & H. R. R. 49 I. C. C. 93; Schaefer & Son v. L. I. R. R., 49 I. C. C. 580; National Lumber Co. v. A. F. & S. R. R., 50 I. C. C. 133; Barber & Co. v. C. C. C. & St. L. Ry., 51 I. C. C. 194; Chattanooga Sewer Pipe & F. B. Co. v. Belt Ry., 51 I. C. C. 447; Central Pa. Lumber Co. v. T. V. Ry., 51 I. C. C. 465; Higgins Lumber & Export Co. v. N. O. G. N. R. R., 51 I. C. C. 214, 215; Grain & Hay Exchange of Pittsburgh v. P. Co., 51 I. C. C. 723; Keystone Warehouse Co. v. P. R. R. Co., 53 I. C. C. 335, 3337, 431, 432; Northport Smelting & Refining Co. v. G. N. Ry. Co., 53 I. C. C. 641; Aetna Explosives Co. v. P., C., C. & St. L. R. R. Co., 53 I. C. C. 707; Great Northern Refining Co. v. Illinois Central, 53 I. C. C. 431, 432; Wheeler v. Director General, 55 I. C. C. 149; Piqua Milling Co. v. E. R. R., 55 I. C. C. 239; Kansas City Southern Ry. Co. v. Ft. Smith Compress Co., (Ark. 1919), 210 S. W. 147; Pennsylvania R. Co. v. Kittanning Iron & Steel Mfg. Co., (Pa. 1919), 106 Atl. 207; Wholesale Coal Trade Assn. v. Director General, as Agent, 58 I. C. C. 15, 26, 27, 28; Trade Asso. v. Director General, 58 I. C. C. 15, 29; Lowry Lumber Co. v. Director General, as Agent, 59 I. C. C. 90, 91; Central R. R. of N. J. v. Anchor Line, 219 Fed. 716; New York Board of Trade v. Director General, 59 I. C. C. 205, 209, 211; Regulations for Payment of Rates and Charges, 59 I. C. C. 456; Washburn Crosby Co. v. Director General,, 60 I. C. C. 157; Mount Hood R. R. Co. v. Director General, as Agent, 60 I. C. C. 116; National Tube Co. v. P., C., C. C. & St. L. R. R. Co., 61 I. C. C. 590, 598; Dodge Bros. v. Director General, as Agent, 62 I. C. C. 689, 692; Superior & Southeastern Ry. v. Director General, 63 I. C. C. 431; Vim Motor Truck Co. v. Director General, as Agent, 64 I. C. C. 588; Virginia Iron, Coal & Coke Co. v. Director General, as Agent, 69 I. C. C. 501; Bartlesville Zinc Co. v. Director General, 74 I. C. C. 26; F. M. Sibley Lumber Co. v. Director General, 77 I. C. C. 415; General Petroleum Corp. v. Director General, as Agent, 80 I. C. C. 53; Demurrage Rules on Coal and Coke, 89 I. C. C. 230.

§12½. Act of God.

IMPORTANT CASES SINCE 1908

(a) Cars delivered to a shipper for loading and unloading do not cease to be held for those purposes from the fact that the time of holding is extended by an act of God. Mount Hood R. R. Co. v. Director General, as Agent, 60 I. C. C. 116, 118.

(b) The duty of an interstate shipper to load cars within the free time given by the tariffs, and the obligation to pay demurrage for their detention, are, in considering the effect of an act of God, to be classified with those imposed by law, and where a storm which destroyed a bridge on a logging road and prevented the return of cars taken over it for loading within the free time was of such extraordinary character that it should be called an act of God, it relieved the shipper for liability for demurrage. Southern Ry. Co. v. White, 284 Fed. 560.

§13. Average Demurrage Plan.

See Average Demurrage Plan.

IMPORTANT CASES SINCE 1908

(a) Substitution of detention has been amply provided for in every instance where the average agreement is in effect. Meeker v. C. R. R. Co. of N. J., 46 I. C. C. 657, 658.

(b) One of the purposes of the average agreement is, by credits for cars promptly released, to take care of detention caused by bunching and weather interference. Davis Sewing Machine Co. v. P. C. C. & St. L. R. R., 51 I. C. C. 191, 193.

(c) The Cummins amendment to the Act to Regulate Commerce cited as prohibiting any limitation of liability on the part of a carrier, has no application to a question of average demurrage agreement providing that a shipper electing to take advantage of the average agreement is not exempted from payment of demurrage caused by bunching of cars. E. E. Delp Grain Co. v. Hines, 55 I. C. C. 175, 176.

(d) Practice of trunk lines in assessing demurrage predicated upon the time of placement upon interchange tracks and individually applying the average rule, instead of using as a basis the time of placement on the loading and unloading tracks and applying the average rule to the combined cars of all lines, found unduly prejudicial. Reparation awarded. Empire Steel & Iron Co. v. Director General, 56 I. C. C. 158, 190, 191.

(e) The average agreement, so called, is merely a reaffirmation of a continuing obligation resting under the act on the part of the consignor or consignee to observe demurrage regulations and to pay demurrage charges. If it were not entered into the consignor or consignee would be required, under the act, to pay the higher demurrage charges legally assessable under the so-called demurrage plan. Demurrage charges are in the nature of a penalty, and are not fairly comparable with ordinary contracts. Lehigh Valley Coal Sales Co. v. Director General, 58 I. C. C. 76, 80.

(f) The average rule refers specifically only to detention of cars held by shippers or receivers for loading or unloading, and complainant contends that the rule does not authorize the assessment of the charges, as the cars were not held for those purposes. But the cars which are delivered to a shipper for loading or unloading do not cease to be held for those purposes within the meaning of the rule from the fact that the time of holding is extended by an act of God. Mount Hood Ry. Co. v. Director General, 60 I. C. C. 116, 118.

(g) The assessment of average demurrage is a concession from the straight demurrage charge and is a privilege or option extended on the part of the carrier. Penick & Ford v. Director General, 61 I. C. C. 173, 177.

(h) Where, pursuant to the provisions of such tariff schedules so filed, an "average agreement" is entered into by the carrier and a consignee, whereby demurrage charges for the detention of cars by such consignee are computed at the end of each calendar month and credits for cars promptly released by the consignee are offset against debits for those detained, which agreement further provides that the consignee should not be entitled to the benefit of certain exemptions from demurrage charges specified in the tariff, including detention caused by weather conditions preventing unloading of cars, and by reason of bunching of cars in delivery to the consignee due to the neglect of any railroad company, the consignee is not relieved from paying demurrage upon cars detained by him beyond the allotted time resulting from a delivery of cars in accumulated numbers, which bunching of cars was caused "by conditions created by heavy snowfall, severe storms, and protracted intensely cold weather;" such conditions not having been specified as a ground of exemption therefrom in such agreement, read in connection with such tariff schedules. Anthony Carlin Co. v. Hines, (Ohio 1923), 140 N. E. 99.

(i) In suit to recover demurrage, where defendant's bookkeeper, who had complete charge of disposition of incoming freight, entered into an average demurrage agreement with plaintiff and executed it in defendant's name per himself, and it could be found from the evidence that the bookkeeper was either authorized to make the agreement or his act was afterwards ratified by defendant, defendant's request for binding instructions was properly overruled. Davis v. Carroll-Porter Boiler & Tank Co., (Pa. 1923), 119 Atl. 742.

ALL OTHER CITATIONS

Washburn-Crosby Milling Co. v. Sou. Ry. Co., 22 I. C. C. 465; Galveston Com-

mercial Assn. v. A. T. & S. F. Ry. Co., 25 I. C. C. 216, 231; Alan Wood, Iron & Steel Co. v. P. R. R. Co., 24 I. C. C. 27; Scanton & Lehigh Coal Co. v. L. V. R. R. Co., Unrep. Op. A459; Michigan Mfrs. Asso. v. M. P. R. R. Co., 31 I. C. C. 329, 335; Nat. Casket Co. v. S. Ry. Co., 31 I. C. C. 678, 695; Picher Lead Co. v. St. L. & S. F. R. R., 35 I. C. C. 45; Plymouth Coal Co. v. D. L. & W. R. R., 36 I. C. C. 76; Woolson Spice Co. v. Penn. R. R., 39 I. C. C. 583; Pittsburg Crucible Steel Co. v. Penn. Co., 41 I. C. C. 706; Castner, Curran & Bullitt (Inc.), v. P. Co., 42 I. C. C. 3; Schaeffer & Son v. L. I. R. R., 49 I. C. C. 580; Northport Smelting & Refining Co. v. G. N., 53 I. C. C. 641; American Smelting & Refining Co. v. L. V., 56 I. C. C. 195-197; New Orleans Refining Co. v. La. Ry. & Nav. Co., 55 I. C. C. 131; Delp Grain Co. v. Director General, 55 I. C. C. 175; Pennsylvania R. Co. v. Kittaning Iron & Steel Mfg. Co., Ct. 532; Wholesale Coal Trade Asso. v. Director General, as Agent, 58 I. C. C. 15, 29, 30; New York Board of Trade v. Director General, 59 I. C. C. 205, 210; National Tube Co. v. P. C. C. & St. L., 61 I. C. C. 590; Union Bag & Paper Co. v. Director General, as Agent, 61 I. C. C. 424, 427, 431; Southern Ry. Co. v. Buckeye Cotton Oil Co., (Miss. 1921), 89 Sou. 228; Atlantic Bitulithic v. M. P. & Ry., 87 I. C. C. 687.

§14. Bunching.

IMPORTANT CASES SINCE 1908

(a) There is nothing unreasonable or unlawful about a tariff rule which provides that in the event of the carrier's bunching a shipper's cars and delivering them in excess of the shipper's facilities and ability to load or unload, demurrage will not accrue. American Creosoting Works v. I. C. R. R. Co., 15 I. C. C. 160, 164.

(b) Unreasonable delays in transportation should not cause demurrage to accrue. Lynah & Read v. B. & O. R. R. Co., 18 I. C. C. 38, 46.

(c) The fact that two carloads are shipped on one day and one the next from the same point of shipment to the same destination, and one car arrives on one day and two on the subsequent day, does not constitute bunching within the meaning of the demurrage rules. Northern Wisconsin Produce Co. v. M. St. P. & St. Ste. M. Ry. Co., 21 I. C. C. 197, 198.

(d) Demurrage charges on carloads of zinc ore at Jersey City, N. J., not exported because of war conditions, not found unreasonable. New Jersey Zinc Co. v. C. R. R. Co. of N. J., 36 I. C. C. 289.

(e) Demurrage rules under which demurrage accrued on three carloads of castings and lumber at East Moline, Ill., not found unreasonable, there being no showing that it was practicable for complainant to finish unloading within the free time allowed; although defendant did not deny that its tracks were congested, or that some of the delay in constructing additional tracks was avoidable on its part. Deere & Co. v. C. M. & St. P. Ry. Co., 40 I. C. C. 533, 534.

(f) Complainant attacked demurrage charges on 78 cars moving interstate to Lockport, N. Y., and offered for delivery and delivered at that place by the Erie between Nov. 16 and Dec. 31, 1918, as unreasonable due to the failure of defendant to place the cars in order of arrival. Actual placement was accomplished when defendant placed the cars for unloading by certain doors of complainants buildings on its switch. When on constructive placement cars were held on defendants nearby switches. They were all actually placed for unloading during December, 1918. Demurrage charges were correctly computed. It appears that complainant did not desire to have shipments placed on its siding except upon specific request from it. When the shipments arrived defendants car clerk notified complainant by telephone of arrival and also sent written notice. No car was switched to actual placement except on direction from the complainant and complainants direction for such placement usually specified the number of the car it wished placed. It is not shown that any direction of complainant for the placement of cars was not executed as given. HELD, demurrage charges lawfully assessed, complainant dismissed. Upson Co. v. Erie Railroad, 69 I. C. C. 483.

(g) Under provision of a demurrage tariff for extra free time in case of bunching, as the direct result of the act or neglect of the carriers, bunching as the result of the consignee's previous fault in not accepting will not avail. Michigan Cent. R. R. v. United States, 246 Fed. 353.

(h) A private switch track is "full" within the meaning of a provision in the carrier's rules relating to car service and

demurrage charges that "the delivery of cars to private tracks shall be considered to have been placed on the tracks designated, or, if such track or tracks be full, when the road offering the cars would have made delivery had the condition of such tracks permitted," where, although such switch track would hold more cars, there were upon it all the cars that the consignee, as it used the track, could handle and unload, and the consignee did not ask for more. Menasha Paper Co. v. C. & N. W. Ry. Co., 36 Sup. Ct. 501; 241 U. S. 55; 60 L. ed. 885.

(i) Coal was bunched in transit, due to flood conditions. Demurrage collected while awaiting reconsignment was not unreasonable. Reeves Coal Co. v. L. & N. R. R. Co., Unrep. Op. 2110.

ALL OTHER CITATIONS

Brooklyn Cooperage Co. v. I. C. R. R. Co., 22 I. C. C. 358; American Creosoting Works v. I. C. R. R. Co., 15 I. C. C. 160, 163; Alan Wood Iron & Steel Co. v. P. R. R. Co., 24 I. C. C. 27, 31; Metropolis Lumber Co. v. L. I. R. R. Co., Unrep. Op. A414; American Hay Co. v. C. V. Ry. Co., 29 I. C. C. 659; Michigan Mfrs. Asso. v. P. M. R. R. Co., 31 I. C C. 329, 335; Crow's Nest Pass Coal Co. v. G. N. Ry. Co., 32 I. C. C. 479; Five Per Cent Case, 31 I. C. C. 351, 412; American Radiator Co. v. L. V. R. R., 44 I. C. C. 361; Davis Sewing Machine Co. v. P. C. C. & St. L. R. R., 51 I. C. C. 191; Cumberland Glass Mfg Co. v. Director General, 57 I. C. C. 439; Lehigh Valley Coal Sales Co. v. Director General, 58 I. C. C. 76; Payne v. White House Lumber Co. (Tex. 1921), 231 S. W., 417; Carnation Milk Products Co. v. Director General, as Agent, 66 I. C. C. 553; Virginia Iron Coal & Coke Co. v. Director General, 69 I. C. C. 501; Allied Machinery v. Director General, as Agent, 81 I. C. C. 204.

§14¼. Constructive Placement.

IMPORTANT CASES SINCE 1908

(a) Demurrage tariff provided for constructive placement when delivery can not be made "on account of act or neglect of consignee or inability of consignee to receive," and that in such circumstances "delivery will be considered to have been made when cars were tendered." HELD: Unless actual tender is made or consignee has informed carrier that no more cars can be received, rule requires carrier to place cars to full extent of consignee's physical capacity to receive them. Union Bag & Paper Co. v. Director General, as Agent, 61 I. C. C. 424, 426.

(b) Complainant attacked certain demurrage charges collected on carloads held short of destination under constructive placement at various points more or less distant from Fenimore, N. Y. Original decision 61 I. C. C. 424. The case was reopened. If in this case the evidence shows that the complainant could have received and unloaded more cars had they been actually instead of constructively placed, it follows that the demurrage debits and the resulting charges must be adjusted accordingly. HELD, the large accumulation of cars on constructive placement was directly due to the fire and resulting chaotic conditions within the plant up to August 9th; and that for period subsequent to that date defendant was justified in assuming that complainants unloading capacity was no greater than that demonstrated by its daily performances during the period in question. HELD, the demurrage charges contemplated by the former finding were lawfully assessed and collected. The demurrage rules provide that the placing of recent arrivals ahead of previous arrivals will be construed as a railroad error. The report in this respect will therefore be modified, and defendant should refund the amount in excess of the demurrage which would have accrued but for such error. Union Bag & Paper Corp. v. Director General, 69 I. C. C. 711.

(c) Constructive placement of a car is a fiction. It is effective only under the conditions prescribed in the demurrage code, which conditions were made and published by the carriers. They must accordingly find a way to determine in each case whether, when they place a car constructively, such placement is due to the act, neglect, or inability of the consignee to receive it. Union Bag & Paper Corp. v. Director General, 69 I. C. C. 711, 714.

(d) Following Union Bag & Paper Corp., 61 I. C. C., 424, 69 I. C. C., 711, in computing demurrage on shipments constructively placed, consignee should be allowed credit for the time necessary to transport cars from point of constructive placement to point of final placement. International Paper Co. v. Dir. Gen., as Agent, 74 I. C. C. 34, 37.

(e) Failure of carrier to give written

notice of constructive placement, as provided in the demurrage rules, found not the proximate cause of delay in receiving and unloading cars. Severe weather and labor troubles resulted in accumulation of cars at plant of complainant who had actual notice of such constructive placement and acquiesced in the absence of written notice. Since there was substantial, if not literal, compliance with the rules, demurrage charges found not illegally assessed. International Paper Co. v. Dir. Gen., as Agent, 74 I. C. C. 34, 37.

(f) Where cars are constructively placed and written notice thereof is given by defendant, in conformity with the governing tariffs, the free time on such shipments should be computed from the first 7 a. m. after notice is furnished instead of the first 7 a. m. after arrival of the cars at point of constructive placement. International Paper Co. v. Director General, as Agent, 74 I. C. C. 37.

(g) Demurrage charges assessed on shipments constructively placed at points on connecting lines, due to inability of consignee to accept delivery are not unreasonable or unlawful. Newton Oil Mill v. Director General, 74 I. C. C. 113, 115.

(h) Notices of arrival of bituminous coal at Allentown, Pa., were promptly mailed by carrier. Cars were held under constructive placement, written notices of which were sent but receipt thereof denied. Complainant's officers were in daily communication with carrier's yardmaster, who in telephone conversations gave them notice of number of cars on hand. Demurrage charges assessed found not unreasonable or unlawful, except to extent they exceeded those which would have accrued if shipments had been actually placed in order of arrival as provided in the demurrage tariff. Lehigh Silk Dyeing Co. v. Director General, as Agent, 77 I. C. C. 39.

(i) Upon reconsideration, finding in former report, 74 I. C. C., 34, modified to hold that certain shipments referred to therein as actually placed should be treated as constructively placed, and that demurrage charges assessed were not unreasonable or otherwise unlawful. Complainant had actual notice of constructive placement and acquiesced in absence of written notice. International Paper Co. v. Director General, as Agent, 80 I. C. C. 135.

ALL OTHER CITATIONS

Union Bag & Paper Co. v. Director General, as Agent, 61 I. C. C. 424, 427; Alpirn v. Director General, 62 I. C. C. 486, 488; Upson Co. v. E. R. R. Co., 69 I. C. C. 483; Baltimore Trust Co. v. Director General, as Agent, 74 I. C. C. 22; Newton Oil Mill v. Director General, 74 I. C. C. 113, 115; International Paper Co. v. Director General, as Agent, 74 I. C. C. 135; Chicago, St. P. M. & O. Ry. Co. v. New Dells Lumber Co., (Wis., 1924), 197 N. W. 713 (State Shipment).

§14½. Congestion or Delay Because of War.

See Demurrage §16.

IMPORTANT CASES SINCE 1908

(a) The word "tendered" as used in constructive placement provision of demurrage tariff construed to require that shipments be tendered for delivery at billed destination, or, at most, at a point reasonably adjacent to such destination. Union Bag & Paper Corp. v. Director General, as Agent, 61 I. C. C. 424, 427.

(b) Vessel on which space engaged commandeered by Government while shipments in transit. While effort was being made to secure space on other vessels, shipments unloaded and stored in order to release equipment. Demurrage and storage charges assessed found not illegal, unreasonable, or unduly prejudicial, as governing tariff did not limit the causes which may contribute to failure of a vessel to make its scheduled sailing. Dodge Bros. v. Director General, as Agent, 62 I. C. C. 689.

(c) Contention that shipments were detained at port as result of action of government in commandeering vessels on which space was engaged, and that no demurrage should have been assessed during time when the lines of defendant carriers were being operated by a federal agency, not sustained, as governing tariff did not limit the causes which may contribute to failure of a vessel to make its scheduled sailing. Dodge Bros. v. Director General, as Agent, 62 I. C. C. 689, 690, 691.

ALL OTHER CITATIONS

Adam v. I. C. R. R. Co., 41 I. C. C. 685; Kansas City Southern Ry. Co., v. Fort Smith Compress Company, (Ark. 1919), 210 S. W. 147; United Shoe Machinery Corporation v. Pa. R. R., 55 I. C. C. 253; James S. Kirk & Co. v. C. & N. W., 60 I. C. C. 491.

§14¾. Deviation from Route.

IMPORTANT CASES SINCE 1908

(a) The fact that the carrier deviated from the route designated in the bill of lading did not relieve the shipper from demurrage charges imposed by the tariff for failure to unload within the prescribed time after arrival at destination. Minneapolis, St. P. & S. S. M. Ry. Co. v. Reeves Coal Co., (Minn. 1921), 181 N. W. 335, 345.

(b) Under railroad's rules, made part of agreement between carrier and consignee, HELD that, where consignee's regular unloading track was occupied by loaded cars used for ballast purposes during a flood, carrier could make constructive placement by actually delivering the incoming cars at other points in consignee's yards instead of giving notice, but that the option belonged to it and not to the consignee. Chicago, St. P., M. & O. Ry. Co. New Dells Lumber Co. (Wisc., 1924), 197 N. W. 713. (State Shipment.)

§15. Free Time.

CASES 1887-1908

(a) It is held that 48 hours is an unreasonably small allowance of time for unloading where any portion of it has to be consumed in attending to the preliminaries necessarily antecedent to the actual process of unloading, and it is ordered that as to grain, flour, hay, and feed consigned to and deliverable at interior points in the territory of the Philadelphia Car Service Association, the defendants cease and desist from charging demurrage until the expiration of a reasonable time for unloading after the cars have been placed for unloading and notice of such placing has been given the consignee or other proper party. It is further held that 48 hours will be a reasonable time for the actual unloading. Pa. Millers State Asso. v. Phila. & R. Ry. Co., 8 I. C. C. 531.

(b) Complainant attacked as unjust and unreasonable and unduly discriminatory car service rules providing at interior points $1.00 per car for each day or fraction of a day said car may be detained over 48 hours in unloading or loading, while on cars loaded with coal, coke, pig iron or iron ore, delivered at interior points, 72 hours are allowed for loading or unloading, 96 hours at Philadelphia. There is no violation of section 2 of the act shown in this case in the application of the rule allowing 96 hours for unloading cars at Philadelphia; neither is there any violation of that section in the facts, that on all other commodities beside those to which the 96 hour rule is applied, only 48 hours are allowed at Philadelphia and on coal, coke, pig iron, and iron ore 72 hours are allowed at interior points, while only 48 hours are allowed on other traffic at interior points. Section 2 prohibits unjust discrimination in the transportation of a like kind of traffic and does not apply where the traffic is of different kinds of classes not competitive with each other. HELD, 48 hours is an unreasonably small allowance of time for unloading where any portion of it has to be consumed in attending to the preliminaries necessarily incident to the actual process of unloading, and it is ordered that as to grain, flour, hay, and feed consigned to and deliverable at interior points in the territory of the Philadelphia Car Service Association, the defendants cease and desist from charging demurrage until the expiration of a reasonable time for unloading after the cars have been placed for unloading and notice of such placing has been given the consignee or other proper party. HELD, further, 48 hours will be a reasonable time for the actual unloading. Pennsylvania State Millers' Asso. v. P. & R. R. Co., 8 I. C. C. 531.

IMPORTANT CASES SINCE 1908

(c) The public is entitled to a reasonable time in which to load or unload, which should not be shortened because of adverse weather conditions. Murphy Bros. v. N. Y. C. & H. R. R. Co., 21 I. C. C. 176, 177.

(d) The transportation rate contemplates a certain free time within which to unload. In re Advances in Demurrage Charges, 25 I. C. C. 312, 314.

(e) It is a uniform rule that in reckoning free time for the purpose of assessing demurrage charges, Sunday and legal holidays shall be excluded. New Orleans Storage Rules and Regulations, 28 I. C. C. 605, 607.

(f) In the computation of free time, when a car is ordered forward for unloading on or before 6 o'clock in the evening of a given day, the time shall be computed as though the car were unloaded during that day. Anderson-Tully Co. v. M. L. & T. R. R. & S. S. Co., 30 I. C. C. 140, 143.

(g) Tariff rule governing demurrage charges on frozen shipments under which consignee is given a maximum free time

of four days, regardless of how difficult it may be to unload, found not unreasonable as applied to shipments of sand and gravel. Missouri Valley Asso. of Sand & Gravel Producers v. A. V. I. Ry. Co., 73 I. C. C. 615.

(h) On cars actually placed, free time was computed from the first 7 a. m. after arrival instead of from the first 7 a. m. after they were placed on complainant's tracks. No notice of constructive placement was given as provided in the demurrage rules. Demurrage charges, assessed on the theory that cars were on complainant's tracks, when as a matter of fact, they were on carrier's tracks, found illegal. Reparation awarded. International Paper Co. v. Director General, as Agent, 74 I. C. C. 34, 35, 37.

(i) Where cars constructively placed and written notice thereof is given by defendant, in conformity with the governing tariffs, the free time on such shipments should be computed from the first 7 a. m. after notice was furnished instead of the first 7 a. m. after arrival of the cars at point of constructive placement. International Paper Co. v. Dir. Gen., as Agent, 74 I. C. C. 34, 37.

(j) Contention that the giving of notice of arrival on a legal holiday operated to postpone the running of free time, not well founded where there was nothing in the applicable tariffs which prohibited the giving of such notice on a holiday. Foxley Stave & Lumber Co. v. L. & N. R. R. Co., 74 I. C. C. 43, 44.

(k) Free time began from the first 7 a. m. after actual or constructive placement of cars over complainant's coal pockets, and that such cars were released when unloaded and tendered by complainant to the Terminal Co. and any charges collected on time computed differently is erroneous. Scranton & Lehigh Coal Co. v. L. V. R. R. Co., Unrep. Op. A459.

ALL OTHER CITATIONS

Murphy Bros. v. N. Y. C. & H. R. R. R. Co., 17 I. C. C. 457, 460; New Orleans Board of Trade v. I. C. R. R. Co., 17 I. C. C. 496, 502; Peale, Peacock & Kerr v. C. R. R. Co. of N. J., 18 I. C. C. 25, 35; Lynah & Read v. B. & O. R. R. Co., 18 I. C. C. 38, 44, 45, 47; Schultz-Hansen Co. v. S. P. Co., 18 I. C. C. 234, 237; Commercial Exchange of Philadelphia v. P. R. R. Co., 21 I. C. C. 1, 4; Alan Wood Iron & Steel Co. v. P. R. R. Co., 24 I. C. C. 27, 32; Galveston Commercial Asso. v. A. T. & S. F. Ry. Co., 25 I. C. C. 216, 230; Grass Chemical Co. v. B. & O. R. R. Co., Unrep. Op. A131; Michigan Mfrs. Asso. v. P. M. R. R. Co., 31 I. C. C. 329, 333, 336; National Casket Co. v. S. Ry Co., 31 I. C. C. 678, 692; Basin Supply Co. v. T. & F. S. Ry., 33 I. C. C. 157; Crow's Nest Oass Coal Co. v. G. N. Ry. Co., 32 I. C. C. 479, 480; C. Reiss Coal Co. v. A. A. R. R., 38 I. C. C. 337; Dinsmore & Co. v. P. B. & W. R. R. Co., 40 I. C. C. 618; Natl.-League of Commission Merchants v. G. T. Ry. of Can., 41 I. C. C. 745; Edwards & Bradford Lum. Co. v. A. A. R. R., 42 I. C. C. 9; Wattles-Fisher Coal Co. v. A. A. R. R. Co., 42 I. C. C. 186; Newman Lumber Co. v. N. O. & N. E. R. R., 47 I. C. C. 33; New York Harbor Storage, 47 I. C. C. 141, 159; Export Freight Free Time, 47 I. C. C. 162, 177; Hite and Rafetto v. Cent. R. R. of N. J., 52 I. C. C. 344; Regulations for Payment of Rates and Charges, 59 I. C. C. 456; Baltimore Trust Co. v. Director General, as Agent, 74 I. C. C. 22. American Lumber & Export Co. v. Director General, as Agent, 78 I. C. C. 48, 49; West Virginia Pulp & Paper Co. v. Director General, as Agent, 78 I. C. C. 57.

§15½. Legal Rate.

See Legal Rates.

IMPORTANT CASES SINCE 1908

(a) Carloads of lumber were shipped from various interstate points to Goldfield and Tonopah, Nevada. While in transit, the demurrage charges applicable at these points were advanced. The carloads were unclaimed at destination and were assessed demurrage charges on the advanced basis whereas the shipper claimed the demurrage in effect when the shipments originated should have been assessed. There was no agreement that the lumber, or any portion thereof, after it arrived at its destination, should remain in the custody of the railroad company for any fixed period, or, in fact, for any period whatever beyond a reasonable time for delivery. HELD, the schedule was in the nature of an offer to store goods at a certain rate. Until the offer is accepted in some way, there is no binding contract. If the fact that the 18 cars were left in the custody of the company after the expiration of the free time for unloading be construed as an acceptance of the demurrage rates set out in the schedules, still it was not an acceptance for any definite period, and the demurrage

charges should lawfully be assessed at the increased rate. Horton v. Tonopah Goldfield R. Co., 225 Fed. 406, 411, 412.

ALL OTHER CITATIONS

Carnegie Steel Co. v. Director General, as Agent, 80 I. C. C. 269, 274; Webb Fuel Co. v. Director General, as Agent, 81 I. C. C. 631.

§16. Placement or Arrival Notices.

See Notice.

IMPORTANT CASES SINCE 1908

(a) Notice of arrival does not constitute constructive placement where the car is not held by the carrier on account of the consignee's inability to receive it. Northern Wisconsin Produce Co. v. M. St. P. & St. Ste. M. Ry. Co., 21 I. C. C. 197, 198.

(b) The tariff should provide for computing the time from the first 7 a. m. after placement of car and after day on which notice of arrival is given. Murphy Bros. v. N. Y. C. & H. R. R. R. Co., 33 I. C. C. 355, 356.

(c) Consignee failed to receive mailed notice; but carrier's duty was performed when letter was placed in the mail, and demurrage on car of scrap iron was proper. Ohio Iron & Metal Co. v. E., J. & E. Ry. Co., 34 I. C. C. 75.

(d) Written notice of constructive placement of cars on storage track given for certain cars. Demurrage charges assessed on cars as to which no notice of arrival was given held to have been unlawful. Reparation awarded. American Radiator Co. v. L. V. R. R., 44 I. C. C. 361, 362.

(e) No notice either as to arrival or placement of cars was received by complainant, demurrage charges therefore unlawfully assessed. Reparation awarded. American Radiator Co. v. L. V. R. R., 44 I. C. C. 361, 363.

(f) The purpose of a notice of arrival of a shipment is to apprise the consignee that a car has reached destination or a recognized hold point and is being held for delivery or awaiting disposition orders. Obviously the notice should be clear and definite. The consignee should be given all necessary information. On the other hand, if the notice does not sufficiently apprize him of the situation, he should seek further enlightenment from the carrier. Steinhardt & Kelly v. Erie R. R., 52 I. C. C. 304, 305.

(g) What constitutes "substantial compliance" with the requirements of a tariff as to notice to the consignee of arrival of shipment in a particular case is a question not free from difficulty. It would seem that in its determination the Commission must be guided to some extent by the circumstances surrounding the transaction and that no hard and fast rule can be laid down. Unlike freight charges, demurrage charges are in the nature of a penalty and are imposed not for the benefit of a carrier, but in order to promote the free movement of cars in the public interest. It would be manifestly unjust to the public, where the information contained in an arrival notice, in connection with that already possessed by the consignee, was all that it needed or desired to transact business in the customary way, to hold that such consignee could, several years later, set up the insufficiency of the notice as a ground for the refund of demurrage charges legally applicable for detention due to the consignee. Steinhardt & Kelly v. Erie R. R., 52 I. C. C. 304, 306.

(h) Legally applicable demurrage charges found to have been lawfully assessed as mailing of notice of arrival by defendant to consignee at address indicated on bill of lading was in full compliance with tariffs. Lowry Lumber Co. v. Director General, 57 I. C. C. 139.

(i) Bill of lading contained instructions as to party to be notified at reconsignment point together with notation "to be reconsigned to Lansing," but did not name party to whom notice should be sent at latter point. Carrier reconsigned the shipment to ultimate destination where demurrage accrued. HELD: carrier at fault in accepting and moving shipment under ambiguous instructions contained in the bill of lading and demurrage charges illegally assessed. Reparation awarded. Gill-Andrews Lumber Co. v. Director General, 57 I. C. C. 493.

(j) Where shipment is consigned to a firm unknown in the locality and proof of receipt by delivering carrier of mailed instructions for reconsignment is not established, although such notice received by another carrier not a party to the transaction, demurrage lawfully accrues. Wheeler Co. v. N. Y. C. R. R. Co., 59 I. C. C. 161.

(k) A notice in writing is highly desirable as evidence of the fact that notice was given, and tends to promote the orderly conduct of business and prevent unlawful concessions and discrim-

inations that would result from a lax enforcement of the "weather" rule. Virginia Iron, Coal and Coke Co. v. Director General, as Agent, 61 I. C. C. 200, 201.

(l) Where the failure to observe a provision in a demurrage tariff is not the proximate cause of the accrual of demurrage, the Commission has not always insisted that a literal compliance with its terms is necessary. The Commission has held more than once that if a shipper has knowledge of the arrival of his car, either by oral advice from the carrier or otherwise, he can not be heard to say that demurrage will not accrue because he has received no written notice thereof as provided in the demurrage tariff. Virginia Iron, Coal & Coke Co. v. Director General, 69 I. C. C. 501, 502.

(m) Immediately upon arrival of shipments, written notice of arrival was given and cars were placed on storage tracks within complainant's plant, where they were held for varying periods. Under an arrangement with carrier cars were subsequently placed at unloading points within the plant under direction of complainant's yard foreman. HELD: Demurrage charges assessed as though delivery had been made when cars were placed on storage tracks found legally applicable and not unlawful. Bartlesville Zinc Co. v. Director General, as Agent, 74 I. C. C. 26.

(n) Failure of defendant to give written notice of constructive placement, as provided in the demurrage rules, found not the proximate cause of delay in receiving and unloading cars. Severe weather and labor troubles resulted in accumulation of cars at plant of complainant who had actual notice of such constructive placement and acquiesced in the absence of written notice. Since there was substantial, if not literal, compliance with the rules, demurrage charges found not illegally assessed. International Paper Co. v. Director General, as Agent, 74 I. C. C. 34, 37.

(o) Contention that the giving of notice of arrival on a legal holiday operated to postpone the running of free time, not well founded where there was nothing in the applicable tariffs which prohibited the giving of such notice on a holiday. Foxley Stave & Lumber Co. v. L. & N. R. R. Co., 74 I. C. C. 43, 44.

(p) Notices of arrival of bituminous coal at Allentown, Pa., were promptly mailed by carrier. Cars were held under constructive placement, written notices of which were sent but receipt thereof denied. Complainant's officers were in daily communication with carrier's yardmaster who in telephone conversation gave notice of number of cars on hand. Demurrage charges assessed found not unreasonable or unlawful, except to extent they exceeded those which would have accrued if shipments had been actually placed in order of arrival as provided in the demurrage tariff. Lehigh Silk Dyeing Co. v. Director General, as Agent, 77 I. C. C. 39.

(q) Demurrage charges at Detroit, Mich., computed from time of placement on complainant's tracks when cars could not be spotted for unloading because of complainant's inability to receive at unloading point, found applicable and not unreasonable or otherwise unlawful. Sibley Lumber Co. v. Director General, as Agent, 77 I. C. C. 415.

(r) The Commission has found that the mailing of an arrival notice to the consignee at the destination shown in the bill of lading is a full compliance with the tariff, and that the free time begins to run in accordance with the tariff provisions from the time of such notice, regardless of general instructions with reference to the mailing of notices to a point other than the destination of the shipment. American Lumber & Export Co. v. Director General, 78 I. C. C. 48, 49.

(s) Under the demurrage tariffs a carrier's duty as to notification is fully performed when it places in the mail a notice properly addressed to consignee. Sullivan Lumber Co. v. Director General, 78 I. C. C. 393, 394.

(t) Where the failure to observe the provision in a demurrage tariff is not the proximate cause of the accrual of demurrage, the Commission has not always held that a literal compliance with its terms is necessary. The Commission has held more than once that if a shipper has knowledge of the arrival of his car, either by oral advice from the carrier or otherwise, he can not be heard to say that demurrage will not accrue because he received no written notice thereof as provided in the demurrage tariff. The Commission sees no reason why the converse should not govern. Hawkins & Sons v. Director General, 80 I. C. C. 225, 227.

(u) In the absence of anything in a tariff of demurrage charges, or the statute under which it is issued requiring the carrier to give notice of arrival of cars, absence of such notice does not affect the time when demurrage charges commence, notwithstanding notices are usually given on the day of arrival, as matter of courtesy or custom. Chesapeake & Ohio Coal & C. Co. v. Toledo & O. C. Ry., 245 Fed. 917.

(v) Where the unloading conveyor of an oil company had broken down, so that it was unable to unload shipments of cotton seed on the special delivery track, and the carriers immediately on arrival of certain cars of cotton seed oil consigned to the company, notified it by mail, giving the name of the railroad to which the cars belonged, their number, point of shipment, the name of the consignor, and the date of arrival, the failure of the notice to state also that the railroad was unable to make physical delivery of the car at the consignee's siding, because the track was blocked with other cars, did not invalidate the notice as notice of "constructive placement," required by Demurrage Rules, rule 5, §A, so as to constitute a defense in an action against the consignee for demurrage charges; the consignee already having the information omitted from the notice. Davis v. Timmonsville Oil Co., 285 Fed. 470.

(w) Consignee cannot complain that none of the notices served on him regarding the arrival of cars were in the form prescribed by the rules relating to constructive placement, which provide that notices should be in writing, and contain point of shipment, car's initials and numbers, and the contents, when the form of notice used was received by defendant without objection, and there was no request for additional information, and the bills first sent under that form of notice were paid. Davis v. Carroll Boiler & Tank Co., (Pa. 1923), 119 Atl. 742.

ALL OTHER CITATIONS

Germain Co. v. P. B. & W. R. R. Co., 18 I. C. C. 96, 97; Rossie Iron Ore Co. v. N. Y. C. & H. R. R. R. Co., 17 I. C. C. 392; Murphy Bros. v. N. Y. C. & H. R. R. R. Co., 17 I. C. C. 457, 459; Alexander v. St. L. & S. F. R. R. Co., 24 I. C. C. 253; Alan Wood Iron & Steel Co. v. P. R. R. Co., 24 I. C. C. 27, 30; Alexander v. S. Ry. Co., 25 I. C. C. 32; Haas Lumber Co. v. A. G. S. R. R. Co., Unrep. Op. A159; Dan Joseph Co. v. A. C. L. R. R. Co., Unrep. Op. A506; Parry & Co., 29 I. C. C. 559; American Hay Co. v. C. V. Ry. Co., 29 I. C. C. 659, 663; Lewis Mfg. Co. v. D. & R. G. R. R. Co., 32 I. C. C. 488; Ohio Iron & Metal Co. v. E. J. & E. Ry. Co., 34 I. C. C. 75; Weakley & Worman Co. v. C., H. & D. Ry. Co., Unrep. Op. 1899; Cypress Lumber Co. v. A. N. R. R. Co. Unrep. Op. 1918; Fitzgerald Co. v. B., R. & P. Ry. Co., Unrep. Op. 1985; Herb Bros. & Martin v. P. C. C. & St. L. Ry. Co., Unrep. Op. 2188; Levering Bros. and P. B. & W. Co., 39 I. C. C. 349; Miller Jackson Grain Co. v. P. O. & N. R. R., 43 I. C. C. 147; Meeker v. C. R. R. Co. of N. J. 46 I. C. C. 657, 658; Michigan Cent. R. R. v. United States, 246 Fed. 353; Wilson v. Long Island R. R. Co., 165 N. Y. S. 913; Delaware Riv. Steel Co. v. P. & R. Ry., 49 I. C. C. 537; Meeker v. Penn. R. R., 49 I. C. C. 673; Schroeder Lumber Co. v. N. Y. C. R. R., 51 I. C. C. 473; Naylor & Co. v. D. L. & W. R. R., 52 I. C. C. 397; Otto H. Hedrich & Co. v. P. C. C. & St. L. Ry., 53 I. C. C. 79; Steinhardt & Kelly v. Erie Railroad Company, 57 I. C. C. 369; Roessler & Hasslacher Chemical Co. v. Director General, 56 I. C. C. 441, 442; Ross v. Indiana Natural Gas & Oil Co. (Ind. 1921), 130 N. E. 440; Eastern Lumber Co. v. Director General, 57 I. C. C. 272; William Danzer & Company, v. C. & O. Ry. Co., 58 I. C. C. 119; Lowry Lumber Co. v. Director General, as Agent, 58 I. C. C. 113, 117; Lowry Lumber Co. v. Director General, 59 I. C. C. 90, 91; J. R. Wheeler Co. v. N. Y. C., 59 I. C. C. 161; Lowry Lumber Co. v. Director General, 60 I. C. C. 718; Minneapolis, St. P. & S. S. M. Ry. Co. v. Van Dusen Harrington Co., 272 Fed. 255; Ross v. Indiana Natural Gas & Oil Co. (Ind. 1921), 131 N. E. 794; Hewitt-Lea-Funck Co. v. Director General, as Agent, 61 I. C. C. 49; C. F. Arnold & Co. v. T. & P. Ry. Co., 69 I. C. C. 81; Republic Coal Co. v. C. & N. W. Ry., 78 I. C. C. 375; Davis v. Greensboro Warehouse & Storage Co. (N. C., 1923), 120 S. E. 462.

§16½. Penalty Charge.

IMPORTANT CASES SINCE 1908

(a) Complainant attacked car service charges collected for the detention at Solvay, N. Y., in December 1920 and January 1921, of two carloads of cooperage stock shipped from Pelham, Ala.,

to Solvay and forwarded thence to Syracuse, N. Y., as unjust, unreasonable and unlawful to extent such charges exceeded ordinary demurrage charges, and that the penalty charge of $10 per day should not have been applied. Shipments were placed on a siding of defendant which connects with an interchange track of the Solvay Process Co., the consignee whence the latter removed them to its plant. Later, both cars were returned by the consignee, without having been unloaded, to the track of defendant, with the information that it refused to receive the contents of the cars. On the same date defendant notified the complainant by telegram of the rejection and on Jan. 21, 1921, upon instructions from complainant, the cars were moved by defendant to King's Warehouse at Syracuse for storage. Complainant does not attack any of the charges except the penalty charge which applies on cars loaded with lumber and certain products thereof held for reconsignment. Both the demurrage and the reconsignment tariffs make a distinction between reconsignment and reshipment. The application of the so-called reconsignment charge under rule 12 of the reconsignment tariff is not determinative of whether or not the reforwarding constitutes a reconsignment or a reshipment. The transaction here considered came within the terms of rule 12, but the charge of $7 per car was not collected, resulting in undercharge. Whatever grounds the reconsignment tariff may afford for controversy as to what constitutes a reconsignment thereunder, it is clear that the movement from Solvay to Syracuse was under a new contract and at a new rate, and hence within the definition of reshipment contained in the demurrage tariff. HELD, penalty charged attacked illegally collected, reparation awarded. J. D. Hollingshead Co. v. N. Y. C. R. R., 73 I. C. C. 640.

§17. Railroad Errors or Omissions.

IMPORTANT CASES SINCE 1908

(a) Where a shipper has been compelled to pay demurrage charges through carrier's error, the resulting damage must be borne by the carrier responsible for the error. Conf. Ruling 220 (f). Amer. Cement Plaster Co. v. Ft. W. & D. C. Ry. Co., 58 I. C. C. 435, 436.

(b) Where a shipper is compelled to pay demurrage charges through the fault of one of the transporting carriers, such charges must be refunded. Reeves Coal & Dock Co. v. Director General, 63 I. C. C. 387, 388.

(c) A clause in a demurrage tariff which says that no demurrage charges shall be assessed for railroad errors or omissions refers to railroad errors or omissions occurring after the cars are placed. Michigan Cent. R. R. v. United States, 246 Fed. 353, 358.

ALL OTHER CITATIONS

Germain Co. v. N. O. & N. E. R. R. Co., 17 I. C. C. 22, 25; Hanley Milling Co. v. P. Co., 19 I. C. C. 475; Crescent Coal & Mining Co. v. B. & O. R. R. Co., 20 I. C. C. 559, 570; Northern Wisconsin Produce Co. v. M. St. P. & St. Ste. M. Ry. Co., 21 I. C. C. 197, 198; Alexander v. S. Ry. Co., 25 I. C. C. 32, 34; Dinger v. C. C. C. & St. L. Ry. Co., Unrep. Op. A-68; New York Exchange Assn. v. L. V. R. R. Co., 29 I. C. C. 90, 92; Cranson Lumber Co. v. A. C. L. R. R. Co., Unrep. Op. A-866; Este Co. v. A. C. L. R. R., 34 I. C. C. 469; Natl. Clay Works v. M. & St. L. R. R., 38 I. C. C. 353, 354; Reiss Coal Co. v. A. A. R. R. Co., 38 I. C. C. 337; Edwards & Bradford Lumber Co. v. A. A. R. R. Co., 42 I. C. C. 9; Wattles-Fisher Coal Co. v. A. A. R. R. Co., 42 I. C. C. 186; Sanders & Barnett v. L. V. R. R. Co., 42 I. C. C. 603, 604; Currie & Campbell v. C. R. R. of N. J., 45 I. C. C. 3; Schuh-Mason Lumber Co. v. M. & O. R. R., 46 I. C. C. 365; Bayway Chemical Company v. C. R. R. Company of New Jersey.. 46 I. C. C. 424, 426; Bay Bros. Lumber Co. v. L. & A. Ry. Co., 50 I. C. C. 369; Davis Sewing Machine Co., 51 I. C. C. 191; Difenderfer Lumber Co.. v. M. A. & E., 53 I. C. C. 571, 573; Southern Lbr. Mfg. Co. v. C. of Ga., 55 I. C. C. 225, 227; Southern Lumber Co. v. Director General, 55 I. C. C. 343; Gill Andrews Lumber Co. v. Director General, 57 I. C. C. 493; Delp Grain Co. v. Director General, 55 I. C. C. 175; Texas Company v. Director General, 57 I. C. C. 48; Gill-Andrews Lumber Co. v. Director General, 57 I. C. C. 493; Delp Grain Co. v. Director General, as Agent, 59 I. C. C. 755; Schuhle's Pure Grape Juice Co. (Inc.) v. Director General, as Agent, 63 I. C. C. 129; Sterling Lumber Co. v. Director General, as Agent, 64 I. C. C. 432; Elm City Lumber Co. v. S. A. L. Ry. Co., 64 I. C. C. 660.

§18. Reciprocal Demurrage.

CASES 1887-1908

(a) The Commission is without authority to fix rules or regulations for reciprocal demurrage. J. B. Mason v. C. R. I. & P. Ry., 12 I. C. C. 61, 62.

IMPORTANT CASES SINCE 1908

(b) The liability of carriers for general damages growing out of their failure to furnish cars is determinable by the courts. The law does not require them to define their liability by tariff publication and the Commission has no jurisdiction to require carriers to establish reciprocal demurrage regulations. Deposit for Live Poultry Car Ordered, 66 I. C. C. 653, 656.

ALL OTHER CITATIONS

In re Advances in Demurrage Charges, 25 I. C. C. 314, 321; State v. Public Service Commission of Washington, (Wash., 1917), 162 Pac. 523.

§18¼. Switching Reclaims.

IMPORTANT CASES SINCE 1908

(a) The per diem agreement is not a proper basis for settlement by an industrial railway for the use or detention upon its line of foreign cars. Lake Erie & Fort Wayne R. R. Co., 63 I. C. C. 122.

ALL OTHER CITATIONS

Wholesale Coal Trade Assn. v. Director General, as Agent, 58 I. C. C. 15, 33; Lehigh Valley Coal Sales Co. v. Director General, as Agent, 58 I. C. C. 76; Birmingham Southern R. R. Co. v. Director General, as Agent, 61 I. C. C. 551.

§18½. Uniform Demurrage Code.

See Per Diem Charges.

IMPORTANT CASES SINCE 1908

(a) The existence of merely unique or exceptional transportation conditions in certain localities furnishes no ground for exceptions being made to the uniform demurrage code in favor of such localities, unless it appear that unlawful discrimination would otherwise result against such localities if exceptions were not made. Michigan Mfrs. Asso. v. P. M. R. R., 31 I. C. C. 329, 336.

(b) The primary purposes of the uniform demurrage code were to promote prompt release of loaded cars and prompt loading of empty cars, to prevent unreasonable detention of equipment. Lowry Lumber Co. v. Director General, 58 I. C. C. 113, 114.

(c) Following Birmingham Southern case, 61 I. C. C., 551, assessment of demurrage under uniform demurrage code against the Valley & Siletz R. R. Co., for use or detention of foreign cars on its line found unreasonable and basis for payment prescribed. Valley & Siletz R. R. Co. v. S. P. Co., 80 I. C. C. 724.

ALL OTHER CITATIONS

Michigan Mfrs. Asso. v. P. M. R. R. Co., 31 I. C. C. 326, 329; Birmingham Southern R. R. Co. v. Director General, 61 I. C. C. 551.

§19. Weather Interference.

IMPORTANT CASES SINCE 1908

(a) In a typical case due to inability to unload frozen shipments of ore, cars accumulated on tracks at complainant's plant resulting in further deliveries not being accepted when tendered, and cars were constructively placed at various points along carrier's line. HELD, following Pennsylvania R. R. Co. v. Kirtaning Iron & Steel Mfg. Co., 253, U. S., 319, demurrage found illegally assessed and unreasonable. Wharton Steel Co. v. Director General, as Agent, 59 I. C. C. 613.

(b) Shippers are entitled to a reasonable free time for loading or unloading cars, and the principle has long been recognized that demurrage should not be imposed for delays occasioned by weather interference. Virginia Iron, Coal & Coke Co. v. Director Geenral, 61 I. C. C. 200, 201.

(c) When a shipment is tendered for delivery in a frozen condition and for that reason can not be unloaded within the prescribed free time, it is not unreasonable to require that due notice to that effect be given in order that the carrier may have the necessary information upon which to base its demurrage charges and to be afforded opportunity to take proper steps to expedite unloading. Manifestly a notice in writing is highly desirable as evidence of the fact that notice was given, and also tends to promote the orderly conduct of business and to prevent unlawful concessions and discriminations that would result from a lax enforcement of the "weather" rule. Virginia Iron, Coal & Coke Co. v. Director General, 61 I. C. C. 200, 201.

(d) Complainant attacked the frozen lading rule published in demurrage tariffs as unjust and unreasonable as applied to sand and gravel. Under the old rule when sand was frozen in transit and arrived at destination in that condition, the consignee was able to extend the free

time during the entire period required to unload by serving notice on the agent of the carrier and making reasonable effort to unload. Under the present rule, if the lading was frozen at the time of placement, the consignee is given a maximum free time of four days, regardless of how difficult it may be to unload. The rule in question is now a part of the uniform demurrage code generally applicable throughout the entire country, and, at time of hearing, had not been effective during a winter season. The evidence presented in this record does not justify a condemnation thereof. HELD, rule attacked not unreasonable, complaint dismissed. Missouri Valley Sand & Gravel Producers v. A. V. I. Ry. Co., 73 I. C. C. 615.

(e) Tariff rule governing demurrage charges on frozen shipments under which consignee is given a maximum free time of four days, regardless of how difficult it may be to unload, found not unreasonable as applied to shipments of sand and gravel. Missouri Valley Asso. of Sand & Gravel Producers v. A. V. I. Ry. Co., 73 I. C. C. 615.

(f) Tariff provided that written notice be furnished by consignee to carrier's agent within the free time, of frozen condition of lading. Shipments delivered with lading frozen and such notice not served on carrier's agent, who had actual notice of frozen condition of shipments. HELD: Failure to serve written statement did not increase period of detention, require performance of any additional service by carrier, or cause it to take any different course in dealing with situation. Demurrage charges assessed found unreasonable and reparation awarded. Hawkins & Sons v. Director General, as Agent, 80 I. C. C. 225.

(g) Contention that demurrage rule requiring written notice of frozen lading to be furnished to carrier's agent should be uniformly enforced, regardless of agent's knowledge concerning certain shipments in absence of such written notice, and that to do otherwise would open door for allowance of concessions and working of unjust discriminations, not sustained. While failure to adhere strictly to letter of rule may be result of collusive arrangements amounting to unlawful discrimination under section 2 of the act, possibility of such arrangements would not be avoided by strict adherence nor is such possibility an answer to complaint of shipper under section 1. Hawkins & Sons v. Director General, as Agent, 80 I. C. C. 226.

(h) Demurrage rules governing shipments of ore and other commodities frozen in transit found not unreasonable. Under ordinary conditions there would seem to be no question as to reasonableness of rules assailed, and circumstances set forth by complainants, namely, unusual conditions of weather and transportation generally, do not furnish justification for their condemnation. Cambria Steel Co. v. Director General, as Agent, 80 I. C. C. 633.

ALL OTHER CITATIONS

Alan Wood, Iron & Steel Co. v. P. R. R. Co., 24 I. C. C. 27, 32; Kollyrite Trucking Co. v. P. R. R. Co., Unrep. Op. A146; Obermeyer & Liebmann v. N. Y. C. R. R. Co., 36 I. C. C. 315, 316; Jewett, Bigelow & Brooks v. C. H. & D. Ry. Co., 36 I. C. C. 655, 656; Castner, Curran & Builtt v. Penn. Co., 42 I. C. C. 3; Davis Sewing Machine Co., 51 I. C. C. 191; Chattanooga Sewer Pipe & Fire Brick Co. v. B. Ry., 51 I. C. C. 447; Central Pennsylvania Lumber Co. v. Director General, 53 I. C. C. 523; Delp Grain Co. v. Director General, 55 I. C. C. 175; Pennsylvania R. Co. v. Kittaning Iron & Steel Mfg. Co., 40 Sup. Ct. 532; Pennsylvania R. Co. v. Kittaning Iron & Steel Mfg. Co., (Pa. 1919), 106 Atl. 207; Wholesale Coal Trade Assn. v. Director General, 58 I. C. C. 15, 29; Wharton Steel Co. v. Director General, 59 I. C. C. 613, 615; Mount Hood R. R. Co. v. Director General, as Agent, 60 I. C. C. 116; Hamilton Foundry & Machine Co. v. Director General, as Agent, 64 I. C. C. 439; Penn. R. R. Co. v. Kittaning Iron & Steel Co., 253 U. S. 319; Virginia Iron, Coal & Coke Co. v. Director General, as Agent, 69 I. C. C. 501; McGarry & Company v. Wabash R. R., 88 I. C. C. 301.

§20. Advance in Demurrage During Transit.

IMPORTANT CASES SINCE 1908

(a) Demurrage charges increased after shipment had left point of origin, and upon arrival at destination, increased charges assessed. HELD, off-track storage not in transit, track storage, and demurrage are controlled by tariffs in effect contemporaneously with the accrual of these services; off-track storage in transit, by tariffs in effect upon date of shipment. United Shoe Machinery Corp. v. Director General, 55 I. C. C. 253, 256.

ALL OTHER CITATIONS

Toledo & O. C. Ry. v. C. & O. Coal & Coke Co., 238 Fed. 629, 632; Chesapeake & Ohio Coal & Coke Co. v. Toledo & O. C. Ry., 245 Fed. 917; United Shoe Machinery Corporation v. Pa. R. R., 55 I. C. C. 253, 256; Lowry Lumber Co. v. Director General, 57 I. C. C. 145.

V. REPARATION.

See Reparation. Routing and Misrouting

§21. In General.

IMPORTANT CASES SINCE 1908

(a) The full amount of demurrage charges which a shipper is compelled to pay through the fault of a carrier must be borne by the carrier whose agent is responsible for the error. Middle West Coal Co. v. C. O. Ry., 41 I. C. C. 723, 724.

(b) A carrier failed to transmit routing instructions and correct car number, resulting in demurrage and switching charges. Reparation awarded. Schuh-Mason Lumber Co. v. M. & O. R. R., 46 I. C. C. 365, 367.

(c) After court proceedings instituted for collection of certain demurrage charges, complaint filed before the Commission alleging such charges unreasonable. HELD, upon a complaint to secure a ruling upon reasonableness of such charges, and to obtain relief from payment of same, legal proceedings therefore having been instituted, the Commission may inquire into the reasonableness and determine that issue, but questions of fact to be determined by the court. Charges not found unreasonable. Heid Bros. v. E. P. & N. E. R. R., 55 I. C. C. 416.

(d) The erroneous information alleged to have been given by the Erie's agent, upon which complainant relies in support of its claims against that carrier, affords no basis for relief from the Commission. Cleveland Cooperage Co. v. Director General, 57 I. C. C. 423-425.

(e) Claim for reparation on account of demurrage accruing on cars loaded with oats, detained by reason of carrier's default in its contract to furnish water for operation of elevator, not within Commission's jurisdiction. Dougherty & Co. v. Director General, 58 I. C. C. 589, 590.

(f) Complainant attacked charges assessed on hollow building tile stored on the right of way of the C. & N. W., at Boone, Iowa, as unreasonable. Original decision found in 60 I. C. C. 418, wherein reparation was awarded to extent they exceeded the applicable demurrage and track storage rules. Director General petitioned for rehearing. HELD, previous order affirmed. Kalamazoo Tank & Silo Co. v. Director General, 69 I. C. C. 701.

(g) Where the consignee voluntarily paid demurrage for two years, he could not recover at common law, and therefore can recover only under the Interstate Commerce Act, if at all, either by an application to the Commission or a suit in the federal courts. Hunter v. N. Y. N. H. & H. R. R., 166 N. Y. Supp. 237.

ALL OTHER CITATIONS

St. Louis Southwestern Ry. Co. v. Arkadelphia Milling Co. (Ark. 1915), 180 S. W. 200, 201; Wattles-Fisher Coal Co. v. A. A. R. R. Co., 42 I. C. C. 186; Edwards & Bradford Lumber Co. v. A. A. R. R. Co., 42 I. C. C. 9; In re Arlington Hotel Co., 98 Atl. (Del. 1916), 186; Detroit, G. H. & M. Ry. Co. v. Owosso Sugar Co., (Mich. 1916), 159 N. W. 378; Schuh-Mason Lumber Co. v. M. & O. R. R., 46 I. C. C. 365, 368; International Salt Co. of New York v. S. A. L. Ry., 46 I. C. C. 478, 479; Bertles & Bertles v. M. C. R. R., 48 I. C. C. 463; Difenderfer Lumber Co. v. M. A. & E. Ry. Co., 53 I. C. C. 571, 573; Waters v. Becker, (Wis. 1921), 186 N. W. 167; Allied Machinery Co. v. Director General, as Agent, 81 I. C. C. 204; Pacific Grain Co. v. Director General, as Agent, 81 I. C. C. 679, 681.

§22. Actions at Law.

See Actions at Law.

IMPORTANT CASES SINCE 1908

(a) Where the railroad company's tariffs on file with the Interstate Commerce Commission provided for every essential element of its claim for demurrage, and the statement of claim set out the articles and rules of the coal exchange in whose care the shipment was consigned merely to show that defendants as members of the exchange, and through it as their agent brought themselves within the terms of the tariff, an objection that the rules of the coal exchange were not filed with the Interstate Commerce Commission is not tenable. Norfolk & W. Ry. Co. v. Emmons Coal Mining Co., 287 Fed. 168.

(b) An objection to a provision of a

carrier's tariff substituting the date on which a car should be released from the date when its equivalent is unloaded, so as to cause a car, when unloaded, to be charged with demurrage after its actual release, goes not only to the reasonableness of the tariff but its discriminating effect, and is not for the court to determine. Norfolk & W. Ry. Co. v. Emmons Coal Mining Co., 287 Fed. 168.

(c) In an action by the United States Railroad Administration against the shipper for demurrage, unloading, storage charges and war taxes incidental thereto on three cars of lumber tendered by defendant to plaintiff in shipments, but refused on the ground that a War Department embargo existed against the shipment, it was error to direct the jury to find that plaintiff lawfully refused to accept the shipments, since C. S. §564, requires finding by the jury without expression of opinion from the court where the evidence is permissible of more than one construction, or is such that different inferences may be drawn therefrom, the evidence in the case being in conflict as to whether an embargo claimed to exist was applicable to the shipments tendered. Davis v. Hilton Lumber Co. (N. C. 1923), 117 S. E. 50.

(d) In a suit for demurrage, where plaintiff's witness, being shown carbon copies of original notices delivered to defendant, stated that the originals had been sent to defendant by him, an objection thereto was inopportune, as plaintiff had the right to thus lay the ground for later offering the papers, at which time, if the best evidence rule applied, the objection would have been proper. Davis v. Carroll-Porter Boiler & Tank Co., (Pa. 1923), 119 Atl. 742.

(e) In suit for demurrage, where there was evidence covering the claim as to some of the cars for which plaintiff had a right to recover, defendant's request for binding instruction was properly overruled, and judgment n. o. v. was properly denied. Davis v. Carroll-Porter Boiler Tank Co., (Pa. 1923), 119 Atl. 742.

(f) Where the initial carrier of a shipment of coal quoted the same rate charged by other carriers, but on arrival at destination it was found that its tariff rate was somewhat higher and the consignee refused to accept the coal, but the carrier kept the coal in the cars for several months and then sold it, the trial judge's finding that ten days was a reasonable time for unloading and storing the coal, and that demurrage could only be charged for that period, HELD warranted. Waters v. Becker, (Wisc. 1921), 186 N. W. 167.

ALL OTHER CITATIONS

Mt. Clemens Sugar Co. v. Grand Trunk Ry., (Mich. 1918), 166 N. W. 531; Louisville & N. R. Co. v. Camody, (Ala. 1919) 82 So. 648; Kansas City Southern Ry. Co. v. Ft. Smith Compress Co. (Ark. 1919), 210 S. W. 147; Payne v. White House Lumber Co. (Tex. 1921), 231 S. W. 417; Northern Pac. Ry. Co. v. Department of Public Works (Wash., 1923), 217 P. 13.

VI. LIABILITY TO PAY.

§23. In General.

IMPORTANT CASES SINCE 1908

(a) Where the only evidence that shipper had any authority to ship is a telegram sent by consignee purporting to countermand the order, shipper wired consignee to "unload the car and send me what you think is right," and consignee refused the shipment, consignee is not liable for demurrage. Davis v. Allen (S. C. 1923), 117 S. E. 547.

(b) Where consignee countermanded the order on November 15th, carrier did not secure control of goods until November 20th, bill of lading was not issued until November 20th, and consignee refused the goods, consignee was not liable for demurrage. Davis v. Allen (S. C. 1923), 117 S. E. 547.

(c) Where a railway, at defendant's request, placed its cars on its siding, to be loaded with lumber by the owner thereof, and the lumber is loaded thereon, but no shipping directions are given by either the owner of the lumber or by the defendant, in consequence whereof the cars are permitted to remain on the siding and demurrage charges accrue therefor, the party at whose instance they were placed there is responsible for the demurrage charges, and recovery may be had on the common counts in assumpsit. And such right of recovery is not affected by the fact that the loaded lumber does not conform to the contract made between the vendor and purchaser. Davis v. Lawrence Oil & Gas Co. (W. Va. 1923), 117 S. E. 692.

(d) A carrier can not assess demurrage on a shipment of hay, assembled because the consignee held the car while he sorted out wet hay, which was dam-

aged because the carrier furnished a leaky car, rendering it necessary to rehandle the hay. Davis v. Clement Grain Co. (Tex. 1923), 251 S. W. 545.

ALL OTHER CITATIONS

Ross v. Indiana Natural Gas & Oil Co. (Ind. 1921), 130 N. E. 440; Louisville & N. R. Co. v. Camody (Ala. 1919), 84 So. 824; Davis v. Greensboro Warehouse & Storage Co., (N. C., 1923), 120 S. E. 462; In Re Tidewater Coal Exch. (N. Y., 1923), 292 Fed. 225.

DETENTION CHARGES

See Demurrage.

IMPORTANT CASES SINCE 1908

(a) Carriers may impose charges necessary to compel the removal of freight from the carriers' terminals and prompt release of equipment. Providence Fruit & Produce Exchange v. M. C. R. R. Co., 36 I. C. C. 307, 309, 310.

(b) Detention charges assessed in addition to the demurrage charges after the expiration of free time, on cars provided with heating apparatus held reasonable. Providence Fruit & Produce Exchange v. M. C. R. R. Co., 36 I. C. C. 307, 308.

ALL OTHER CITATIONS

Providence Fruit & Produce Exchange v. M. C. R. R. Co., 36 I. C. C., 307, 308, 309, 310.

DIAPERING

ALL CITATIONS

Wisconsin & Arkansas Lumber Co. v. St. L., I. M. & S. Ry. Co., 33 I. C. C. 33, 42.

DIFFERENTIALS

I. ESTABLISHMENT AND CONTROL
- § ½ Jurisdiction of Commission.
- §1 In general.
- §2. Relation of classification.

II. APPLICATION.
- §2½ In general.
- §3 C. L. and L. C. L. shipments
- §4. Through shipments.

III. PURPOSE.
- §5 To equalize conditions
- §6 To equalize consuming points.
- §7 To equalize producing points

IV. REASONABLENESS AND DISCRIMINATION.
- §8 In general.
- §8½ Between commodities.

V. REPARATION.
- §9 In general.

VI. PROCEDURE.
- §10 In general.

CROSS REFERENCES

See Advance §5 (3), §10, §11½; Blanket Rates §8, §10; Classification §17; Discrimination; Equalization of Rates; Long and Short Hauls; Reasonableness of Rates §28; Relative Rates.

I. ESTABLISHMENT AND CONTROL

See Control and Regulation.

§½. Jurisdiction of Commission.

See Interstate Commerce Commission I.

CASES 1887-1908

(a) The Interstate Commerce Commission cannot inquire whether railroad companies act wisely or unwisely, fairly, or unfairly, between themselves in making rates, forming lines, and establishing differentials; but its inquiry is limited to the question whether the situation created by the companies violates the Act to Regulate Commerce. New York Produce Exch. v. Baltimore & O. R. Co., 7 I. C. C. 612.

(b) Railway companies may make whatever rates, form whatever lines, and establish whatever differentials they deem best for the purpose of securing and conducting transportation, provided the just interests of the public are not sacrificed thereby, and whether in so doing they act wisely or unwisely, fairly or unfairly between themselves, is not for the Commission to determine; the jurisdiction of the Commission is confined to inquiring whether the situation which the carriers have created is in violation of the act. New York Produce Exchange v. B. & O. R. Co., 7 I. C. C. 612, 658.

IMPORTANT CASES SINCE 1908

(c) Differential adjustments can be prescribed only where unlawful discrimination is found and unlawful discrimination between different producing points competing in a common market can not be found unless the same carrier serves the common market and controls the rates to it from the different producing points, or where the traffic moves a part of the way to the common market over the rails of the same carrier. The only way to establish differentials where entirely independent carriers serve a common market from competing producing points would be to fix maximum rates from some of the producing points and minimum rates from

the others, and the latter is not within the authority of the Commission. Galloway Coal Co. v. A. G. S. R. R., 40 I. C. C. 311, 315.

ALL OTHER CITATIONS

Board of Trade of Chicago v. I. C. R. R. Co., 26 I. C. C. 545, 551; R. R. Comm. of La. v. A. H. T. Ry., 48 I. C. C. 312, 358.

§1. In General.

IMPORTANT CASES SINCE 1908

(a) Differentials can not always with propriety be computed upon a fixed rate per mile. Bituminous Coal to C. F. A. Territory, 46 I. C. C. 66, 128.

(b) Under the generally recognized bases of making freight rates the differential to intermediate or near by territory should be greater than to destinations farther distant, irrespective of the increase in the length of the haul from the group of origin brought about by the extension and enlargement of the group. Distance, however, is not the only transportation factor to be considered in fixing the measure of a differential. Bituminous Coal to C. F. A. Territory, 46 I. C. C. 66, 129.

(c) In the making of rates to local or noncompetitive points the differentials above the rates to the basing points should bear some reasonable relation to the total distances. Mayfield & Graves County Commercial Club v. Illinois Central R. R. Co., 49 I. C. C. 419, 420.

(d) One of chief purposes of a differential is to stabilize rate relationships between competing producing points or markets. Stability is of peculiar importance to a highly competitive commodity like coal. Fixed or stable differentials on coal are the rule and the commission has repeatedly rejected proposals to establish percentage differentials between competing coal fields. Ohio-Michigan Coal Cases, 80 I. C. C., 663, 685.

ALL OTHER CITATIONS

Black Mountain Coal Land Co. v. S. Ry. Co., 15 I. C. C. 286, 296; Williams Co. v. V. S. & P. Ry. Co., 16 I. C. C. 482 487; Andy's Ridge Coal Co. v. So. Ry. Co., 18 I. C. C. 405, 407, 410; Alabama Coal Operators Ass'n. v. S. Ry. Co., 21 I. C. C. 230, 233, 234; Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 23 I. C. C. 195, 198; New Pittsburg Coal Co. v. H. V. Ry. Co., 24 I. C. C. 244; Rehearing granted so far as reparation is concerned, 26 I. C. C. 121; Consolidated Fuel Co. v. A. T. & S. F. Ry. Co., 24 I. C. C. 213; Boileau v. P. & L. E. R. R. Co., 24 I. C. C. 129, 133; Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co., 24 I. C. C. 55, 66, 71, 74; Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co., 26 I. C. C. 638, 654; Scott Paper Co. v. P. R. R. Co., 26 I. C. C. 601, 602; Board of Trade of Chicago v. I. C. R. R. Co., 26 I. C. C. 545; Augusta & Savannah Steamboat Co v. O. S. S. Co. of Savannah, 26 I. C. C. 380, 386, 388; Kalmbeck-Ford Co. v. K. C. S. Ry. Co., 26 I. C. C. 289, 291; Ozark Cooperage & Lumber Co. v. St. L. & S. F. R. R. Co., 26 I. C. C. 132, 134; Rhinelander Paper Co. v. M. St. P. & S. St. M. Ry., 26 I. C. C. 104, 105; Barnard Co. v. C M. & St. P. Ry. Co., 26 I. C. C. 91, 93; Indianapolis Freigh Bureau v. C. C. C. & St. L. Ry. Co., 26 I. C. C. 53, 54; Commercial Club of Duluth v. B. & O. R. R. Co., 27 I. C. C. 639, 656, 657; Holland Blow Stave Co. v. A. C. L. R. R. Co., 27 I. C. C. 488, 492; Gottron Bros .Co. v. G. & W. R. R., 28 I. C. C. 38, 42; Wabash R. R. Co. v. Priddy (Ind. 1923), 101 N. E. 724 727; Wisconsin & Ark. Lumber Co. v. St. L. I. M. & S. Ry. Co., 33 I. C. C. 33, 36; Daly Coal Co. v. C. & A. R. R. Co., 33 I. C. C. 467, 468; Cottonseed Products to Texas, 48 I. C. C. 297; Southwestern Class Case, 48 I. C. C. 379, 395; Reduced Rates from New York Piers 81 I. C. C. 312, 329; Western Coal Rates, 80 I. C. C., 383, 419.

§2. Relation of Classification.

See Relative Rates.

CASES 1887-1908

(a) Complainant attacked as unlawful rates on wheat and other kinds of grain from Iowa, Minnesota and South Dakota to Milwaukee as compared with rates on like grain to Minneapolis, and of unlawfully higher rates on wheat than on flour from some of the shipping points. HELD, that in many instances, and in varying degrees at different points, the differentials in grain rates to Milwaukee above rates in force to Minneapolis from shipping points on and south of the Southern Minnesota Division of the C. M. & St. P., give Minneapolis undue and unreasonable preference and advantage. That just and reasonable differentials in such rates would be obtained by applying the interstate distance tariff of the C. M. & St. P. R. Co., or the C. & N. W. Ry. to the short line

mileage from the several points of shipment to Minneapolis and Milwaukee. That just and reasonable rates to Milwaukee would be made by adding such differentials to rates from time to time in force to Minneapolis and any higher rates to Milwaukee would be relatively unreasonable and unjust to that city. That charging any higher rate on wheat than on flour between the same points and on the same line is unjust discrimination and unlawful. Chamber of Commerce of Milwaukee v. C. M. & St. P. R. Co., 7 I. C. C. 481.

IMPORTANT CASES SINCE 1908

(b) In numerous cases involving rates from the midcontinent field the Commission has required the establishment of rates on fuel, gas and other low-grade oils 5 cents less than on refined oils. Empire Refineries v. Director General, as Agent, 73 I. C. C. 207, 209; Davenport Commercial Club v. Director General, as Agent, 73 I. C. C. 251, 255.

(c) Rates on anthracite coal from Crested Butte district in Colorado to interstate destinations found unduly prejudicial to traffic in anthracite coal and unduly preferential of traffic in bituminous coal to extent they exceed by more than 50 cents the rates on bituminous lump coal to same destinations. Western Coal Rates, 80 I. C. C. 440.

ALL OTHER CITATIONS

Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 23 I. C. C. 195, 202; American Insulated Wire & Cable Co. v. C. & N. W. Ry. Co., 26 I. C. C. 415, 416; Board of Trade of Chicago v. I. C. R. R. Co., 26 I. C. C. 545.

II. APPLICATION.

§2½. In General.

See Application of Rates.

CASES 1887-1908

(a) Mathematical precision in the adjustment of rates is not always attainable nor necessary, and if the differences are not in fact unreasonable it can not be material whether they are arrived at by one mode or another; and while the custom of arbitraries or fixed differences may not be an ideal method, it is simpler than fluctuating percentages, and so long as it is fair and equitable it is amenable to no valid objection. Boston Chamber of Commerce v. L. S. & M. S. R. R. 1 I. C. C. 754, 762.

(aa) It is neither sound in principle nor equitable in practice for railway lines to create artificial differences in market conditions by an arbitrary differential in rates, whereby the product of one section of the country is assigned to one market, and the product of another section of the country to another market. Re Export Rates from Points East and West of Miss. River., 8 I. C. C. 185.

IMPORTANT CASES SINCE 1908

(b) Adjustments which arbitrarily fix the rates on one commodity a uniform differential over those on another, without regard to distance, are unscientific and must result in some degree of injustice. Fruits and Vegetables, 43 I. C. C., 291, 332.

(c) In figuring joint rates between standard lines and lines authorized to charge higher rates, which may be designated differential lines, there should be applied the standard single-line scale for the total distance plus the joint line differential. To the rate so arrived at there should be added that portion of the amount of increase (to attain the higher rate) of the standard joint line rate which the mileage over the differential line is of the total length of the haul. Natchez Chamber of Commerce v. L. & A. Ry., 52 I. C. C. 105, 129.

(d) The propriety of a difference in treatment of differentials between contiguous points on long and short haul traffc has been recognized by the Commission. The reason for this is that on the long haul traffic the volume of the rate is permitted by the distance to increase to a point where the additional cost of the service represented by the differential can be spread thinly over the line haul and finally absorbed without unduly encroaching upon the line haul revenues, whereas on short haul traffic the distance is not such as to permit of a sufficient increase in the volume of the rate to warrant that absorption. St. Louis Chamber of Commerce v. B. & O., 57 I. C. C. 639, 647.

(e) No general program of maintaining differentials can be made effective coincident with increases herein approved without materially delaying their effective date, and to maintain differentials by applying percentage increases to basing rates and adding thereto existing differentials can not be done without materially lessening the additional revenue to be derived by the carriers, as generally differentials are added to, rather than deducted from, base rates. Increased Rates, 1920, 58 I. C. C. 220, 245, 248.

(f) Common principle of rate making, although not always allowed, that differentials should diminish with increasing distance and vanish when mileage on which differential is based becomes inconsiderable in proportion to total mileage to destination. Western Coal Rates, 80 I. C. C. 383, 413.

(g) The adjustment of rates is an element that must be considered in judging reasonableness of differential adjustment as between two competitive fields in relative distances to common markets. Western Coal Rates, 80 I. C. C. 419.

(h) The commission has adhered to the principle of preserving fixed differentials between coal-producing districts, regardless of changes in level of rates. Ohio-Michigan Coal Cases, 80 I. C. C. 663, 684.

ALL OTHER CITATIONS

Southern Hardwood Traffic Bureau v. I. C. R. R. Co., 31 I. C. C. 6, 8; Coal Rates from Virginia Mines, 30 I. C. C. 635, 649; Crawford & Bunce v. P. C. C. & St. L. Ry. Co., 32 I. C. C. 12, 16; Pueblo Commerce Club v. D. & R. G. R. R. Co., 31 I. C. C. 133, 136; Nix & Co. v. S. Ry. Co., 31 I. C. C. 145, 147; Woolworth Co. v. Old Dominion S. S. Co., Unrep. Op. A-901; The Twin Cities Cases, 33 I. C. C. 571; Cast Iron Pipe from North Carolina Points, 38 I. C. C. 183, 186; Rates via Rail-and-Lake Routes, 37 I. C. C. 302, 309; Ocean S. S. Co. of Savannah, 37 I. C. C. 422, 426; Bituminous Coal Rates to the Southeast, 37 I. C. C. 652, 665; Memphis Merchants Exchange v. I. C. R. R. Co., 43 I. C. C. 378, 381; Green Fire Brick Co v. C. & A. R. R., 44 I. C. C. 448, 454; Arlington Cotton Oil Co. v. C. of G. Ry. 45 I. C. C. 188; Schram Glass Mfg. Co. v. St. L. & S. F. R. R. 45 I. C. C. 465, 466; R. R. Com'rs. of Iowa v. A. A. R. R., 46 I. C. C. 20 38; Lake Cargo Coal Rates, 46 I. C. C. 159, 188; Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R., 46 I. C. C. 558, 561, 562; Second Duluth Case, 46 I. C. C. 585, 590; Coal to South Dakota, 46 I. C. C. 628, 639, 640; Weis-Peterson Box Co. v. M. & O. R. R., 46 I. C. C. 693, 698, 702; State of Iowa v. Wabash Ry., 46 I. C. C. 703, 710; R. R. Comm. of La. v. A. H. T. Ry., 48 I. C. C. 312, 332; Lumber from the Southeast, 50 I. C. C. 191, 193; Memphis Southwestrn Investigation, 55 I. C. C. 515, 539; Rates on Grain and Grain Products, 56 I. C. C. 133, 140; Switching Charges to and from South Tacoma, 61 I. C. C., 128, 129; Swift Lumber Co. v. F. & G. R. R. Co., 61 I. C. C. 485, 487; Lake Superior Paper Co. v. Director General, 64 I. C. C. 33; Salem Glass Works v. Director General, as Agent, 68 I. C. C. 643; Ohio-Michigan Coal Cases, 80 I. C. C. 663, 684, 685; Rio Grande Chamber of Commerce v. St. L., B. & M. Ry. Co., 81 I. C. C. 703.

§3. C. L. and L. C. L. Shipments.

See Classification §5.

IMPORTANT CASES SINCE 1908

(a) The arbitrary or differential at opposite cities at Ohio River crossings is generally less on carload than on less-than-carload traffic. Henderson Commercial Club v. I. C. R. R. Co., 42 I. C. C. 196, 199.

ALL OTHER CITATIONS

Duncan & Co. v. N. C. & St. L. Ry. Co., 16 I. C. C. 590, 595.

§4. Through Shipments.

See Thru Routes and Joint Rates.

CASES 1887-1908

(a) Upon complaint by dealers at Mankato, Minn., that rates from Chicago to Mankato should be no higher than to Waterville, Minneapolis and points allowed like rates. HELD, that in view of the circumstances and conditions existing, a somewhat higher charge to Mankato is not unlawful, but that a difference of twenty per cent or more on the respective classes, charged when the complaint was filed, is excessive, and that a difference of ten per cent on the several classes is reasonable and should not be exceeded. The Manufacturers' & Jobbers' Union v. Minn. & St. L., 3 I. C. R. 115.

(b) Complainants attacked as unreasonable and discriminatory rates from Chicago and other western points to Boston, produced by adding to rates from the same points to New. York a socalled arbitrary or differential of 10c on first class, 6c on second class, 5c on other classes. HELD, arbitraries exacted unreasonable to extent they exceeded 10 per cent over the rates to New York. Toledo Produce Exchange v. L. S. & M. S. R. Co., 3 I. C. C. 830.

(c) Unreasonable disparity between the aggregate rates on hauls of different length to a common destination, whether by one carrier or by more than one jointly, resulting in undue advantage to one locality or business or disad-

vantage to another, is unlawful. Colorado Fuel & Iron Co. v. S. P. Co., 6 I. C. C. 488, 514.

(d) Upon complaint brought in behalf of New York City, and alleging that differentials, allowed by the defendant carriers on grain, flour and provisions from Chicago and other western points, of 2 cents to Philadelphia and 3 cents to Baltimore below the rates to New York, are unlawful under section 3 of the Act to Regulate Commerce. HELD, that the differentials are legitimately based upon the competitive relations of the carriers, that it does not appear upon the present record that the carriers have exceeded the limit within which they are free to determine for themselves, and, accordingly, that the differentials complained of do not result in unlawful preference or advantage to Philadelphia or Baltimore over the City of New York. New York Produce Exchange v. Baltimore & O. R. Co., 7 I. C. C. 613.

(e) Defendants' rates for transporting lumber in carloads to points on the New York & Long Branch Railroad are made by adding to the rate to New York, N. Y., an arbitrary charge of 5 cents per 100 pounds when the shipping point is Saginaw, Mich., but only 2 cents per 100 pounds when the shipping point is Buffalo, N. Y. Water competition between Buffalo and New York affects the rates to New York, but it justifies no wider difference in the rates from Saginaw and Buffalo to these interior destinations than exists in the rates from these shipping points to New York. HELD, that the discrimination is undue and in violation of the Act to Regulate Commerce. Mershon, S. P. & Co. v. Central R. Co. of N. J. et al, 10 I. C. C. 457.

(f) Complainants alleged that defendants, having in effect on sugar in carloads from New Orleans, rates per hundred pounds which were 25 cents to Wichita and 20 cents to Kansas City and other Missouri River points, increased those rates to 47 cents to Wichita and 32 cents to Missouri River points, thereby increasing the differential as between Wichita and Kansas City from 5 cents to 15 cents per hundred pounds, and that the new rates were, as against Wichita, unjust and unreasonable in themselves and relatively; and it was further alleged that new advanced rates from other points of origin imposed the same differential as between Wichita and Kansas City, and that, as against Wichita, those rates were also unlawful. Wichita and Kansas City compete for the sale of sugar in common competitive territory. The competitive conditions applying in the transportation of this traffic to Wichita and Kansas City are stated and found not to justify the 15-cent differencial against Wichita, and the existing rates to Wichita are excessive. HELD: 1. That the rate of 47 cents on sugar from New Orleans to Wichita is unreasonable; 2. That the present differential of 15 cents applied at Wichita above Kansas City on shipments of sugar from the Atlantic Seaboard and New Orleans subjects Wichita to undue discrimination; and such differential should not be more than 8 cents per 100 pounds; 3. That as to traffic passing through Wichita to Kansas City the rule laid down in Johnston-Larimer D. Co. v. A. T. & S. F. Ry. Co., 6 I. C. C. Rep. 586, forbidding any higher charge to Wichita than to Kansas City on shipments from Galveston, is, in the light of decisions of the United States Supreme Court, no longer applicable, and defendants operating lines through Wichita to Kansas City are not prohibited from charging a higher rate on sugar to Wichita than to Kansas City so long as the Wichita rate is reasonable. Lehman-Higginson G. Co. et al. v. A. T. & S. F. R. Co. et al., 10 I. C. C. 461.

(g) It was contended by New York and Boston that the differentials favoring Baltimore and Philadelphia on freight articles from the west to Baltimore, Philadelphia, and Boston should be abolished. The differentials below or above the rates to New York are as follows; Export traffic, 3 cents less to Baltimore and 2 cents less to Philadelphia, except on grain, iron, and steel articles, which are 1½ cents less to Baltimore and 1 cent less to Philadelphia, with the same rates to Boston as to New York on this traffic. On ex-lake grain received at Buffalo, Fairport, and Erie, there is, pending the disposition of this case, a differential in favor of Baltimore of 4-10 of a cent per bushel below the New York rate, but no differential in favor of Philadelphia. HELD, that the differential per 100 pounds on flour, all-rail and lake and rail, should be reduced to 2 cents at Baltimore and 1 cent at Philadelphia, and that the existing differential on ex-lake grain should be reduced to 3-10 of a cent per bushel and be allowed both to Baltimore and Philadelphia; that other-

wise the present export differentials should remain in force. Re Differential Freight Rates to and From North Atlantic Ports, 11 I. C. C. 13.

(h) The present charges on corn products and corn from Missouri River points to the Pacific Coast terminals constitute undue, unreasonable, and unlawful discrimination against corn products and producers thereof at places on the Missouri River, to the extent that such rate on corn products is more than 5 cents above the rate on corn. In the Matter of Re Rates on Corn and Corn Products from Missouri River Points to Points in Washington, Oregon and California, 11 I. C. C. 212.

(i) The present difference in through rates per 100 pounds on grain, flour, and feed, carloads, from Chicago and other western points to Mount Holly and Pemberton, N. J., is 5 cents, Mount Holly taking the rate to New York, and Pemberton, 6 miles east, the New York rate plus 5 cents. Prior to February, 1903, the Mount Holly rate was the New York rate plus 3 cents, and for a long period the differential against Pemberton in favor of Mount Holly was 2 cents. The Mount Holly rate was reduced on account of developed water competition. Under the 5-cent differential complainant could save 2½ cents per 100 pounds by shipping to Mount Holly and teaming to Pemberton. Since the hearing the Pennsylvania Railroad Company has put in a tariff naming a reconsignment charge on the traffic of 2½ cents (50 cents per ton) from Mount Holly to Pemberton. HELD, that the present through rate to Pemberton as compared with the rate to Mount Holly is excessive and subjects complainant and Pemberton itself to unreasonable prejudice and disadvantage, that the through rate to Pemberton should not exceed the New York rate plus 2 cents per 100 pounds, and should not be at any time more than 2 cents above the rate to Mount Holly. Eber De Cou. v. Penn. Railroad Co., 12 I. C. C. 160.

IMPORTANT CASES SINCE 1908

(j) In making joint through rates on long distance traffic to local or non-competitive points, differentials above rates to basing points should bear some reasonable relation to total distances involved. Board of Trade of Carrollton v. C. of G. Ry. Co., 28 I. C. C. 154, 165.

(k) No general program of maintaining differentials can be made effective coincident with the increases herein approved without materially delaying their effective date, and to maintain differentials by applying the percentage increases to basing rates and adding thereto existing differentials can not be done without materially lessening the additional revenue to be derived by the carriers, as generally differentials are added to, rather than deducted from, base rates. Increased Rates, 1920, 58 I. C. C. 220, 245.

ALL OTHER CITATIONS

Windsor Turned Goods Co. v. C. & O. Ry. Co., 18 I. C. C. 162, 163; Huges Creek Coal Co. v. K. & M. Ry. Co., 31 I. C. C. 10, 14; Vulcanite Portland Cement Co. v. C. R. R. Co. of N. J., 46 I. C. C. 483, 487; St. Louis Chamber of Commerce v. Director General, 59 I. C. C. 586.

III. PURPOSE.

§5. To Equalize Conditions.

See Equalization of Rates §2.

CASES 1887-1908

(a) It is neither sound in principle nor equitable in practice for railway lines to create artificial differences in market conditions by an arbitrary differential in rates whereby the product of one section of the country is assigned to one market and the product of another section of the coutry is assigned to another market. In the Matter of Export Rates from Points East and West of the Mississippi River, 8 I. C. C. 185, 210.

IMPORTANT CASES SINCE 1908

(b) Where rates from various fields in a coal belt are so correlated that to change one may disturb the entire adjustment, the Commission cannot undertake to pass upon the reasonableness of one of the rates involved without considering its relation to the rates from the other coal fields. Victor Mfg. Co. v. S. Ry. Co., 21 I. C. C. 222, 226.

(c) Where, because of difference in distance, rates herein are different from a junction point of a carrier's own main line or branches, the differential should not be higher from points beyond from which the traffic moves through that junction, than at such junction point. Commercial Club of Superior v. G. N. Ry. Co., 24 I. C. C. 96, 120.

(d) While something may be said in support of a differential relation which gives each line a fair chance at the tonnage, nothing can be said for a differential relation which permits some

routes to grow with the business of the country and keeps others practically at a standstill. Rates via Rail-and-Lake Routes, 37 I. C. C. 302, 316.

(e) The only way to establish differentials where entirely independent carriers serve a common market from competing producing points would be to fix maximum rates from some producing points and minimum rates from others, and the latter is not within the Commission's authority. Galloway Coal Co. v. A. G. S. R. R. Co., 40 I. C. C. 311, 315.

(f) A suitable differential to a line requiring a differential is one determined upon the character and service of the route as well as from a consideration of what in the judgment of the carrier would give to such a line an equitable share of the business. U. S. War Department v. A. & S. Ry., 77 I. C. C. 317, 323.

(g) One of chief purposes of a differential is to stabilize rate relationships between competing producing points or markets. Stability is of peculiar importance to a highly competitive commodity like coal. Fixed or stable differentials on coal are the rule and the Commission has repeatedly rejected proposals to establish percentage differentials between competing coal fields. Ohio-Michigan Coal Cases, 80 I. C. C. 663, 685.

ALL OTHER CITATIONS

Raven Red Ash Coal Co. v. N. & W. Ry. Co., 13 I. C. C. 230, 231, 237; George's Creek Basin Coal Co. v. B. & O. R. R. Co., 14 I. C. C. 127, 131; Potlatch Lumber Co. v. N. P. Ry. Co., 14 I. C. C. 41 46; Rehearing denied, 16 I. C. C. 465, 468; Alabama Coal Operators' Ass'n. v. S. Ry. Co., 21 I. C. C. 230, 235, 236; Clearfield Lumber Co. v. C. & O. Ry. Co., 21 I. C. C. 211; In Re Transportation of Rice and Rice Products, 21 I. C. C. 124; Fremont Commercial Club v. C. B. & Q. R. R. Co., 21 I. C. C. 74; Carstens Packing Co. v. O. & W. R. R. Co., 22 I. C. C. 77, 81; Neilson Co. v. La. Ry. & Nav. Co., 23 I. C. C. 254; In Re Import Rates, 24 I. C. C. 78; Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co., 24 I. C. C. 55; Michigan Copper & Brass Co. v. D. S. S. & A. Ry. Co., 25 I. C. C. 357; Kalmback-Ford Co. v. K. C. S. Ry., 26 I. C. C. 289; Holland Blow Stave Co. v. A. C. L. R. R. Co., 27 I. C. C. 488; Norman Lumber Co., v. L. & N. R. R. Co., 29 I. C. C. 565; Columbia Chamber of Commerce v. S. Ry. Co., 28 I. C. C. 339, 342; Oklahoma Portland Cement Co. v. O. L. & G. Ry. Co., 32 I. C. C. 221; New Orleans Joint Traffic Bureau v. A. & S. Ry., 37 I. C. C. 444; Cast-Iron Pipe from North Carolina Points, 38 I. C. C. 183, 186; Utah-Idaho Millers & Grain Dealers Ass'n. v. D. & R. G. R. R. Co., 42 I. C. C. 648, 649, 656; Grain and Grain Products from Argo, Ill., 43 I. C. C. 359, 362; Bituminous Coal to C. F. A. Territory, 46 I. C. C. 66; Ewing & Co., Ltd. v. S. I. Ry., 50 I. C. C. 339; In the matter of Rates on Cement Between Points on Western Trunk Line Territory and Between Points in Western Trunk Line Territory and Adjacent Points, 52 I. C. C. 225; Corp. Commission of North Carolina v. Director General, 57 I. C. C. 523, 526; State of Washington v. Director General, 58 I. C. C. 701; Wichita Board of Commerce v. Director General, 60 I. C. C. 536; Emerson Brantington Co. v. Director General, 62 I. C. C. 18; State of Idaho, ex rel. v. Director General, 66 I. C. C. 330; Brown Elevator Co. v. A. & W., 62 I. C. C. 469; Alantic Refining co. v. Driector General, as Agent, 74 I. C. C. 8.
8.

§6. To Equalize Consuming Points.

See Equalization of Rates §3.

CASES 1887-1908

(a) Manufacturing industries should not be deprived, through a carriers adjustment of relative rates, of advantages resulting from their favorable location in respect of cost of raw material supplied from a common source, or of distance to the common market for the finished product. James & Abbott v. C. P. R. Co., 4 I. C. C. 274, 280.

ALL OTHER CITATIONS

Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 16 I. C. C. 254, 274, 275; The Traffic Bureau of St. Louis v. M. P. Ry. Co., 13 I. C. C. 105, 108; Washburn-Crosby Co. v. P. R. R. Co., 13 I. C. C. 40, 42; Banner Milling Co. v. N. Y. C. & H. R. R. R. Co., 13 I. C. C. 31, 33; Farmers Co-Operative & Educational Union v. G. N. Ry. Co., 17 I. C. C. 406, 410, 412; Southern Cotton Oil Co., v. A. C. L. R. R. Co., 18 I. C. C. 275, 276; League of Commission Mchts. v. A. C. L. R. R. Co., 20 I. C. C. 132, 134; Memphis Freight Bureau v. St. L. S. W. R. R. Co., 20 I. C. C. 33; Commercial Club of Superior, Wis., v. G. N. Ry. Co., 24 I. C. C. 96; modified on rehearing, 25 I. C. C. 342; Superior Commercial

Club v. G. M. Ry. Co., 25 I. C. C. 342; Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co., 26 I. C. C. 638; modified on rehearing, 28 I. C. C. 250; Union Tanning Co. v. S. Ry. Co., 26 I. C. C. 159; California Pole & Piling Co. v. S. P. Ry. Co., 27 I. C. C. 669; Memphis Freight Bureau v. I. C. R. R. Co., 27 I. C. C. 507; Coke Producers Ass'n. of Connelsville v. B. & O. R. R. Co., 27 I. C. C. 125; Crodus Bros. v. A. T. & S. F. R. R. Co., 29 I. C. C. 449; Paducah Board of Trade v. I. C. R. R. Co., 29 I. C. C. 583; City of Memphis v. C. R. I. & P. Ry., 45 I. C. C. 487; Taliaferro & Co. v. S. A. L., 53 I. C. C. 186; Equitable Powder Manufacturing Co. v. Director General, 55 I. C. C. 24.

§7. To Equalize Producing Points.

See Equalization of Rates §3, §7.

IMPORTANT CASES SINCE 1908

(a) The advanced differential of 5c over Galveston on through rail and water rates on rice and rice products from Houston, Tex., to New York, Boston, Baltimore, Philadelphia and Providence, via Galveston, is not discriminatory when compared with corresponding rates from New Orleans, Galveston or other Texas points, or as compared with corresponding rates on other commodities from Houston, the Commission finding that this differential is a low rate made in an effort to comply with an order of the Commission, and with the bona fide purpose of correcting a discrimination in the manner best calculated to put the rates from all Texas milling cities in fair relation to each other. Chamber of Commerce of Houston, Tex. v. G. H. & S. A. Ry. Co., 23 I. C. C. 214.

(b) One of the chief purposes of a differential is to stablize rate relationships between competing producing points or markets. Stability is of peculiar importance to a highly competitive commodity like coal. Fixed or stable differentials on coal are the rule and the Commission has repeatedly rejected proposals to establish percentage differentials between competing coal fields. Ohio-Michigan Coal Cases, 80 I. C. C. 663, 685.

ALL OTHER CITATIONS

Potlatch Lumber Co. v. N. P. Ry. Co., 14 I. C. C. 41, 48; rehearing denied, 16 I. C. C. 465, 468; Baker v. Cumberland Valley R. R. Co., 14 I. C. C. 568, 569, 570; Black Mountain Coal Land Co. v. S. Ry. Co., 15 I. C. C. 286; Big Blacfoot Milling Co. v. N. P. Ry. Co., 16 I. C. C. 173, 175; Cedar Hill Coal & Coke Co. v. C. & S. Ry. Co., 17 I. C. C. 479, 481, 485; Andy's Ridge Coal Co. v. S. Ry. Co., 18 I. C. C. 405, 411; Commercial Club of Omaha v. Anderson & Saline River Ry. Co., 18 I. C. C. 532, 536, 537; Boileau v. P. & L. E. R. R. Co., 22 I. C. C. 640; National Refining Co. v. M. P. Ry. Co., 24 I. C. C. 315; Pittsburgh Vein Operators of Ohio v. Penn. Co., 24 I. C. C. 280; Boileau v. P. & L. E. R. R. Co., 24 I. C. C. 129; Sloss-Sheffied Steel & Iron Co. v. L. & N. R. R. Co., 30 I. C. C. 597; Coal Rates from Virginia Mines, 30 I. C. C. 635; St. Mathews Pro-Pro. Exch. v. L. & N. R. R. Co., 32 I. Co., C. 233; Alpha Portland Cement Co. v. B. & O. R. R., 34 I. C. C. 414; Galloway Coal Co. v. A. G. S. R. R., 40 I. C. C. 311; Milling Co. v. A. T. & S. F. Ry., 41 I. C. C. 533; Wiley & Morehouse v. C. B. & Q. R. R. Co., 42 I. C. C. 313; Sloss-Sheffield Steel & I. Co. v. L. & N. R. R., 46 I. C. C. 558; Southeastern Manufactured Tobacco, 50 I. C. C. 353; West Virginia Rail Co. v. B. & O. R. R., 50 I. C. C. 318; Chaney Co. v. G. N. Ry., 50 I. C. C. 332, 338; Wadhams Oil Co. v. Director General, 57 I. C. C. 597; Duquesne Coal & Coke Co. v. P. & W. V., 62 I. C. C. 759; Decker & Sons v. Director General, as Agent, 74 I. C. C. 171; Proportional Rates on Grain and Grain Products, 74 I. C. C. 341; Big Mandy Coal & Mining Co. v. L. R. R. Co., 78 I. C. C. 445; Dewey Bros. Co. v. N. & W. Ry., 80 I. C. C. 499.

IV. REASONABLENESS AND DISCRIMINATION.

See Discrimination; Reasonableness of Rates

§8. In General.

See Classification §17.

CASES 1887-1908

(a) Complainant attacked rates charged on grain from Farmington, Northfield, Dundas Fairbault and Owatonna, Minn., to points in Iowa, Wisconsin and Illinois as unjust and unreasonable. The C. M. & St. P., runs from a point in Dakota territory through Minneapolis and St. Paul to Chicago. Between Minneapolis and Milwaukee defendant has two routes, one by way of Red Wing and other towns, called the River Division, and being the shorter route; the other by way of Northfield, Fairbault and other towns, called the Iowa and Minnesota Division. The through rate on wheat from Dakota

to Milwaukee and Chicago is 25c, with privilege of milling in transit on both divisions. The rate on wheat from said western territory to Minneapolis and St. Paul when consigned there, and most, if not all of which is carried by other roads, is 17½c. The rate on the River division from Minneapolis to Milwaukee and Chicago, and from all intermediate points is 7½. The rate on wheat on the Iowa and Minnesota division from Minneapolis and intermediate towns is 15c, except from Farmington, which is 13½c. The rate on other commodities is the same by both routes. The fact that the rate on wheat on the Iowa and Minnesota divisions is double the rate enjoyed by neighboring towns on the other division works practically to their disadvantage and prejudice. HELD, the complaint is well founded; that the rate on wheat on that division is relatively too high; that while a reasonable differential may be allowed on that division, on account of greater distance and probable larger expense of transportation and the greater stringency of the competitive forces on the River division, the difference above the present rate on the River division should not exceed 2½c. It is not a sufficient compliance with the Law that rates are reasonable in themselves, but they should be so relatively reasonable as to protect communities and business against unjust discrimination. When the same carrier operates parallel lines and for any cause accepts low rates on one line, it should furnish sufficient corresponding advantages to the patrons of the other line to prevent undue prejudice and disadvantage, and to preserve the substantial equality contemplated by the statute. Boards of Trade Union v. C. M. & St. P. R. Co., 1 I. C. C. 608.

(aa) In view of the longer haul to Boston than to New York, the greater cost of transportation to Boston, the very much greater volume of business to and from New York, the competition by water transportation by the lakes, Erie Canal and Hudson River, and also by several rival railroad lines, and the geographical and commercial advantages of New York, the differentials on Boston local rates of ten cents per hundred pounds on the first and second classes of mechandise and five cents per hundred pounds on the four other classes between New York and Boston on traffic originating west of Buffalo have not been shown to be unjust and unreasonable or to constitute unjust discrimination against Boston. Boston Cham. of Com. v. Lake Shore & M. S. R. Co., 1 I. C. R. 754.

(b) Complainant attacked as unduly preferential and unreasonable rates from St. Louis, Mo., to Lincoln, Neb., compared with the rates to Omaha, Neb. The reason why the rates from St. Louis to Lincoln are higher than the rates to Omaha is that the rates from Chicago are also higher by precisely the same figures, uniform working rates between the two sections having by agreement been carried out by all lines. The differentials are given to Omaha on St. Louis business because of the short line to that point made by the Wabash, and for the purpose of a rule applicable to all Missouri River points they approximate equity. The M. P., having met the Wabash rate at Omaha, is not necessarily required to give Lincoln the same terms, although the distance is a trifle less and Lincoln is the center of a thriving trade. The M. P. gives Lincoln equal rates with Omaha upon all business coming from a direction where there is no competition by a shorter route. The rate from St. Louis to Lincoln is not of itself unreasonable, and the general scheme on which the rates are made throughout the vast territory covered by the roads that have been united in the existing traffic requires that the existing difference between Omaha and Lincoln should be preserved upon traffic from St. Louis as well as from Chicago, and the fact that a low rate from St. Louis is forced upon the M. P. by competition at Omaha is not to be taken advantage of to compel a corresponding reduction upon its Lincoln branch. No substantial damage is suffered by Lincoln inasmuch as the distributing rates from Lincoln are so arranged, in comparison with those from Omaha, that the difference in the rates to these points is equalized. HELD, rates attacked not unduly preferential, complaint dismissed. Lincoln Board of Trade v. M. P. R. R., 2 I. C. C. 98.

(c) The differentials are given to Omaha on St. Louis business because of the short line to that point made by the Wabash, and for the purpose of a rule applicable to all Missouri River points they approximate equity. Lincoln Board of Trade v. Missouri Pac. R. Co., 2 I. C. C. 98.

(d) The rate from St. Louis to Lincoln is not of itself unreasonable, and

the general scheme on which rates are made throughout the vast territory covered by the roads that have been united in the existing traffic requires that the existing difference between Omaha and Lincoln should be preserved upon traffic from St. Louis as well as from Chicago; and the fact that a low rate from St. Louis is forced upon the Missouri Pacific by competition at Omaha is not to be taken advantage of to compel a corresponding reduction upon its Lincoln branch. Lincoln Board of Trade v. Missouri Pac. R. Co., 2 I. C. R. 98.

(da) On complaints of unreasonable and discriminating rates from Chicago and other western points to Boston, produced by the addition to rates from the same points to New York of a so-called arbitrary or differential of 10 cents on first class articles, 6 cents on goods of the second class and 5 cents on the other classes of freight, and which also involved the propriety of combination rates through intermediate points, the divisions of through rates between the carriers, and the relation of lighterage charges in New York harbor to the rates in question; HELD, That the question involved herein is the through rate as affected by the arbitrary differential, and divisions of the through rate accruing to the different roads need not be considered, nor are possible rate combinations properly comparable with the through rate, except for limited purposes. That it can make no difference to the shipper or the public how carriers adjust between themselves the expense of lighterage paid out of the through rate to New York. That the arbitrary differentials now charged are unlawful and should hereafter be made by adding a percentage to the New York rate on shipments included in the six classes of freight from Chicago and points east thereof and west of Buffalo to Boston and other New England points, and that the defendants and other carriers interested be allowed twenty days to show cause by answer why order should not issue commanding them to desist from charging said arbitrary differentials and requiring said rates to Boston and New England points to be made by adding to the New York rate an increase of ten per cent thereof, and if no such answer be filed that such order be issued forthwith. Toledo Produce Exchange v. Lake Shore & M. S. R. Co. 3 I. C. R. 830.

(db) An arbitrary differential added to the rates from Chicago to New York to make the rate to Boston was held improper, and a percentage was ordered to be substituted, instead of the arbitrary sum. Toledo Produce Exch. v. Lake Shore & M. S. R. Co. (Com.) 3 I. C. R. 830.

(e) While existing differentials which result in higher freight rates from Cincinnati than from Louisville to "Montgomery Territory" and "Southwestern Territory" may, as a whole, discriminate against Cincinnati, the inequality arises, if it exists, through combinations of rates to Cincinnati and Louisville from territory north of the Ohio River with rates from those points south; there is no showing whether the fault lies with rates north or south of the river, and neither of the carriers operating north of the river is a party to this proceeding. It fairly appears, on the other hand, that if such differentials were entirely abolished, the rates from a large section north of the Ohio would be against Louisville. The Complainant asks in its petition that the higher rates from Cincinnati than from Louisville be prohibited; readjustment of present rates, and only the fact of distance is presented as a basis for determining whether the higher rates from Cincinnati are unjust or what rates would be just. HELD, that the complaint be dismissed without prejudice. Freight Bureau of Cincinnati v. Cincinnati, N. O. & W. P. R. Co., 7 I. C. C. 180.

(f) Water competition between Charleston and Savannah compels a rate of 80 cents per ton on fertilizer carried by rail between those cities. Rates from Savannah to points in Georgia are fixed by the Georgia Railroad Commission. Water competition exists also between Savannah and Charleston and Jacksonville, Fla. By that mode of carriage the rate from both cities to Jacksonville is the same, and subsequently the same also to points reached by rail from Jacksonville, as against the all-rail lines to those points. Circumstances over which a defendant all-rail line to Montgomery and other points in Alabama has no control also affect fertilizer rates from Savannah and Charleston to such Alabama points in some degree. HELD, upon all the facts, (1) that defendants' present differential of 50 cents more per ton from Charleston than from Savannah to points in Georgia other than common points is not unreasonable or prejudicial to Savannah, (2) that charging the same

rate from Savannah and Charleston over the defendant all-rail lines to points in Florida in competition with ocean and rail competition from Savannah and Charleston is not unlawful, (3) that a lower differential as between Savannah and Charleston on fertilizer to points in Alabama reached by the Alabama Midland Railway than the differential established as between those cities on fertilizer to points in Georgia does not appear justified, and that sufficient difference is not made in rates to some stations in Florida; and that defendants are advised to adjust such rates in accordance with suggestions stated, with leave to complainants to apply for an order if such adjustment is not made. Savannah Bureau of F. & Trans. v. Charleston & S. R. Co., 7 I. C. C. 458.

(g) A differential of 50 cents more per ton from Charleston than from Savannah to joints in Georgia, other than common points, is not unreasonable or prejudicial to Savannah. Savannah Bureau of F. & T. v. Charleston & S. R. Co., 7 I. C. C. 458.

(h) A lower differential as between Savannah and Charleston on fertilizer to points in Alabama reached by the Alabama Midland Railway than the differential established between those cities on fertilizer to points in Georgia is not justified. Savannah Bureau of F. & T. v. Charleston & S. R. Co., 7 I. C. C. 458.

(i) On complaint of unlawful rates charged by defendants on wheat and other kinds of grain from points of shipment in Iowa, Minnesota, and South Dakota to Milwaukee, as compared with rates on like grain to Minneapolis, and of unlawfully higher rates on wheat than on flour from some of the shipping points. HELD, that in many instances, and in varying degrees at different points the differentials in grain rates to Milwaukee above rates in force to Minneapolis from shipping points on and south of the Southern Minnesota Division of the C. M. & St. P. Ry. give Minneapolis undue and unreasonable preference and advantage, and subject Milwaukee to undue and unreasonable prejudice and disadvantage. That just and reasonable differentials in such rates would be obtained by applying the interstate distance tariff of the C. M. & St. P. Ry., or the C. & N. W. Ry., to the shortline mileage from the several points of shipment to Minneapolis and Milwaukee. That just and reasonable rates to Milwaukee would be made by adding such differentials to rates from time to time in force to Minneapolis, and any higher rates to Milwaukee would be relatively unreasonable and unjust to that city. That charging any higher rate on wheat than on flour between the same points and on the same line is unjust discrimination and unlawful. Chamber of Commerce v. Chicago, M. & St. P. Ry. Co., 7 I. C. C. 481.

(j) A differential of 2 cents to Philadelphia and 3 cents to Baltimore below the rates to New York from Chicago and other western points on grain, flour, and provisions cannot, without reference to the actual operation of such differentials, be held to create an undue or unreasonable preference against New York when it is considered that the latter city is some distance further from Chicago than the others and that its ocean facilities greatly surpass those of the other cities. New York Produce Exch. v. Baltimore & O. R. Co., 7 I. C. C. 612.

(k) Railway companies may make whatever rates, form whatever lines, and establish whatever differentials they deem best for the purpose of securing and conducting transportation, provided the just interests of the public are not sacrificed thereby, and whether in so doing they act wisely or unwisely, fairly or unfairly between themselves, is not for the Commission to determine; the jurisdiction of the Commission is confined to inquiring whether the situation which the carriers have created is in violation of the Act to Regulate Commerce. New York Produce Exchange v. Baltimore & O. R. Co., 7 I. C. C. 613.

(l) Upon complaint brought on behalf of New York City, and alleging that differentials allowed by defendant carriers on grain, flour and provisions from Chicago and other western points, of 2c to Philadelphia and 3c to Baltimore below the rates to New York, are unlawful under section 3 of the act. HELD, that the differentials are legitimately based upon the competitive relations of the carriers, that it does not appear upon the present record that the carriers have exceeded the limit within which they are free to determine for themselves, and, accordingly, that the differentials complained of do not result in unlawful preference or advantage to Philadelphia or Baltimore over New York. Complaint dismissed. New York Produce Exchange v. B. & O. R. Co., 7 I. C. C. 612.

(la) A difference in rate between Kansas points and destinations in Texas, of 7 cents per 100 pounds against corn meal and in favor of corn, unjustly discriminates against Kansas millers; and the differential should not exceed 3 cents, which would cover the difference of cost in service, and is sufficient in view of the difference in value, greater liability to injury and other conditions surrounding the transportation of such commodities. Board of R. Comrs. v. Atchison, T. S. F. R. Co., 8 I. C. C. 304.

(m) The present Hampton rates are in violation of both the 4th and 3d sections of the Act to Regulate Commerce, but that Hampton rates may properly be made higher than the Palatka rates by the differentials now existing between the Palatka and Jacksonville rates. Board of Trade v. Nashville, C. & St. L. Ry. Co., 8 I. C. C. 503.

(n) Myrick and Rich Hill, Mo., are located on different branches of defendant's system, and Myrick is 43 miles nearer than Rich Hill to all points on defendants lines in Kansas and Nebraska terminating at Hoxie, Lenora and Smith Center, Kans., and Prosser, Crete, Lincoln and Omaha., Neb. Defendant's rates on coal from Myrick, Mo., are 15 cents per ton lower than from Rich Hill, Mo., to Kansas City and Atchison, but beyond Atchison to numerous points on said Kansas and Nebraska lines this differential disappears, and in many cases lower rates are in force from Rich Hill than from Myrick. HELD, that complainant's demand for a differential north and west of Atchison, as well as to Atchison and points south therof, should be sustained to the extent of a differential of 10 cents in favor of Myrick as far north as Nebraska City Junction and as far west as Greenleaf, Kans., and of 5 cents beyond such points to the termini of defendant's said lines. McGrew. v. Missouri Pac. Ry. Co., 8 I. C. C. 630.

(na) Complainant's demand for a differential in rates on coal from Myrick, Mo., to points north, west, and south of Atchison, as well as to Atchison itself, should be sustained to the extent of a differential of 10 cents in favor of Myrick as far north as Nebraska City Junction and as far west as Greenleaf, Kan., and of 5 cents beyond such points to the termini of defendant's line. McGrew v. Missouri P. R. Co., 8 I. C. C. 630.

(o) Complainant attacked rates on coal from Myrick, Mo., to Kansas City, Atchison and points north and west as unreasonable. Myrick and Rich Hill, Mo., are located on different branches of defendant's system, and Myrick is 43 miles nearer than Rich Hill to all points on defendant's lines in Kansas and Nebraska, terminating at Hoxie, Lenora and Smith Center, Kas., and Prosser, Crete, Lincoln and Omaha, Neb. Defendant's rates on coal from Myrick, Mo., are 15c per ton lower than from Rich Hill, Mo., to Kansas City and Atchison but beyond Atchison to numerous points on said Kansas and Nebraska lines this differential appears, and in many cases lower rates are in force from Rich Hill than from Myrick. HELD, complainants demand for a differential north and west of Atchison, as well as to Atchison and points south therof, should be sustained to the extent of a differential of 10c in favor of Myrick as far north as Nebraska City Junction and as far west as Greenleaf, Kas., and of 5c beyond such points to the termini of defendant's said lines. Defendant may properly make a distinction in classification and apply a lower rate on steam coal, and complainant is not damaged by defendant's failure to publish a rate upon mine run, nut, mill or slack from Myrick since the Myrick mine produces nothing which could be shipped under that name. McGrew v. M. P. R. Co., 8 I. C. C. 630.

(p) Upon complaint that a rate of 75c per 100 pounds on cotton from Dallas, Texas, to New Orleans, La., is unreasonable and should not exceed 55c, it appeared that such rate also applied as a common point rate from substantially all the cultivated portion of Texas, and that reduction of the rate from Dallas would involve corresponding reductions from nearly the whole state; that the rate to New Orleans is determined by adding a differential of 10c to the rate to Galveston, and that such differential is reasonable; that the Texas Railroad Commission fixes the Galveston rate and has reduced such rate from 65c to 60c during the pendency of this proceeding, such action resulting, under maintenance of the differential. in like reduction of the rate to New Orelans; that about 65 per cent of Texas cotton passes through Galveston and about 25 per cent through New Orleans, and reducing only the New Orleans rate would result in diverting more of the traffic from Galveston. HELD, that while the rate from Dallas to New Orleans does not

appear to be altogether reasonable, the Commission is not satisfied, in view of the control exercised and the action taken by the Texas Commission, that it ought to interfere with the present adjustment. Complaint dismissed. Dallas Freight Bureau v. T. & P. R. Co., 8 I. C. C. 33.

(q) The rates for the shipment of lumber in carloads from points in West Virginia and southwestern Virginia to New York City, over the N. & W. Railroad to Hagerstown and thence via the P. R. R. to destination, and over the N. & W. to Shenandoah Junction and thence via the B. & O. R. R., are unreasonable and unjust, where they are made up by adding to those of the N. & W. to Hagertown and Shenandoah Junction a specific or arbitrary of 13 cents per 100 pounds charged by the Pennsylvania, and Baltimore & Ohio respectively. and the specific rate was advanced from 12 to 13 cents in 1893, and the N. & W. charges were generally increased in 1899 and 1900 about 1½ cents per 100 pounds, while much lower rates on competing lumber are maintained from neighboring points in the same shipping section to New York by the B. & O., and by the C. & O. Ry. connecting with the B. & O. at Staunton and the P. R. R. at Washington, and the present rates by the N. & W. yield higher rates per ton mile than those of the C. & O. line. National Wholesale Lumber Dealers' Asso. v. Norfolk & Western R. Co., 9 I. C. C. 87.

(qa) Although the dissimilarity of circumstances and conditions justifies the defendant in charging a higher rate on lumber from Fountain Head, Gallatin, St. Blaise, and Pilot Knob to Louisville same line from Nashville, a difference of than for the longer distance over the 1 cent in the rates is sufficient to offset the difference in circumstances and conditions, any great difference in the rates renders the rate from the intermediate points relatively unreasonable. S. Marten v. Louisville & Nashville R. Co. 9 I. C. C. 581.

(r) Defendant charges on lumber to Boston and Boston points a higher rate from Sheridan, Ind., a non-competitive point on its road, than from Indianapolis, Ind., although the latter is the longer distance point by its line, which runs north from Indianapolis through Sheridan to Michigan City, Ind., and connects at various points with lines to Boston and other eastern localities. Indianapolis is a competitive point and numerous lines run from that city both east and west. The short lines from Sheridan to the east are through Indianapolis, and by those lines Sheridan is a longer distance point. Indianapolis takes 93 per cent of Chicago rates to the east, and Sheridan, though claimed by complainant to be in 93 per cent territory, is charged 100 per cent, or Chicago rates, by the defendant. The rates to Boston and Boston points at the time of complaint were 27 cents per hundred pounds from Sheridan and 25 cents from Indianapolis; but since they have been reduced 26½ and 24½ cents, respectively. The circumstances and conditions governing the traffic from Sheridan are substantially and materially different from those applying on the traffic from Indianapolis. HELD, that no undue discrimination results to Sheridan because by defendant's indirect route the rate is 2 cents less from Indianapolis than it is from Sheridan. G. C. Pratt Lumber Co. v. Chicago, I. & L. R. Co., 10 I. C. C. 29.

(ra) No undue discrimination results to Sheridan by reason of the fact that the rate from that place to Boston is 2 cents per 100 lbs. more than from Indianapolis to Boston, although the latter is the longer distance point by the defendant's line, which runs north from Indianapolis through Sheridan, connecting at various points with lines to Boston; as Indianapolis is a competitive point, and the short lines from Sheridan to the east are through Indianapolis, and by those lines Sheridan is a longer distance point. G. C. Pratt Lumber Co. v. Chicago, I. & L. R. Co., 10 I. C. C. 29.

(rb) An undue discrimination is made by the defendants in fixing their rates for transporting lumber to points on the New York & Long Branch Railroad by adding to the rate to New York city an arbitrary charge of 5 cents per 100 lbs. when the shipping point in Saginaw, Mich., but only 2 cents per 100 lbs. when the shipping point is Buffalo, N. Y. Water competition between Buffalo and New York affects the rates to New York, but it justifies no wider difference in the rates from Saginaw and Buffalo to their interior destinations than exists in the rates from these shipping points to New York. Mershone S. P. & Co. v. Central R. Co. 10 I. C. C. 456.

(rc) The competitive conditions applying in the transportation of sugar to

Wichita and Kansas City do not justify the 15 cent differential against Wichita; such differential should not be more than 8 cents per 100 lbs. Lehman-Higginson Grocery Co. v. Atchison, T. & S. F. R. Co. 10 I. C. C. 460.

(s) Complainant attacked defendants rate on sugar in carloads from New Orleans, La., of 25c to Wichita, Kas., and 20c to Kansas City, Mo., and other Missouri River points, increased to 47c to Wichita and 32c to Missouri River points, thereby increasing the differential as between Wichita and Kansas City from 5c to 15c, and that the new rates were, as against Wichita, unjust and unreasonable in themselves and relatively; and it was further alleged that new advanced rates from other points of origin imposed the same differential as between Wichita and Kansas City, and that as against Wichita, those rates were also unlawful. Wichita and Kansas City compete for the sale of sugar in common competitive territory. The competitive conditions applying in the transportation of this traffic to Wichita and Kansas City are stated and found not to justify the 15c differential against Wichita and the existing rates to Wichita are excessive. HELD, rate of 47c on sugar from New Orleans to Wichita, unreasonable. That the present differential of 15c applied at Wichita above Kansas City on sugar from the Atlantic seaboard and New Orleans subjects Wichita to undue discrimination, and such differential should not be more than 8c per 100 pounds. That as to traffic passing through Wichita to Kansas City the rule laid down in 6 I. C. C. 586, forbidding any higher charge to Wichita to Kansas City on shipments from Galveston, is, in the light of decisions of the Supreme Court, no longer applicable, and defendants operating lines through Wichita to Kansas City are not prohibited from charging a higher rate on sugar to Wichita than to Kansas City so long as the Wichita rate is reasonable. Lehman-Higginson Grocer Co. v. A. T. & S. F. R. Co., 10 I. C. C. 460.

(t) The Commission instituted investigation as to differential freight rates to and from North Atlantic ports. Rates on freight articles from the west to Baltimore, Philadelphia and Boston are adjusted according to the following differentials below or above the rates to New York; Domestic, 3c less to Baltimore and 2c less to Philadelphia, 7c first class to 2c on sixth class, more to Boston. Export traffic, same as domestic traffic to Baltimore and Philadelphia, except on grain and iron and steel articles, which are 1½c less to Baltimore and 1c less to Philadelphia; same rates to Boston as to New York on this traffic. On ex lake traffic received at Buffalo, Freeport and Erie, there is, pending the disposition of this case, a differential in favor of Baltimore of 4-10 of a cent per bushel below the rate to New York, but no differential in favor of Philadelphia. It was contended by New York and Boston that the differentials favoring Baltimore and Philadelphia should be abolished. Domestic traffic was excluded from consideration. HELD, that the differential on export on flour, all rail and lake and rail, should be reduced to 2c at Baltimore and 1c to Philadelphia. That the existing differential on ex lake grain should be reduced to 3-10 of a cent per bushel and be allowed both to Baltimore and Philadelphia. That otherwise the present export differentials should remain in force. In the matter of differential rates, 11 I. C. C. 13.

(ta) Rates on freight articles from the West to Baltimore, Philadelphia and Boston are adjusted acording to the following differentials below or above the rates to New York: Domestic traffic—3 cents less to Baltimore and 2 cents less to Philadelphia; 7 cents, first class, to 2 cents, sixth class, more to Boston. Export traffic—same as domestic traffic to Baltimore and Philadelphia, except on grain and iron and steel articles, which are 1½ cents less to Baltimore and 1 cent less to Philadelphia; same rate to Boston as to New York on this traffic. On ex-lake grain received at Buffalo, Fairport and Erie, there is, pending the disposition of this case, a differential in favor of Baltimore of 4-10 of a cent per bushel below the rate to New York, but no differential in favor of Philadelphia. It was contended by New York and Boston that the differentials favoring Baltimore and Philadelphia should be abolished. Upon voluntary submission of the controversy to the Commission by all parties, domestic traffic was excluded from consideration. For reasons stated no opposition is expressed concerning the relative rates on import traffic. With respect to export differentials,—HELD: 1. That the differential per 100 pounds on flour, all-rail and lake and rail, should be reduced to 2 cents at Baltimore and 1 cent at Philadelphia. 2. That the existing differen-

tial on ex-lake grain should be reduced to 3-10 of a cent per bushel and be allowed both to Baltimore and Philadelphia. 3. That otherwise the present export differentials should remain in force. In the Matter of Differential Rates 11 I. C. C. 13.

(tb) The exaction of first-class rates on cotton-piece goods between Missouri River points and Denver, in view of the long-prevailing differentials in other parts of the country, and other existing conditions, is unjust and unreasonable. Kindel v. Boston & A. R. Co. 11 I. C. C. 495.

(tc) Reasonable and just rates on potatoes in carloads from Mankato and Good Thunder to Washington and Scranton would be 39 cents to Scranton and 38 cents to Washington, and said rates would be 4 cents above the rates from St. Paul; and defendant is also recommended to put in corresponding rates from Mankato and Good Thunder to the various eastern destinations. Hoerr v. Chicago, M. & St. P. R. Co. 11 I. C. C. 547.

(u) Complainant attacked as unreasonable rates on potatoes combination, carloads, from Good Thunder and Mankato, Minn., to Washington, D. C. In October 1902, complainant shipped a carload of potatoes from Good Thunder, Minn., to Washington on which the rate was 46c, and another carload of potatoes from Mankato, Minn., to Scranton, Pa., on which the rate was 50.2c. As there were no through rates in force, the Good Thunder shipment was moved at the combination of rates to and from Chicago, there being an overcharge on the Mankato shipment above the rate of 47c. In 1889 the Soo Line put in through rates on potatoes from St. Paul and Minneapolis to New York, Philadelphia and Boston of 40c, which were met by the American Lines. In June, 1898, all lines put in force a rate of 37c to New York, 40c to Boston, 35c to Philadelphia, and 34c to Baltimore. These rates were not effective from Mankato or from Good Thunder. By most lines the St. Paul and Minneapolis rates to the eastern points mentioned applied as maximum rates to intermediate points. From September 1900 to April 1903, the C. G. W. had in force a rate on potatoes from Mankato to eastern seaboard destinations 2c higher than from St. Paul and apparently this rate was also used over the C. & N. W. Complainant can not handle potatoes at Mankato or Good Thunder for these eastern destinations under the Chicago rate combination. At the time of the shipments above specified complainant was shipping over the Great Western and Northwestern at 2c above the St. Paul rate. Though the through rates from St. Paul are the result of competition, they have been long in force as normal rates, are reasonable and just, and as high as could properly be applied to this traffic. HELD, rates attacked unreasonable to extent they exceeded 4c above the rate from St. Paul, reparation awarded. Hoerr v. C. M. & St. P. R. Co., 11 I. C. C. 547.

(ua) The rate on pine lumber from southern Georgia points to Chattanooga, Tenn., is 2 cents per one hundred pounds higher than to Dalton, Ga.; but on shipments to Cincinnati, Ohio, Chattanooga takes a 2-cent lower rate than Dalton. There is also a dressing-in-transit privilege at Dalton, for which 2 cents per one hundred pounds additional are charged. The lumber shipped out of Chattanooga is mostly hardwood; the southern pine lumber brought to that point being practically consumed there. HELD: That under all the circumstances the lumber rate from Walton to Cincinnati is not so discriminative or exorbitant as to justify disturbance at this time. Farrar v. Southern R. Co. 11 I. C. C. 632.

(v) Complainant attacked as unreasonable a class rate of $3.80 per ton charged on brick, carloads, from Frederick, Md., to Elberon, N. J., 236 miles. There was at the time a rate of $1.75 in effect from Frederick to Jersey City, N. J. Subsequently a commodity rate of $2.75 was established. The customary method in making rates to Elberon is to add to the Jersey City rate an arbitrary of 5c per 100 pounds, which method was used in the establishment of the rate of $2.75. HELD, rate attacked unreasonable to extent it exceeded $2.75 per ton. Reparation awarded. Frederick Brick Works v. Northern Central Ry., 12 I. C. C. 14.

(w) Complainant attacked as unjust and unreasonable rates on flour and other grain products from Blackwell, Okla., on the Frisco to various points in Oklahoma, and other states via the Frisco to a junction point with the M. K. & T., and thence by said line to destination. The defendant has established a distance tariff for the transportation

of these commodities between points upon its own line, and these rates apply on its local shipments from the junction point to the destination of the traffic. It provides, however, by a tariff schedule, that upon traffic received from connections it will exact an arbitrary of 5c per 100 pounds over and above its regular local rate. This arbitrary was published for the purpose of enabling mills upon its own line to sell to territory served by its line, so that it may enjoy the entire haul on that business. HELD, arbitrary of 5c per 100 pounds unreasonable, reparation awarded. Blackwell Milling & Elevator Company v. M. K. & T. Ry., 12 I. C. C. 24.

(x) Complainant attacked class rates charged on cotton piece goods, carloads, from East St. Louis, Ill., to Wichita, Kas., and from East St. Louis to Kansas City and from Kansas City to Wichita as unjust and unreasonable. The real question involved is the differential in rates from eastern points to Kansas City and Wichita, which is 57c via all rail and 44 cents via rail and water routes in favor of Kansas City, the rail and water routes being via Galveston, Tex., and two of the lines passing through Wichita to Kansas City. The rate of 35c East St. Louis to Kansas City, is not excessive. The rate of 66c Kansas City to Wichita is extremely high for the distance of 222 miles; but it would not benefit complainant at Wichita and might result to its disadvantage, and would involve a ruling either that rating cotton piece goods as first class in the western classification is wrong or that the class rates between the Missouri River and Chicago are too high. No reason appears why the classification should be changed or the class rates reduced at this time. The rates from the east and the differential mentioned are not the subject of complaint, and the water and rail lines are not parties hereto. HELD, complaint dismissed without prejudice to other proceedings. Johnson Latimer Dry Goods Co. v. Wabash R. R., 12 I. C. C. 52.

(y) The Missouri, Kansas & Texas Railway and its connections meet the present rate of the Rock Island system on coal from the McAlester and Sans Bois fields, Indian Territory, to Enid, Oklahoma Territory, the Rock Island being the short line, but it does not follow merely because of competition by the Rock Island that the Missouri, Kansas & Texas line must meet that rate or any rate that the Rock Island may be required by law to make effective, nor does it follow that on coal shipped to Enid from the Lehigh and Henryetta fields, in Indian Territory, the rates must be 15 cents per ton less than those from the Sans Bois or McAlester districts, because under present rates and for competitive reasons that differential is now applied. Johnston v. St. L. & S. F. R., 12 I. C. C. 73.

(z) Grain, flour and feed, carloads, from Chicago and other western points to Pemberton, N. J., of five cents per hundred above New York rate, held excessive. De Cou v. Pennsylvania R. Co., 12 I. C. C. 160.

(aa) Complainant attacked commodity rates on grain, flour and feed from Chicago to Pemberton, N. J., compared with rates to Mount Holly, N. J. The present difference in through rates on grain, flour and feed from Chicago to Mount Holly and Pemberton is 5 cents, Mount Holly taking the rate to New York and Pemberton, 6 miles east, the New York rate plus 5c. Prior to February 1903, the Mount Holly rate was the New York rate plus 3c, and for a long period the differential against Pemberton in favor of Mount Holly was 2c. The Mount Holly rate was reduced on account of developed water competition. Under the 5c differential complainant could save about 2½c by shipping to Mount Holly and teaming to Pemberton. Since the hearing the Pennsylvania has put in a tariff naming a reconsignment charge on the traffic of 50c per ton from Mount Holly to Pemberton. HELD, the present through rate to Pemberton as compared with the rate to Mount Holly is excessive and subjects complainant and Pemberton itself to unreasonable prejudice and disadvantage, that the through rate to Pemberton should not exceed the New York rate plus 2c per 100 pounds, and should not be at any time more than 2c above the rate to Mount Holly. Eber De Cou. v. Pennsylvania R. R., 12 I. C. C. 160.

(bb) Complainant attacked as unreasonable class rates and rates on various commodities from interstate points to Roswell, Artesia, Hagerman and Carlsbad, N. M. Roswell is distant from Amarillo 206 miles, Carlsbad 72 miles south of Roswell and Hagerman and Artesia are between. These points are usually grouped. The rates to Roswell are materially higher from all directions than those to Amarillo or Pecos for cor-

responding distances. The rates to Amarillo are on the Burnt District basis, somewhat higher than to Texas common points. The short distance from all the points named to Roswell is through Amarillo, and practically all traffic between Roswell and the outside world moves via that point. It has seemed to the Commission that the most feasible way of adjusting these rates would be by the addition of certain arbitraries to the Amarillo rates. HELD, class rates attacked unreasonable to extent they exceed 35c first class over the rates to Amarillo. Roswell Commercial Club v. A. T. & S. F. Ry., 12 I. C. C. 339.

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(cc) A suitable differential to a line requiring a differential is defined as one determined upon the character and service of the route as well as from a consideration of what in the judgment of the carriers would give to such a line an equitable share of the business. Rates via Rail-and-Lake Routes, 37 I. C. C. 302, 315.

(dd) Nothing can be said for a differential relation which permits some routes to grow with the business of the country and keeps others at a standstill. Rates via Rail-and Lake Routes, 37 I. C. C. 302, 316.

(ee) Differential adjustments can be prescribed only where unlawful discrimination is found and unlawful discrimination between producing points competing in a common market can not be found unless the same carrier serves the common market and controls rates to it, or where the traffic moves a part of the way over the rails of the same carrier. Galloway Coal Co. v. A. G. S. R. R. Co., 40 I. C. C. 311, 315.

(ff) Wider differentials between the rates on bituminous coal from the Ohio group and the Crescent groups to "affected" territory than obtains from the same groups to "non-affected" territory, is justified by dissimilar circumstances and conditions. Bituminous Coal to C. F. A. Territory, 46 I. C. C. 66, 144.

(gg) Conditions which led to the establishment of port differentials had not even a remote connection with the factors which determined the outline of the groups in C. F. A. territory or the percentage assigned to them. Michigan Percentage Cases, 47 I. C. C. 409, 452.

(hh) The mere fact that the arbitrary might have been increased under General Order 28 at the time of its promulgation does not necessarily now justify the rate proposed. The burden still lies with the respondents to justify the proposed increased rate. Switching charge to and from South Tacoma, 61 I. C. C. 128, 129.

(ii) It is a common principle of rate making, although not always followed, that differentials should diminish with increasing distance and vanish when the mileage on which the differential is based becomes inconsiderable in proportion to the total mileage to destination. West Coal Rates, 80 I. C. C. 383, 413.

(jj) Element that must be considered in judging reasonableness of a differential adjustment as between two competitive fields is relative distances to common markets. Western Coal Rates, 80 I. C. C. 419.

(kk) Frequently the Commission will adhere to the principle of preserving fixed differentials between coal-producing districts, regardless of changes in level of rates. Ohio-Michigan Coal Cases, 80 I. C. C. 684.

(ll) The commission has found reasonable a difference of 10 cents per net ton in the c. l. rate on crushed stone and sand in favor of shipper where latter furnished cars. Lehigh Portland Cement Co., 58 I. C. C., 429, and Stewart Sand Co., 68 I. C. C., 111. Olympic Portland Cement Co. v. Director General, as Agent, 83 I. C. C. 402, 406.

(mm) A differential adjustment is the result of a combination of the group and distance methods of making rates. Evidence which merely serves to disclose the typical features of such an adjustment as to certain points of origin is of little value in considering the issues. Davis Fire Brick Co. v. B. & O. R. R., 87 I. C. C. 523, 525.

ALL OTHER CITATIONS

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Ry. Co., 28 I C. C. 680, 685; Arkansas Fruit Co. v. St. L & S. F. R. R. Co., Unrep. Op. A304; Mississippi River Case, 29 I. C. C. 530, 534; American Refining Co. v. St. L. & S. F. Ry. Co., 30 I. C. C. 103; Wheeler Lumber, Bridge & Supply Co. v. A. T. & S. F. R. R. Co., 30 I. C. C. 343; East Dubuque Supply Co. v. I. C. C. R. R. Co., Unrep. Op. A403; National Refining Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A420; Norman Lumber Co. v. L. & N. R. R. Co., 29 I. C. C. 565; Lumber Rates to Knoxville, Tenn, 30 I. C. C. 524, 526; Coal Rates from Virginia Mines, 30 I. C. C. 635, 649; Kansas Grocery Co. v. A. & W. Ry. Co., 32 I. C. C. 139, 144; Louisiana Sugar Planters' Asso. v. I. C. R. R. Co., 31 I. C. C. 311, 320; Pittsburgh & Southwestern Coal Co. v. W. P. T. Ry. Co., 31 I. C. C. 660; Gile & Co. S. P. Co., 34 I .C. C. 319; Foster Lumber Co. v. Clatskanie Transp. Co., 36 I. C. C. 190; Low Moor Iron Co. v. C. & O. Ry., 36 I. C. C. 222; Rates on Bituminous Coal, 36 I. C. C. 401, 421; Bennett & Son v. C. & O. Ry., 38 I. C. C. 310; Norris v. I. H. B. R. R. Co., Unrep. Op. 2211; Peet Bros. Mfg. Co. v. A. T. & S. F. Ry. Co., Unrep. Op. 2249; Bituminous Coal Rates to the Southeast, 37 I. C. C. 652, 665; Memphis Freight Bureau v. St. L. I. M. & S. Ry. Co., 39 I. C. C. 224, 236, 243, 244; City of Memphis v. C. R. I. & P. Ry. Co., 39 I. C. C. 256, 270; Swift & Co. v. U. P. R. R. Co., 39 I. C. C. 665 669; Byrd-Matthews Lumber Co. v. G. & N. W. R. R. Co., 40 I. C. C. 116, 120; Galloway Coal Co. v. A. G. S. R. R. Co., 40 I. C. C. 311, 323, 327; Dallas Chamber of Commerce v. A. T. & S. F. Ry. Co., 40 I. C. C. 619; Lumber Rates from Helena, Ark., and Other Points, 41 I. C. C. 565, 570, 576; American Beet Sugar Co. v. S. P. Co., 41 I. C. C. 631, 637; Lake Superior Paper Co. v. M. St. P. & S. Ste. M. Ry., 42 I. C. C. 109; Henderson Com. Club v. I. C. R. R. Co., 42 I. C. C. 196; Des Moines Committee v. C. St. P. M. & O. Ry. Co., 42 I. C. C. 65, 71; Du Pont Wholesale Grocery Co. v. A. T. & S. F. Ry. Co., 42 I. C. C. 79, 81; Lake Superior Paper Co. (Ltd.) v. M., St. P. & S. S. M. Ry. Co., 42 I. C. C. 109; Brick from New Hampshire Stations, 42 I. C. C. 231, 236; Inman-Poulsen Lumber Co. v. S. P. Co., 42 I. C. C. 275; Northern Merchantile Co. v. A. E. R. R. Co., 42 I. C. C. 290; Wiley & Morehouse v. C., B. & Q. R. R. Co., 42 I. C. C 313, 316; Lehigh Portland Cement Co. v. B. & O. S. W. R. R. Co., 42 I. C. C. 406, 414; Utah-Idaho Millers and Grain Dealers Asso. v. D. & R. G. R. R. Co., 42 I. C. C. 648, 656; Blackwell Lumber Co. v. M. P. Ry. Co., 42 I. C. C. 756, 760; Friedlander & Co. v. C. of G. Ry. Co., Unrep. Op. 1957; Meridan Fertilizer Factory v. A. & S. Ry. Co., 33 I. C. C. 160, 163; Chamber of Commerce of Milwaukee v. C., M. & St. P. Ry. Co., 34 I. C. C. 581, 583; Ireland & Rollings v. St. L. & S. F. R. R. Co., Unrep. Op. 1964; Pacific Fruit Exchange v. A., T. & S. F. Ry. Co., Unrep. Op. 2026; Sand Point Lumber & Pole Co. v. G. N. Ry. Co., 43 I. C. C. 59, 62; Dolan Fruit Co. v. C. B. & Q. Ry., 43 I. C. C. 353; Cannon Mfg. Co. v. S. Ry. Co., 43 I. C. C. 625, 628; West Coast Lumberman's Asso. v. A. & W. Ry, 44 I. C. C. 443, 446; Bituminous Coal to C. F. A. Territory 46 I. C. C. 66, 90, 116, 129, 145; Lake Cargo Coal Rates, 46 I. C. C. 159, 170, 175; Vulcalite Portland Cement Co. v. C. R. R. Co. of N. J., 46 I. C. C. 483, 487; Second Duluth Case, 46 I. C. C. 585, 590; Southern Lumber & Mfg. Co. v. Tennessee Ry. 47 I. C. C. 87, 90; Muskogee Produce Co. v. St. L. & S. F. R. R., 47 I. C. C. 239 242; Traffic Bureau Sioux City Commercial Club v. A. & W. Ry. Co., 47 I. C. C. 347, 348, 354; Conquest & Son v. S. A. L. Ry., 47 I. C. C. 517, 522; Lumber to Sioux City, Iowa, 47 I. C. C. 540, 541; N. Y. Harbor Case, 47 I. C. C. 643, 703; Western Cement Rates, 48 I. C. C. 201, 258; Laird v. T. & N. Ry., 48 I. C. C. 733, 737; Tulsa Traffic Asso. v. A. T. & S. F. Ry., 48 I. C. C. 731, 732; Traffic Bureau of Knoxsville, Tenn. v. B. & O. R. R., 49 I. C. C. 205, 220, 225; Pollack Steel Co. v. B. & O. R. R., 49 I. C. C. 238, 246; Orange Rice Mill Co. v. T. & N. O. R. R. 49 I. C. C. 250, 254; Bartlett-Collins Glass Co. v. St. L. S. F. Ry., 49 I. C. C. 488; Allentown Portland Cement Co. v. B. & O. R. R., 49 I. C. C. 502, 514, 520; Hogan & West v. G. N. Ry., 49 I. C. C. 564; Hormel & Co. v. C. G. W. R. R., 49 I. C. C. 639; Natchez Chamber of Commerce v. Y & M. V. R. R., 49 I. C. C. 700, 706; Metropolis Commercial Club v. I. C. R. R., 51 I. C. C. 376; Terrell Commercial Club v. T. & P. Ry., 50 I. C. C. 6, 11; West Virginia Rail Co. v. C. & O. Ry., 50 I. C. C. 110, 115, 116; Southeastern Manufactured Tobacco (No. 2), 50 I. C. C. 120, 125; Wilson & Co. v. C. M. & St. P. Ry., 50 I. C. C. 126; Chaney Co. (Ltd.) v. G. N. Ry., 50 I. C. C. 332, 337, 338; Ewing & Co. (Ltd.)

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§8½. Between Commodities.

IMPORTANT CASES SINCE 1908

(a) Fact that in the Midcontinent Oil Case, 36 I. C. C. 109, and in subsequent cases which have followed it, a differential of 5 cents was established between the rates on crude and refined oils does not warrant the conclusion that this should be the differential under all circumstances, and particularly where the rates are larger in amount. Utah State Automobile Asso. v. A. T. & S. F. Ry. Co., 66 I. C. C. 8, 17.

(b) Following Arkansas Jobbers & Mfrs. Asso., 59 I. C. C. 662, rates on coarse grain 10 per cent less than those on wheat prescribed. Arkansas Jobbers & Mfrs. Asso. v. Director General, 66 I. C. C. 475, 479.

(c) Rates on printing and writing paper, and on paper articles grouped therewith, found unreasonable to the extent they exceed by more than 10 to 33 1-3 per cent, respectively, the corresponding rates on newsprint paper. Minnesota & Ontario Paper Co. v. N. P. Ry. Co., 66 I. C. C. 571, 575, 583.

ALL OTHER CITATIONS

Mixed Shipments of Lumber, Sash and Doors, 78 I. C. C. 103; Parkersburg Rig & Reel Co. v. M. K. & T. Ry. Co., 78 I. C. C. 238; Iowa Malleable Iron Co. v. Director General, as Agent, 78 I. C. C. 667, 670; Empire Refineries (Inc.) v. Director General, as Agent, 83 I. C. C. 223; Moline Oil Co. v. Director General, 83 I. C. C. 227; Empire Refineries v. A., T. & S. F. Ry. Co., 83 I. C. C. 706.

V. REPARATION.

See Reparation.

§9. In General.

IMPORTANT CASES SINCE 1908

(a) Complainants seeking reparation because of undue prejudice proceeded upon theory that they were damaged in amount measured by former differentials which they enjoyed under competing cities, notwithstanding assertion that competitors' prices were based upon lower production costs and that in meeting them they were compelled to shrink their profits, sometimes more than the amount of the differentials. HELD, Theory contrary to binding rule in International Coal Co. Case, 230 U. S. 184, which requires affirmative proof of fact and amount of damage Kerr & Co. v. S. S. Ry. Co., 62 I. C. C. 296, 302.

ALL OTHER CITATIONS

Commercial Club of Omaha v. A. & S. R. Ry. Co., 27 I. C. C. 302, 314; Thomas Iron Co. v. Director General, 57 I. C. C. 505; O. E. Burnx and F. H. Knapp v. B. S. & K. R., 62 I. C. C. 345; Waco Chamber of Commerce v. Director General, 73 I. C. C. 708; Atlantic Refining Co. v. Director General, 74 I. C. C. 8.

VI. PROCEDURE.

See Procedure Before Commission.

§10. In General.

IMPORTANT CASES SINCE 1908

(a) Where insufficient carriers are named the Commission cannot undertake to settle so broad a question as that of

the differential relation of Omaha and Kansas City. Omaha Grain Exchange v. C. R. I. & P. Ry. Co., 28 I. C. C. 680, 681, 687.

(b) Comparison of related rates by Commission in determining reasonableness of rates criticized by complainants as "adjusting of differentials." That such a method may be employed in any proceeding before the Commission regarding the reasonableness of a rate can not be validly questioned. Wickwire Steel Co. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 415, 423.

(c) Exhibit comparing differentials, although of little or no practical help, held properly admissible in evidence. Cast-Iron Pipe from North Carolina Points, 38 I. C. C. 183, 186.

(d) Distance is not the only transportation factor to be considered in fixing the measure of a differential. Bituminous Coal to C. F. A. Territory, 46 I. C. C. 66, 129.

ALL OTHER CITATIONS

Union Tanning Company v. Director General, 57 I .C. C. 354; Thomas Iron Co. v. Director General, 57 I. C. C. 505; United Verde Extension Mining Co. v. Director General, 57 I. C. C. 625.

DISCRIMINATION

I. CONTROL AND REGULATION
- §1. Construction of the Act.
- §1a. Section 2.
- §2. Jurisdiction of Commission.
- §2½. State and Interstate rates.

II. DETERMINATION OF DISCRIMINATION.
- §3. In general.
- §3½. Previous decision of Commission.
- §4. Similar conditions.
- §4½. Special rates.
- §4¾. State rates.
- §5. Test of discrimination.

III. JUSTIFICATION.
- §5½. In general.
- §6. Carrier as shipper or consignee.
- §7. Carrier not serving prejudiced point.
- §7½. Use of commodity.
- §8. Competition.
  - (1) In general.
  - (2) Artificial.
  - (2½) Potential competition
  - (3) Railroads in general.
  - (4) Short-line carriers.
  - (5) Water carriers.
  - (6) State rates.
  - (7) Market competition.
- §8½. Difference in conditions.
- §9. Disadvantage of location.
- §10. Encouragement of own territory.
- §10½. Failure to agree on divisions.
- §11. Low rate to favored point.
- §11¼. Two line haul.

IV. REMOVAL OF DISCRIMINATION
- §11½. In general.
- §12. Reduction of rates.
- §13. Disturbance of settled adjustment.

V. PROCEDURE AND EVIDENCE.
- §13½. In general.
- §14. Burden of proof.
- §15. Showing of damage.
- §16. Actions in courts.
- §17. Reparation.
- §18. Complaint.

CROSS REFERENCES

See Absorption of Charges II; Advanced Rates V; Allowance III, IV; Any Quantity Rates; Blanket Rates §8, §12, IV, V; Branch Lines I; Bridges and Tolls II, V; Cars and Car Supply III §33; Class Rates II; Classification V, §17, §20, §22 (1); Commodity Rates III; Credit Account §2; Crimes I, II; Custom Brokers; Demurrage §3; Differentials II; Divisions V; Equalization of Rates; Evidence §13 (6); Export Rates and Facilities III; Expres C ompanies III; Facilities and Privileges IV; §15; Import Traffic II; Local Rates and Combinations; Long and Short Hauls §6⅞; Minimums §7; Passenger Fares and Facilities II. III, §10, §12; Percentage Rates; Proportional Rates II, IV; Rail-and-Water Rates; Reasonableness of Rates §28; Reconsignment II; Reduced Rates §4½; Special Contracts §5; Storage §2; Switch Track and Switching III; Tap Lines §7; Telephone and Telegraph Companies I; Terminal Facilities §10; Through Routes and Joint Rates II, IV §13; Track Storage II; Water Carriers II; Weights and Weighing III.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Construction of the Act.

See Act to Regulate Commerce II.
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(a) Act to Regulate Commerce; rates for transportation of interstate traffic. The first section of the Act provides that all charges for services, rendered by common carriers subject to the provisions of the Law, "shall be reasonable and just," and prohibits and declares unlawful, "any unjust and unreasonable charge." This is the sole requirement of the Law, upon the subject of rates, which common carriers subject to the provisions of the Law may demand for the transportation of interstate traffic. Kentucky & Indiana Bridge Co. v. Louisville & Nashville R. Co., 2 I. C. R. 351.

(b) Undue discrimination, within the meaning of the Interstate Commerce Act, § 3, has reference to rates as well as to facilities afforded to shippers. United States v. Tozer, 2 I. C. R. 597.

(c) "Any undue or unreasonable preference or advantage," within the meaning of the Act to Regulate Commerce, §3, includes every form of unjust discrimination, not only in rates, but also in the conveniences and facilities supplied to shippers in any of the details of the carrying service. Re Morris' Petition (C. C. N. D. N. Y.), 2 I. C. R. 617.

(d) If a person, locality or traffic has been subjected by an act of the carrier to a disadvantage not imposed by impelling and controlling considerations for which the carrier is not responsible, the Commission is of the opinion that the statute applies, notwithstanding this act of the carrier working the wrong is not limited in terms to particular persons or particular description of traffic. Bates v. Pennsylvania Co., 2 I. C. C. 715, 719.

(e) No device, such as payment of unreasonable rent for use of cars furnished by shippers, can be practiced to evade the duty of equal charges for equal service. Rice v. Cincinnati, W. & B. R. Co., (Com.), 3 I. C. R., 481; Rice v. Western N. Y. & P. R. Co., (Com.), 3 I. C. R. 162.

(f) The common carriers named and referred to in the last clause of section 3 of the Act to Regulate Commerce are such as are subject to the provisions of that Statute. Copeheart & Smith v. Louisville & Nashville R. Co., 3 I. C. R. 278.

(g) Railway companies are bound under the Interstate Commerce Act only to give the same terms to all persons alike under the same conditions and circumstances; and any fact which produces an inequality of condition and a change of circumstances justifies an inequality of charge. Interstate Commerce Commission v. Baltimore & O. R. Co. (U. S. Sup. Ct.), 4 I. C. R. 92.

(h) In order to constitute an unjust discrimination under the Interstate Commerce Act, § 2, the carrier must charge or receive directly from one person a greater or less compensation than from another, or must accomplish the same thing indirectly by means of a special rate, rebate, or other device, but in either case it must be for a like and contemporaneous service in the transportation of a like kind of traffic, under substantially similar circumstances and conditions. Interstate Commerce Commission v. Baltimore & O. R. Co. (U. S. Sup. Ct.) 4 I. C. R. 92.

(i) The Interstate Commerce Act does not recognize indefinite or uncertain transportation charges, the idea of unequal compensation for like service, or discrimination in the treatment of persons similarly situated, and is repugnant to every requirement of that law, and a party to an interstate shipment cannot be excluded by the carrier from privileges afforded to other patrons in the same locality because of his refusal to pay excessive freight charges, even though an agreement to subsequently refund the excess should acompany the demand. Phelps & Company v. The Texas & Pacific Railway Company, 4 I. C. R. 363.

(j) If railway companies engaged in the transportation of traffic from one territory voluntarily enter into an association with railway companies engaged in the transportation of similar traffic from another territory to a common market, for the purpose, among others, of a mutual adjustment of rates over their respective lines, and in pursuance of this purpose as members of such association agree to and maintain rates over their own lines higher than are reasonable and the relation thus established between the rates from the two territories, respectively is unjustly prejudicial to the former and unduly preferential to the latter, this is a violation of the first paragraph of section 3 of the Act to Regulate Commerce, for which, whether or not there be a joint liability under said Act of the two systems of carriers, there is

at least a several liability on the part of those serving the territory injuriously affected. Freight Bureau v. Cincinnati, N. O. & T. P. R. Co., 4 I. C. R. 592, 609.

(k) Under the 7th section of the act, the question of unjust discrimination may arise, and under the 3d section, the question of undue preference may arise. And in determining a question under either or both of those sections, it may often, if not always, become necessary to contrast the rates to other places and persons; because those sections involve the question of relative rates, with all their elements. Interstate Commerce Commission v. L. & N. R. Co., 5 I. C. R. 656.

(l) The 3d section forbids any undue and unreasonable preference or advantage. The mere circumstance that there is, in a given case, a preference or an advantage, does not, of itself show that such preference or advantage is undue or unreasonable. Interstate Commerce Commission v. Alabama M. R. Co., 5 I. C. R. 685.

(m) There is nothing in the act which defines what shall be held to be due or undue, reasonable or unreasonable. Such questions are not of law, but of fact; and those facts and matters which carriers, apart from any question arising under the statute, would treat as calling, in given cases, for a preference or advantage, are facts and matters which must be considered in forming judgment whether such preference or advantage is undue or unreasonable. Interstate Commerce Commission v. Alabama, M. R. Co., 5 I. C. R. 685.

(n) When the section says that no locality shall be subjected to any undue or unreasonable prejudice or disadvantage, it does not mean that regard is to be had only to the welfare of the locality or community where the traffic originates, or where the goods are shipped on the cars. The welfare of the locality to which the goods are sent is also to enter into the question. Interstate Commerce Commission v. Alabama M. R. Co., 5 I. C. R. 685.

(o) The Interstate Commerce Act does not recognize indefinite or uncertain transportation charges; the idea of unequal compensation for like service, or discrimination in the treatment of persons similarly situated is repugnant to every requirement of that law, and a party to an interstate shipment cannot be excluded by the carrier from privileges afforded to other patrons in the same locality because of his refusal to pay excessive freight charges, even though an agreement to subsequently refund the excess should accompany the demand. Phelps & Co. v. Texas & Pacific Railway Co., 6 I. C. C. 36.

(p) If railway companies engaged in the transportation of traffic from one territory voluntarily enter into an association with railway companies engaged in the transportation of similar traffic from another territory to a common market, for the purpose, among others, of a mutual adjustment of rates over their respective lines, and in pursuance of this purpose as members of such association agree to maintain rates over their own lines higher than are reasonable, and the relation thus established between the rates from the two territories, respectively, is unjustly prejudicial to the former and unduly preferential to the latter, this is a violation of the first paragraph of section 3 of the Act to regulate commerce, for which, whether or not there be a joint liability under said Act of the two systems of carriers, there is at least a several liability on the part of those serving the territory injuriously affected. Freight Bureau v. Cincinnati, N. O. & T. P. R. Co. et al., 6 I. C. C. 197.

(q) The requirement of the agreement of the Southern Railway & Steamship Association that its members apply "full local rates upon all traffic subject to the Association Agreement coming from or going to" connecting lines which do not maintain Association rates, while to traffic from other connecting lines conforming to such rates full local rates are not applied, is repugnant to that clause of § 3 of the Act to regulate commerce which forbids carriers to "discriminate in their rates and charges between connecting lines." Freight Bureau v. Cincinnati, N. O. & T. P. R. Co., et al, 6 I. C. C. 197.

(r) The central idea of the Act is equality. The thing aimed at is to prevent discrimination. The carrier must not discriminate in any form, whether between individuals, commodities or localities. Matter of alleged unlawful rates and practices. 7 I. C. C. 240, 253.

(s) It must be remembered that not every inequality in rates constitutes a violation of the law. Discrimination is

forbidden only when it is unjust. Preferences and prejudices are not prohibited unless they are undue. The language of the statute implies that there may be discriminations which are not unjust and preferences which are not undue. Commercial Club of Omaha v. C. & N. R. Co., 7 I. C. C. 386, 404.

(t) Railway companies are not prohibited by section three of the act from preferring one locality over another unless the preference is undue or unreasonable, but a preference which is without legitimate excuse is, in and of itself, undue and unreasonable. New York Exchange v. B. & O. R. Co., 7 I. C. C. 612, 658.

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(u) It is the object of the Interstate Commerce Act and the Elkins Act to prevent favoritism by any means or device whatsoever and to place all shippers upon equal terms. Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 289.

(v) The fact that a rate is per se reasonable does not prove that it may not be unlawful on other grounds. If rates are relatively unjust, so that an undue preference accrues under them to one person or locality, or an undue prejudice results to another person or locality, the law is violated, although the higher rates are not in themselves unreasonable. Bennett & Son v. C. & O. Ry. Co., 38 I. C. C. 310, 313.

(w) Section 2 expressly prohibits a carrier from charging a greater or less compensation for a like and contemporaneous service dependent upon the individual served. Bartlett Hayward Co. v. B. & O. R. R. Co., 40 I. C. C. 151, 155.

(x) The provisions of the Act against unjust discrimination speak to the carriers of the country individually and with respect to those things for which they are individually responsible, and not to the carriers as parts of a single great system. Galloway Coal Co. v. A. G. S. R. R. Co., 40 I. C. C., 311, 315.

(y) Although the Act has been amended and revised many times during the past 30 years, section 3 has remained unchanged since its enactment in 1887. R. R. Comm. of La. v. A. H. T. Ry., 48 I. C. C. 312, 362.

(z) Section 3 is broad enough to include any undue prejudice to one description of traffic, including interstate commerce, and undue preference of another description of traffic, that interferes with the free movement of such interstate commerce, whatever form the discrimination may take. R. R. Comm. of La. v. A. H. T. Ry., 48 I. C. C. 312, 363.

(aa) What constitues undue and unreasonable prejudice and disadvantage is a question of fact and not of law. R. R. Comm. of La. v. A. H. T. Ry., 48 I. C. C. 312, 364.

(bb) The purpose of section 2 of the Act is to enforce equality as between shippers and to prohibit any rebate or other device by which two shippers, shipping over the same line, the same distance, under the same circumstances of carriage, are compelled to pay different prices therefor. Pac. Lumber Co. v. N. W. P. R. R., 51 I. C. C. 738, 760.

(cc) Section 2 is primarily directed against discrimination between shippers located in the same community. Pac. Lumber Co. v. N. W. P. R. R., 51 I. C. C. 738, 760.

(dd) It is immaterial in this connection whether the complainant is a weak or strong line; that is not an essentially determinative factor in deciding discrimination. On the contrary, the Act to regulate commerce was primarily designed to protect the weak in the right of equal treatment under like circumstances, which might otherwise be denied them. The public is not ordinarily interested in, injured by, or benefited from a difference in divisions between connections, but the connecting line is subjected to discrimination if the circumstances and conditions in regard to or are like those obtaining in respect of another connection and the rates or charges it receives are different from those of that other connection. There is nothing here to offset the likeness in circumstances and conditions of carriage as between complainant as a connecting line and each of the defendants as connecting lines of each other. The mutuality of reciprocal advantages at other points as between defendants does not change the substantial likeness of the traffic interchanged between complainant and each of the defendants and that interchanged between defendants. Western Pacific R. R. v. S. P. Ry., 55 I. C. C. 71, 79.

(ee) Paragraph 4, Section 15, of the act reiterates in effect what is stated in section 3, but in it Congress has gone further than declaring that there shall

be no undue or unreasonable advantage, preference, or prejudice as between persons and localities, as in section 3, and has forbidden and declared unlawful any undue, unreasonable, or unjust discrimination against interstate or foreign commerce. Intrastate fares within Illinois, 59 I. C. C. 350, 361.

(eea) Undue prejudice under section 3 of the act ordinarily requires prejudice suffered by one party to be source of positive advantage to one alleged to be preferred and that a competitive relationship exist between parties or commodities concerned. Boston Wool Trade Asso. v. B. & A. R. R. Co., 78 I. C. C. 178, 183.

(eeb) In initiation of rates, and until they are proven unduly prejudicial in an appropriate proceeding, there is nothing in the regular statute to prevent the carrier from carrying nut coal between points on its own line on slack coal basis, or to require it to make same screen regulations as obtain at mines served by different carriers. Slack Coal from Arkansas Oklahoma Mines, 80 I. C. C. 194, 203, 204.

(ff) Paragraph (1) of section 3 of the act forbids giving to persons, firms, or localities any undue or unreasonable preference or advantage, or their subjection to any undue or unreasonable prejudice or disadvantage. Miller Paper Co. v. P. R. R. Co., 80 I. C. C. 314, 316.

(gg) The Interstate Commerce Act, does not denounce every discrimination, preference, and prejudice, but only those that are undue or unreasonable, and the question whether a discrimination, preference, or prejudice is unreasonable is for the Commission. Mfrs. Co. v. United States, 38 Sup. Ct. 383.

(hh) On contention that maintenance of admittedly prejudicial rules has not adversely affected prejudiced points, HELD: Section 3 of the act provides that it shall be "unlawful" for any common carrier subject to the act to subject any person, company, firm, corporation, or locality, or any particular description of traffic, to any undue prejudice. Mere fact that prejudiced point has continued to participate in traffic does not make undue prejudice any the less unlawful. Sioux City Live Stock Exchange v. Co., St. P., M. & O. Ry. Co., 83 I. C. C. 243, 245.

(ii) Prior to Transportation Act Feb. 28, 1920, carriers were at liberty to establish or maintain even unreasonably low rates, provided they were not discriminatory. Keogh v. Chicago & N. W. R. Co. (1922), 43 Sup. Ct. 47.

(jj) Whether preference or discrimination is undue, unreasonable, or unjust, under Interstate Commerce Act, §§2, 3, is ordinarily left to the Interstate Commerce Commission for decision, and the determination is to be made as a question of fact on the matter provided in the particular case. Nashville, C. & St. L. Ry. v. State of Tenn., (1923), 43 Sup. Ct. 583.

(kk) While every rate which gives preference or advantage to certain persons, commodities, localities, or traffic is discriminatory, only such discrimination as is unreasonable, undue, or unjust is unlawful, under Interstate Commerce Act, §§2, 3. Nashville, C. & St. L. Ry. v. State of Tenn. (1923), 43 Sup Ct. 583.

(ll) A difference in rates may constitute unjust discrimination, under Act to Regulate Commerce, §3, though the higher rate is inherently reasonable and the lower rate is not unreasonably low; the difference being illegal, unless justified by the cost of the respective services, or other transportation conditions. United States v. Illinois Cent. R. Co. 44 Sup. Ct. 189.

(mm) Mere "discrimination" does not render a rate illegal under Act to Regulate Commerce, §3, but the discrimination to violate such statute must be unjust when measured by the transportation standard; that is, the difference in rates, to be illegal, must not be justified by the cost of the respective services, by their values, or by other transportation conditions. United States v. Illinois Cent. R. Co. 44 Sup. Ct. 189.

ALL OTHER CITATIONS

Lilly Co. v. Northern Pac. Ry., (Wash. 1911), 117 P. 401, 402; Rail & River Coal Co. v. B. & O. R. R. Co., 14 I. C. C. 86, 88; Cambria Steel Co. v. B. & O. R. R. Co., 15 I. C. C. 484, 486; Ames Brooks Co. v. Rutland R. R. Co., 16 I. C. C. 479, 481; Railroad Commissioners of Florida v. S. A. L. Ry., 16 I. C. C. 1, 2; Railroad Commission of Tennessee v. A. A. R. R. Co., 17 I. C. C. 418, 421; Loch Lynn Construction Co. v. B. & O. R. R. Co., 17 I. C. C 396; Herbeck-Demer Co. v. B. & O. R. R. Co., 17 I. C. C. 88; In Re Restricted Rates, 20 I. C. C. 426, 433; In Re Restricted Rates, 20 I. C. C. 426, 435; Federal Sugar Re-

fining Co. v. B. & O. R. R. Co., 20 I. C. C. 200, 214; In Re Carriers Operating Between the Mississippi and Missouri Rivers, 21 I. C. C. 546, 552; Chamber of Commerce of Newport News v. S. Ry. Co., 23 I. C. C. 345, 352, 353; R. R. Com. of La. v. St. L. S. W. Ry. Co., 23 I. C. C. 31, 41, 42; Mobile Chamber of Commerce v. M. & O. R. R. Co., 23 I. C. C. 417, 426; United States v. O. R. & Navigation Company, 159 Federal 975, 978; U. S. v. Wells, Fargo Express Co., 161 Fed. 606, 610; Penn. R. R. Co. v. International Coal Mining Co., 173 Fed. 1, 4; Mitchell Coal & Coke Co. v. Penn. R. R. Co., 181 Fed. 403, 411; I. C. C. v. C. R. I. & P. Ry., 218 U. S. 88, 110, 30 Sup. Ct. 651, 54 L. ed. 946; Puritan Coal Mining Co. v. P. R. R. Co. (Pa. 1912), 85A, 426, 435; Transit Case, 24 I. C. C. 340, 350; In re Rates on Salt, 24 I. C. C. 192, 194; Flour City S. S. Co. v. L. V. R. R. Co., 24 I. C. C. 179, 185; Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 26 I. C. C. 53, 58; Rates on Plaster and Gypsum Rock, 27 I. C. C. 67, 69; T. & P. Ry. v. United States, 205 Fed. 380, 382, 385; Douglas & Co. v. I. C. R. R. Co., 31 I. C. C. 587, 593, 594; Pacific Nav. Co. v. S. P. Co., 31 I. C. C. 472, 480; Pacific Coast Gypsum Co. v. O-W. R. R. & N. Co., 30 I. C. C. 135, 139; Wickwire Steel Co. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 415, 419; Hocking Valley R. Co. v. New York Coal Co., 217 Fed. 727, 733; Curry & Whyte Co. v. D. & I. R. R. Co., 32 I. C. C. 162, 168; Ligon v. St. L. & S. F. Ry. Co., (Mo. App. 1914), 168 S. W. 647, 649; Zoller Hop. Co. v. So. Pac. Co., 143 Pac., 931, 933; Consumers Co. v. C. & N. W. Ry., 36 I. C. C., 259, 261; Pennsylvania Co. v. United States, 35 Sup. Ct. 370, 373; 236 U. S. 351; 60 L. ed. 616; Manufacturers & Merchants Assn. v. A. & A. R. R. Co., 37 I. C. C. 350, 351; Through Rates to Points in Louisiana and Texas, 38 I. C. C. 153, 162; Vandenboom-Stimson Lumber Co. v. St. L. I. M. & S. Ry. Co., 38 I. C. C. 432, 437; LaCrosse Shippers' Asso. v. C. & N. W. Ry. Co., 38 I. C. C. 453, 463; Stonega Coke & Coal Co. v. L. & N. R. R. Co., 39 I. C. C. 523, 544; Connor Lumber & Land Co. v. A. C. & Y. Ry. Co., 40 I. C. C. 111, 113; Graham & Gila County Traffic Assn. v. A. E. R. R. Co., 40 I. C. C. 573, 574; Banks v. Missouri Pac. Ry. Co., (Mo. 1916), 186 S. W. 7; Foster Lumber Co. v. A. T. & S. F. Ry., (Mo. 1917), 194 S. W. 281, 285; Emery & Co. v. B. & M. R. R., 47 I. C. C. 200, 201; Nat'l Live Stock Exch. v. C. B. & Q. R. R., 47 I. C. C. 380, 397; The New York Harbor Case, 47 I. C. C. 643, 722; California Walnut Growers Association v. A. & R. R. R., 50 I. C. C. 558, 568; In re Private Cars, 50 I. C. C. 652, 692; Bills of Lading, 52 I. C. C. 671, 722; United States v. S. V. Ry. Co., 53 I. C. C. 607, 618; Western Pac. R. R. Co. v. S. P. Co., 55 I. C. C. 71, 80, 82; Portsmouth Asso. of Commerce v. S. A. L. Ry., 55 I. C. C. 377, 380; Natchez Chamber of Commerce v. L. & A. Ry. Co., 58 I. C. C. 610, 618; Intrastate Fares Within Illinois, 59 I. C. C. 350, 362, 363; Greater Des Moines Committee v. Director General, 60 I. C. C. 403, 409; National Spring & Wire Co. v. Director General, as Agent, 60 I. C. C. 564, 566; Three Lakes Lumber Co. v. Director General, 61 I. C. C. 408, 414; Southern Hardwood Traffic Asso. v. Director General, 61 I. C. C. 132, 142; American Creosote Co. v. Director General, 61 I. C. C. 145, 151; Tidewater Oil Co. v. Director General, as Agent, 62 I. C. C. 226, 227; Ridge Coal Mining Co. v. M. P. R. R. Co., 62 I. C. C. 259, 261; Whitaker-Glessner Co. v. B. & O. R. R. Co., 63 I. C. C. 47, 58; Export Bill of Lading, 64 I. C. C. 347, 352; Pioneer Lumber Co. v. Director General, 64 I. C. C. 485, 489; Coal from D. T. & I. R. R. Mines, 64 I. C. C. 564, 566; Parkersburg Rig & Reel Co. v. Director General, as Agent, 64 I. C. C. 568, 573; Pioneer Shaft & Pole Co. v. Director General, 64 I. C. C. 744, 746; Miller Paper Co. v. P. R. R. Co., 80 I. C. C. 317; Central R. Co. of New Jersey v. United States, 42 Sup. Ct. 80; Railroad Commission of Wisconsin v. Chicago, B. & Q. R. Co., 42 Sup. Ct. 232.

§1a. Section 2.

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(a) Section 1 requiring charges to be reasonable, and section 2, forbidding unjust discrimination, apply when exceptional charges are made under section 4, as they do in other cases. Re Southern R. & S. Asso. (Re Louisville & Nashville R. Co.), 1 I. C. R. 278.

(b) The term "a like kind of traffic," as it occurs in the Act to Regulate Commerce, §2, in respect to discrimination by carriers, does not mean traffic that is identical, but it means traffic that is of "a like kind" with other freight in the

elements of a fair and just classification for the purpose of arriving at a just and reasonable rate, and a rate that will avoid unjust discrimination and unlawful preference. New York Bd. of Trade & Transp. v. Pennsylvania R. Co. (Com.) 3 I. C. R. 417.

(c) The provision of the third section of the Act to Regulate Commerce prohibiting carriers from making or giving any undue or unreasonable preference or advantage to any particular person, firm, company, corporation or locality, or any particular description of traffic, in any respect whatsoever, not only applies to relative rates on one description of traffic shipped to or from competing localities, but also to relative rates on differently described articles which are competitive in the same markets; and when carriers have established rates on articles of competitive traffic which are relatively reasonable and fair, they cannot arbitrarily select particular articles of such traffic and materially raise or lower rates so established thereon without violating that provision of the Statute. Squire & Co. v. Mich. Central R. Co., 3 I. C. R. 515.

(d) Disadvantage to the shipper of one product can hardly be predicated upon charges for transporting another product differing essentially in character from the former and widely dissimilar in the demands which it supplies. In such cases the rates themselves are insufficient to convict the carrier of unlawful discrimination; but the amount actually charged on one commodity may be of great importance in determining whether the charge on another commodity is reasonable or otherwise, especially when both have numerous points of resemblance in respect to the cost and hazard of transportation. Rice v. Cincinnati, W. & B. R. Co., 3 I. C. R. 841.

(e) Section 2 of the act forbidding unjust discriminations, applies even in cases where a departure from the long and short haul rule of the statute is shown to be authorized, and the right, if established, of making the greater charge for the shorter haul, does not justify a disparity in rates so great as to result in unjust discrimination. Raworth v. N. P. R. Co., 3 I. C. C. 857, 863.

(f) In order to constitute an unjust discrimination under section 2, of the Interstate Commerce Act, the carrier must charge or receive directly from one person a greater or less compensation than from another, or must accomplish the same thing indirectly by means of a special rate, rebate or other device; but, in either case, it must be for a like and contemporaneous service in the transportation of a like kind of traffic, under substantially similar circumstances and conditions. Interstate Commerce Commission v. Baltmiore & O. R. Co., 4 I. C. R. 92.

(g) A rate on a particular class of goods which is unreasonable or discriminatory in itself, is not justifiable on the ground that the same rate is given another (and in this case a competitive) class of goods and as applied to the latter is liberal and advantageous. Potter Manufacturing Co. v. Chicago & G. T. R. Co., 4 I. C. R. 223.

(h) The fact that a lower rate is charged from a more distant point by reason of a competing route, which exists thence, is one of the circumstances which may be taken into account, under the provision of the 2d and 3d sections of the Act to Regulate Commerce. Interstate Commerce Commission v. L. & N. R. Co., 5 I. C. R. 656.

(i) The principal purpose of the 2d section is to prevent unjust discrimination between shippers. It implies that in deciding whether differences in charges, in given cases, were or were not unjust, there must be a consideration of the several questions whether the services rendered were "like and contemporaneous," whether the kinds of traffic were "like," and whether the transportation was affected under "substantially similar circumstances and conditions." Interstate Commerce Commission v. Alabama M. R. Co., 5 I. C. R. 685.

(j) Section 2 of the act prohibits unjust discrimination between individuals through charging different rates for like service under substantially similar circumstances and conditions, and does not prevent a railroad company from absorbing a terminal charge on livestock in one market and exacting such a charge for terminal service in another city which is reached by a different line. Cattle Raisers' Asso. of Texas v. Ft. W. & D. C. R. Co., 7 I. C. C. 513, 540.

(k) Section 2 of the Act does not deal with preference between localities.—Section 2 deals with preferences as between shippers, and not as between lo-

calities; and it is conceded to be wholly inapplicable to this case. Interstate Commerce Commission v. Western & Atlantic R. R. Co., 8 I. C. C. App XIII.

(l) Reasonableness no defense to charge of unjust discrimination.—Liability of a carrier for unjust discrimination between shippers under the Interstate Commerce Act, § 2, does not depend upon the reasonableness or justice of the charge named to the shipper complaining. The test of reasonableness in charges for interstate commerce is the schedule of rates of the carrier at the time in force. Kinnavey v. Terminal R. Asso. of St. L., 8 I. C. C. App. XXVI.

(m) The phrase "under substantially similar circumstances and conditions," in section 2 of the Act to regulate commerce, refers to the matter of carriage, and it is not permissible, under that section, for two or more carriers to establish a joint through rate less than the sum of their locals, which is applicable only to a particular shipper or class of shippers, while denying such lower rate to other shippers of like traffic between the same points of origin and destination. Capital City Gas Co. v. Central Vermont R. Co., 11 I. C. C. 104.

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(n) While absence of competition does not prevent a finding of unjust discrimination under section 2, to sustain such a finding it must appear that the transportation services are like and contemporaneous and are performed under substatially similar circumstances and conditions, and that the property transported is like traffic. But it is the line haul to which section 2 primarily relates, and if the movement is either over a different line, or, if over the same line, for a substantially different haul, the transportation service is substantially dissimilar. Tidewater Oil Co. v. Director General, as Agent, 62 I. C. C. 226, 227.

(o) Potato starch and potato flour found to be like kinds of traffic within the meaning of that term as employed in section 2 of the act, and rates on potato starch found unjustly discriminatory to extent they exceeded the rates between the same points on potato flour. Nagase & Co. v. Director General, as Agent, 62 I. C. C. 422, 424.

(p) In order to constitute an unjust discrimination under section 2, the carrier must charge or receive directly from one person a greater or less compensation than from another, or must accomplish the same thing indirectly by means of a special rate, rebate or other device; but in either case it must be for a like and contemporaneous service in the transportation of a like kind of traffic, under substantially similar circumstances and conditions. East Springfield Citizens Club v. American Railway Express Co., 68 I. C. C. 482, 483.

(q) The unjust discrimination prohibited by section 2 of the act is in movements over the same roads or road, and not over different roads or partly over the same road and partly over different roads. Providence Fruit & Produce Exchange v. Rhode Island Co., 69 I. C. C. 422, 424.

(r) The phrase "under substantially similar circumstances and conditions," in section 2 of the act, "refers to matters of carriage, and does not include competition," which is "extraneous to the transportation." Rates on Bunker Coal, 73 I. C. C. 62, 74.

(s) Deliveries of coal to industries or team tracks within a terminal district, found to be two classes of movements not made "under substantially similar circumstances and conditions" of carriage. Rates on Bunker Coal, 73 I. C. C. 61, 75.

(t) Allegation relating to section 2 of the act will not be considered, where there is no showing of discrimination between shippers in same community. Dean Mill Co. v. M. P. R. R. Co., 80 I. C. C. 174.

(u) Rates on compo-board found not unreasonable as compared with rates on beaver board, Cornell board, and other wall boards, but unduly prejudicial to extent they exceed rates on wall boards made of fiber board or pulp-board. Nonprejudicial basis of rates prescribed and reparation denied. Green Lumber Co. v. A. A. R. R. Co., 80 I. C. C. 185.

ALL OTHER CITATIONS

East Springfield Citizens Club v. American Railway Express Co., 68 I. C. C. 482, 483; Pioneer Cooperage Co. v. B. & O. R. R., 68 I. C. C. 645; Providence Fruit & Produce Exchange v. Rhode Island Co., 69 I. C. C. 422, 424; Rates on Bunker Coal, 73 I. C. C. 61, 62, 74, 75; Standard Brick Co. v. G., F. & A. Ry. Co., 74 I. C. C. 553; Western Coal Rates, 80 I. C. C. 383, 440.

§2. Jurisdiction of Commission.

See Interstate Commerce Commission I.

CASES 1887-1908

(a) It is impossible to exercise a jurisdiction such as is conferred by the 3rd section by any process of mere mathematical or arithmetical calculation. A much broader view must be taken, and it would be hopeless to attempt to decide a case by any attempted calculation. Interstate Commerce Commission v. Alabama M. R. Co., 5 I. C. R. 685.

(b) To justify interference by the Interstate Commerce Commission with the adjustment of rates as between rival localities, it must appear that the preference and advantage to the one, and the corresponding prejudice and disadvantage to the other, are so appreciable and established with such a degree of certainty as to be justly declared unreasonable. Commercial Club v. Chicago & N. W. R. Co., 7 I. C. C. 386.

(c) The Commission is authorized by the Act to regulate commerce, after investigation, to order carriers to cease and desist from subjecting any particular person, locality, or description of traffic to undue or unreasonable prejudice or disadvantage in any respect whatsoever, and its jurisdiction extends to a case of alleged unlawful prejudice and disadvantage to shippers of outbound package freight through enforcement by carriers of a regulation providing for the earlier closing of depots used for the reception of such freight. Cincinnati Chamber of Commerce and Merchants' Exchange v. Baltimore & O. S. W. R. Co., 10 I. C. C. 378.

(d) Discrimination in according facilities, within jurisdiction of Commission to forbid and to award reparation. Rogers & Co. v. P. & R. Ry. Co., 12 I. C. C. 308.

(e) The Commission has jurisdiction to forbid discrimination and to award reparation for the detriment directly and proximately resulting from it. E. L. Rogers & Company v. P. & R. Ry., 12 I. C. C. 309, 311.

(f) Discrimination unlawful only when unreasonable. Rates not unduly discriminatory can only be reduced by the Commission when, in its opinion, shown to be unreasonable in themselves. Commercial & Industrial Ass'n of Union Springs v. L. & N. R. R. Co., 12 I. C. C. 372.

(g) Where undue discrimination is not shown, the rates complained of can only be reduced by the Commission when in its opinion they are shown to be unreasonable in themselves. C. & I. Asso. of Union Springs v. L. & N. R. Co., 12 I. C. C. 372.

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(h) The Commission has ample authority to deal with unlawful practices that result in unjust discrimination or undue prejudice in their effect on interstate traffic or on interstate shippers, and this authority it is its duty to exercise whether the practices grow out of contracts or otherwise. Hocking Domestic Coal Co. v. K. & M. Ry., 44 I. C. C. 392, 399.

(i) Although the rate structure will undoubtedly become more logical and more stable as the rates approach more nearly in each instance to the cost of service, the Commission cannot condemn a rate solely because it is not constructed on that principle, unless it be clearly shown that the resulting discrimination is undue; and whether or not it is undue can best be determined by a careful consideration of the history of the rate, the reason for its establishment, the nature of the traffic, the competition between shippers and communities, and all other pertinent evidence. The New York Harbor Case, 47 I. C. C. 643, 736.

(j) The Commission has the authority and it is its duty to reach all unlawful discriminatory practices resulting in favoritism and unfair advantages to particular shippers or carriers. Prescott & Northwestern R. R. v. M. P. R. R. R., 68 I. C. C. 487, 490.

(k) It is not only within its power, but the law makes it the duty of the Commission to make orders which shall nullify practices resulting in rebating or preferences, whatever form they take and in whatever guise they may appear. Prescott & Northwestern R. R. v. M. P. R. R., 68 I. C. C. 487, 490.

(l) Where it is possible for a delivering carrier to put an end to undue prejudice by the exercise of its power to refuse to enter into any joint or proportional rate which is preferential, and when the fact of undue prejudice is established, it is within the power of the Commission to put an end to it. Peters Cartridge Co. v. Director General, 73 I. C. C. 311, 314.

(m) Whether any undue, unreason-

able, or unjust discrimination against interstate commerce, or other violation of the act exist is for the Commission to decide upon the record. Klamath County Chamber of Commerce v. S. P. Co., 74 I. C. C. 207, 212.

(ma) Jurisdiction of commission over intrastate rates subsequent to Federal control is prescribed by sections 3 and 13 of the act. The commission has no jurisdiction except where they are shown to be prejudicial to interstate commerce, and long and short-haul provision of section 4 authority to pass upon measure of such does not apply thereto. Producers Refining Co. v. M. K. & T. Ry. Co., 80 I. C. C. 339, 340.

(n) The power of the Commission to establish through routes and joint rates does not depend upon finding carriers guilty of discrimination. In addition to other powers enumerated in Sec. 15 and in Sec. 1, it is also said that the Commission may also, after hearing, with or without complaint, establish through routes and joint rates; and also give it power to a certain point to correct unjust practices. St. Louis Southwestern Ry. Co. v. United States, 234 Fed. 668, 679.

(o) In determining whether the Commission exceeded its authority under §3 of the Act to Regulate Commerce, it is essential to consider the character of the service required. Section 3 was a part of the original act, and remains unchanged, but there are certain amendments to the act which are to be read in connection with §3 as if they were originally incorporated within the act. Blair v. Chicago, 201 U. S. 400, 475, 50 L. ed. 801, 832, 26 Sup Ct. Rep. 427. The act as amended June 29th, 1906, defines what is meant by common carrier engaged in transportation by railroad which are brought within the control of the act, and a railroad is defined to include all switches, spurs, tracks, and terminal facilities of every kind, used or necessary in the transportation of persons or property designated in the act, and also all freight depots, yards, and grounds used or necessary in the transportation or delivery of any kind of said property. Not only does the act define railroads, but it specifically defines what is meant by transportation, which is made to include "cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration, or icing, storage, and handling of property transported." It is made the duty of every carrier "subject to the provisions of this act to provide and furnish such transportation, upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto;" and on June 18, 1910, it was additionally provided that the carrier should "provide reasonable facilities for operating such through routes and to make reasonable rules and regulations with respect to the exchange, interchange, and return of cars used therein, and for the operation of such through routes, and providing for reasonable compensation to those entitled thereto." Pennsylvania Co. v. United States, 35 Sup Ct. 370, 373; 236 U. S. 351; 59 L. ed. 616.

(p) Under the Interstate Commerce Act the Interstate Commerce Commission can remove discrimination practiced by a combination of connecting carriers as well as that by an individual railroad. Central R. Co. of New Jersey v. United States, 42 Sup. Ct. 80.

(q) The Interstate Commerce Commission must determine, at least in the first instance, whether a rate is discriminatory. Keogh v. Chicago & N. W. Ry. Co., 43 Sup. Ct. 47.

(r) Where through rate charged by railroad from certain points within blanket territory was lower than rate charged from another point within such territory on an independent short line, the Interstate Commerce Commission could require the railroad to desist from unjust discrimination, though the point from which the higher rate was charged was not on its own line; the railroad being in a position to remove the discrimination by increasing the lower rate. United States v. Illinois Cent. R. Co. 44 Sup Ct. 189.

ALL OTHER CITATIONS

Minneapolis Threshing Machine Co. v. C. R. I. & P. Ry. Co., 13 I. C. C. 128, 130; Rail and River Coal Co. v. B. & O. R. R. Co., 14 I. C. C. 86, 89; Grand Junction Mining & Fuel Co. v. C. N. Ry. Co., 16 I. C. C. 452, 456; Joynes v. Penn. R. R. Co., 17 I. C. C. 361, 364, 365; Federal Sugar Refining Co. v. B. & O. R. R. Co., 20 I. C. C. 200, 208; Ashland Fire Brick Co. v. S. Ry. Co.,

22 I. C. C. 115, 120; Chattanooga Feed Co. v. A. G. S. R. R. Co., 22 I. C. C. 480, 485; In Re Advances on Meats and Packing-house Products, 23 I. C. C. 656, 664; Langdon v. Penn. R. R. Co., 194 Fed. 486, 491; I. C. C. v. C. R. I. & P. Ry., 218 U. S. 88, 110, 30 Sup. Ct. 651, 54 L. ed. 946; S. Ry. Co. v. U. S., 204 Fed. 465, 473, 474; T. & P. Ry. Co. v. U. S., 205 Fed. 380, 383; H. E. & W. R. Ry. Co., v. U. S., 205 Fed. 391; Coke Producers Assn. of Connellsville v. B. & O. R. R. Co., 27 I. C. C. 125, 144; Pittsburgh Steel Co. v. L. S. & M. Ry. Co., 27 I. C. C. 173, 185; Arkansas Pass Channel & Dock Co. v. G. H. & S. A. Ry. Co., 27 I. C. C. 403, 415; Sioux City Terminal Elevator Company v. C. M. & St. P. Ry. Co., 27 I. C. C. 457, 463; Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co., 24 I. C. C. 55, 74; Puritan Coal Mining Co. v. Pennsylvania R. R. Co. (Pa. 1912), 85 A., 426, 435; Hocking Valley R. R. Co. v. New York Coal Co., 217 Fed. 727, 735; P. & H. Ry. Co. v. U. S., 219 Fed. 989, 992, 993, 994; Philadelphia & R. Ry. Co. v. U. S., 219 Fed. 989, 991; Pacific Coast Gypsum Co. v. O.-W. R. R. & N. Co., 31 I. C. C. 135, 139; Anson, Gilkey & Hurd Co. v. S. P. Co., 33 I. C. C. 332, 334, 340; Merchants Exch. of St. Louis v. B. & O. R. R., 34 I. C. C. 341, 357; LaCrosse Shipper's Asso. v. C. & N. W. Ry., 38 I. C. C. 453, 459, 460, 463; Cast-Iron Pipe from North Carolina Points, 38 I. C. C. 183, 186; Stonega Coke & Coal Co. v. L. & N. R. R. Co., 39 I. C. C. 523, 544; Nashville Abattoir, Hide & Melting Asso. v. L. & N. R. R. Co., 40 I. C. C. 134, 139; St. Louis Southwestern Ry. Co. v. United States, 234 Fed. 668, 678; Private Wire Contracts, 50 I. C. C. 731, 761; I. C. C. v. Ill. Cent. R. Co., 215 U. S. 452, 30 Sup. Ct. 155, 54 L. Ed. 280; I. C. C. v. D. L. & W., 220 U. S. 235, 31 Sup. Ct. 392, 55 L. Ed. 448; Pa. R. Co. v. International Coal Co., 230 U. S. 184, 33 Sup. Ct. 893, 57 L. Ed. 1446, Ann. Cas. 1915A, 315; United States v. L. & N. R. Co., 235 U. S. 314, 35 Sup. Ct. 113, 59 L. Ed. 245; Seaboard Air Line Ry. Co. v. United States, 249 Fed. 368, 372; K. C. Millers' Club v. A. T. & S. F. R. R., 50 I. C. C. 170, 182; Colonial Nav. Co. v. N. Y. N. H. & H. R. R. Co., 50 I. C. C. 625, 633; Metropolis Commercial Club v. I. C. R. R., 51 I. C. C. 376, 382; Commercial Club of Omaha v. B. & O. R. R., 52 I. C. C. 205, 264; Western Pacific R. R. Co. v. S. P. Co., 55 I. C. C. 71, 74; Arkansas Jobbers & Mfrs. Asso. v. Director General, 59 I. C. C. 662, 669; D'Arcy Spring Co. v. Director General, as Agent, 62 I. C. C. 129; Pioneer Pole & Shaft Co. v. Driector General, as Agent, 64 I. C. C. 744, 746; Peters Cartridge Co. v. Director General, as Agent, 73 I. C. C. 311, 314.

§2½. State and Interstate Rates.

See Intrastate Rates and Regulation §4½.

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(a) Under Interstate Commerce Act, § 13, pars. 3 and 4, and section 15a as enacted by Transportation Act of 1920, §§ 416 and 422, respectively, requiring the Commission to establish rates which will enable the carriers as a whole or in groups to earn a fixed return upon the valuation of their porperty used in the commerce, the provision declaring that rates fixed by state authority which discriminate against interstate or foreign commerce are unlawful, and authorizing the Commission to fix rates in that event, gives the Commission authority to prescribe all intrastate rates within a state whose statutes have fixed rates which are sustantially less than those required to produce the required return, so that the interstate rates necessary to give the carriers their return would have to be increased proportionally. Railroad Commission of Wisconsin v. Chicago, B. & O. R. Co., 42 Sup. Ct. 232.

(b) The provisions of Interstate Commerce Act, § 15a, as enacted in Transportation Act of 1920, § 422, authorizing the Interstate Commerce Commission to prescribe certain rates in the exercise of its power to prescribe changes and reasonable rates, does not authorize the Commission to change all of the intrastate rates, but leaves its authority limited to such of those rates as caused the discrimination. Railroad Commission of Wisconsin v. Chicago, B. & Q. R. Co., 42 Sup. Ct. 232.

(c) An order by the Interstate Commerce Commission raising the intrastate rates to a level of the interstate structure, which is merely incidental to the regulation of interstate commerce and necessary to its efficiency in view of the fact that commerce is a unit and does not regard state lines, does not violate the specific proviso of the original Interstate Commerce Act repeated in the amending acts that the Commission is not to regulate traffic wholly within a

state. Railroad Commission of Wisconsin v. Chicago, B. & Q. R. Co., 42 Sup. Ct. 232.

(d) Since the language of the Transportation Act is clear in giving the Interstate Commerce Commission power to prescribe intrastate rates if the rates fixed by the state discriminate against interstate or foreign commerce, the committee reports and explanatory statements in Congress prior to the passage of the bill showing that it was not intended to confer on the Commission power to remove discrimination involved in a general disparity between interstate and intrastate rates, will not be considered, since the legislative history of an act is admissible as an aid to construction only to solve doubt, not to create it. Railroad Commission of Wisconsin v. Chicago, B. & Q. R. Co., 42 Sup. Ct. 232.

(e) The Transportation Act of 1920 gives the Interstate Commerce Commission power to remove a general disparity between intrastate and interstate rates which operates as a real discrimination against, and obstruction to, interstate commerce, but does not give the Commission unified control of interstate and intrastate commerce, nor deprive state authorities of discretion to deal with intrastate rates as between themselves on the general level which the Interstate Commerce Commission has found to be fair to interstate commerce. Railroad Commission of Wisconsin v. Chicago, B. & Q. R. Co., 42 Sup. Ct. 232.

(f) Section 13 of the act provides that whenever any regulation or practice made or imposed by State authority is brought in issue, and commission finds that such regulation or practice results in undue preference or prejudice as between persons or localities in intrastate commerce on one hand and persons or localities in interstate commerce on the other, the commission "shall prescribe the * * * regulation, or practice thereafter to be observed, in such manner as * * * will remove such * * * prejudice * * *." Sioux City Live Stock Exchange v. C., St. P., M. & O. Ry. Co., 83 I. C. C. 243, 246.

ALL OTHER CITATIONS

Nebraska Rates, Fares and Charges 81 I. C. C. 290, 292.

II. DETERMINATION OF DISCRIMINATION.

§3. In General.

See Allowance §7

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(a) Defendant railway company has two lines of nearly equal length, one starting from Providence and the other from East Providence, which unite at Valley Falls, whence the main line runs into Massachusetts. The rate charged by defendant on coal shipped at Providence is the same as on coal shipped at East Providence as far as Valley Falls and the next station, but beyond that point the rate on coal from Providence is ten cents per gross ton more than on coal from East Providence. HELD, (a) That this is an unjust discrimination; that if it is fair and reasonable for the defendant to make the charge to Valley Falls from the two termini the same, there can be no justification for making different rates to stations beyond, based on the fact that the coal comes from one terminus rather than from the other. (b) That the evidence fails to support the contention of defendant that the extra rate upon coal received at Providence is only a fair equivalent for the additional cost of handling it there. (c) That under all the circumstances it is not admissible for defendant to impose upon its patrons at Providence, whose investments were made before the East Providence line was constructed, an additional charge because of the inconvenience attending the transaction of its business at that station and for which they are in no way responsible. Providence Coal Co. v. Providence & W. R. Co. 1. I. C. R. 363.

(b) A railroad company has no right by any discrimination not grounded in reason, to put any single dealer, whether a large dealer or a small dealer, to any destructive disadvantage. Providence Coal Company v. P. & W. R. Co., 1 I. C. C. 363, 367.

(ba) The means, occupation or purpose of parties are not proper considerations upon which to found discriminations among them. Smith v. N. P. R. R. 1 I. C. C. 611, 621.

(bb) But rates and charges not unreasonably high of themselves, can be so adjusted in their relations to each other as to give the undue preference and produce the unreasonable disadvantage which the third section of the Act makes unlawful, and if the railway company in establishing its charges on

the different divisions and branches of its roads, so adjusts them as to divert trade and business to one locality, which naturally under an equitable adjustment of charges would go to another, HELD, such unreasonable preference for one place and disadvantage to another, are not excused or made lawful by the fact that some of such rates are not entirely voluntary, but the result of competition with other carriers. Raymond v. C. M. & St. P. R. R., 1 I. C. C. 627, 629.

(bc) Discrimination must consist in the doing for or allowing to one party or place what is denied to another; it can not be predicated on action which in itself is impartial. Crews, Danville Chamber of Commerce v. R. & D. R. R. Co., 1 I. C. C. 703, 712.

(bd) Where a complaint is made by a shipper that an unjust discrimination was perpetrated by a railroad company against him at a particular time named, to rebut the inference arising from the circumstances, calling for explanation, among other evidences, the carrier may show that during a long course of business neither it nor any of its agents have ever shown any unfriendly spirit whatever toward the shipper; and that on the contrary its agents, immediately before the matter complained of, made extra exertions in good faith to serve the shipper in obtaining cars for him from the connecting line to whom the shipper had to look for such cars. In the absence of some rule and custom of business placing such duty on the carrier to notify the shipper, without any inquiry on the part of the latter of the fact that he can there obtain cars for the movement of his freight, it is the duty of the shipper, by reasonable inquiry made to the proper agent of the railroad company, to obtain this information for himself. HELD, no case of preference or unjust discrimination is made out by the evidence. Complaint dismissed. Riddle Dean & Co. v. B. & O. R. R., 1 I. C. C. 778, 784.

(c) Discrimination must consist in the doing for or allowing to one party or place what is denied to another; it cannot be predicated on action which in itself is impartial. Crew v. R. & D. R. R. Co., 1 I. C. R. 703.

(d) A common carrier may contract to ship freight at a lower rate than the published tariff, but he cannot contract to deny the same reduced rate to other shippers. Christie v. Missouri P. R. Co., (Mo.), 2 I. C. R. 22.

(e) To render a preference of one over another unlawful, under the Act to Regulate Commerce, it is not necessary that it should be accomplished by any "device;" and it is equally true that the ingenuity of man cannot invent a "device" for the perpetration of an unlawful preference on the part of a carrier engaged in interstate commerce, without incurring the penalties prescribed by the Statute. Scofield v. Lake Shore & Michigan Southern R. Co., 2 I. C. R. 67.

(f) In the determination of a complaint of undue preference against Lincoln, Nebraska, in favor of Omaha, in rates from St. Louis, the comparative length of the two pieces of road, the grades, crossings, and bridges, the interest upon the cost, and the facilities with which trains may be handled, must be considered, besides the mere volume of business. Lincoln Board of Trade v. Missouri P. R. Co., (Com.), 2 I. C. R. 98.

(g) All discriminations and preferences by one carrier between others are not forbidden or made unlawful by the Interstate Commerce Act, but only such as are unjust or undue or unreasonable. Kentucky & I. Bridge Co. v. Louisville & N. R. Co. (C. C. D. Ky.), 2 I. C. C. 351. Overruling decision of the Interstate Commerce Commission in the same case, 2 I. C. R. 102.

(h) A uniform rate upon milk destined for New York city from all stations within 200 miles upon railroads running through the southern counties of New York, west of the Hudson River to Jersey City, is not an unjust discrimination in favor of more distant shipping points, as against those nearer the common terminus. Howell v. New York, L. E. & W. R. Co. (Com.), 2 I. C. R. 162.

(i) Under the Act to Regulate Commerce shippers are not to be be put in a position of subserviency to common carriers, nor required to ask for rates, but are entitled to equal and open rates at all times. Re Tariffs of the Trans-Continental Lines, 2 I. C. R. 203.

(j) Taking and billing freight between two points at lower rates if it is destined to another point beyond the original destination is giving an illegal preference. Northwestern Iowa Grain & Stock Shippers Asso. Chicago & N. W. R. Co. (Com.), 2 I. C. R. 431.

(k) In determining the question of undue prejudice from a rate, distance is only one of the factors, and other material facts, such as character and quality of the commodity, cost of production, extent and nature of the competition in the business itself and by other transportation lines, and the interests of the public in the use of the commodity and its market cost, are to be considered. Imperial Coal Co. v. P. & L. E. R., 2 I. C. C. 436, 443.

(l) Actual undue prejudice or damage of which the rate is the cause must result to the more favorable situated producers, to render a group rate unlawful. Imperial Coal Co. v. Pittsburgh & L. E. R. Co. (Com.), 2 I. C. R. 436.

(m) Unlawful discrimination is not established by proof that a rate of freight on cotton from Vicksburg to eastern points is given to one different from that given to another, when it also appears that such rate is only a part of a uniform through rate from a point beyond. Cowan v. Bond, 2 I. C. R. 542.

(n) In proceedings to determine whether there has been discrimination in favor of a certain shipper, it is sufficient to show the rates actually charged, as differing from the public schedule of the rates charged to the public in general, for a reasonable length of time. Innumerable shipments in detail for many years are immaterial. Rice v. Cincinnati, W. & B. R. Co. (Com.), 2 I. C. R. 584.

(o) Mere inequality between the rate charged a shipper and the published tariff rates does not constitute unjust discrimination, within the meaning of Colo Const. art. 15, § 6, prohibiting "undue or unreasonable discrimination." Bayles v. Kansas P. R. Co. (Colo.), 2 I. C. R. 643.

(p) Carriers must respect the interests of those who may have occasion to employ their services, and conform their charges to the rules of relative equality and justice. Thurber v. New York C. & H. R. R. Co. (Com.), 2 I. C. R. 742.

(q) The elements of distance, of difference in character of tariff, and of dissimilar transportation conditions, as grounds for distinction in rates, are as clearly recognized as the right of a carrier to compensation for his services. Some discrimination for adequate cause is lawful. The discrimination must not be unjust nor the advantage undue, and the respective rates must not be relatively unreasonable. It is the extent of the discrimination that may be unreasonable and unjust, and not always the mere fact of a difference. Thurber v. N. Y. C. & H. R. Co., 2 I. C. C. 742, 752.

(r) The general rule contemplated by the statute of equitable graded charges on like traffic with reasonable reference to the amount of the service, is just in itself, and commonly most beneficial both to the carriers and to the public, and is not only to be departed from when justified by exceptional conditions, and in such instances no longer than the conditions require. Lehmann Higginson & Co. v. S. P. Co., 3 I. C. C. 80, 92.

(s) When a carrier engages in transportation for which, by reason of competitive conditions, or for purposes of its own, it receives low rates from some patrons and at some localities, it accepts the legal obligation to give impartial service to other patrons and at other localities that sustain similar relations to the traffic. The Manufacturers' & Jobbers Union v. Minn. & St. L. R. Co., 3 I. C. R. 115.

(t) Discrimination against Chicago in rates from the west upon live hogs as compared with packing-house products is not justified by the claim that a higher rate of speed is necessary for carrying hogs and also a greater risk and expense, where the evidence does not sustain these claims. Chicago Bd. of Trade v. Chicago & A. R. Co. (Com.), 3 I. C. R. 233.

(u) The small dealer is entitled to just and reasonable rates on his product, as much as many and large dealers, and any discrimination between them in rates based upon the idea that the one class of persons make many shipments while the other makes but few is unjust and unreasonable. It is a discrimination in favor of one kind of traffic as against another in the vital matter of rates, and is unlawful. Harvard Company v. Pennsylvania Co., 3 I. C. C. 257, 262.

(v) Discrimination in the making of contracts by a carrier for the carriage of goods, without partiality, is inoffensive. Partiality exists only in cases where advantages are equal and one party is unduly favored at the expense of another who stands upon an equal footing. Cleveland, C. C. & I. R. Co. v. Closser (Ind.), 3 I. C. R. 387.

(w) If railroad companies and those

who directed and control their roads were limited to the business of transportation it would take away from both the opportunity to unlawfully prefer themselves as shippers. Disinterested and impartial control is essential to prevent illegal favoritism, and abuse of the privileges with which carriers are invested for the benefit of the public. Coxe Bros. & Co. v. L. V. R. R. Co., 3 I. C. C. 460, 474.

(x) When it is made to appear upon investigation that any common carrier is unjustly discriminating against any person, company, or firm, subjecting them to unreasonable disadvantage, or doing anything in violation of the Act, the remedy which the act provides is that such carrier be required to cease and desist from such violations. Coxe Bros. & Co. v. L. V. R. R. Co., 3 I. C. C. 460, 475.

(y) A carrier in its relations to the public acts within defined limitations. It must observe the rules of fair dealing, and not subject any part of the public with which it deals to undue prejudice. Its franchise is, in a sense, a trust to be used for the proper and impartial benefit of the public. Shamberg v. D. L. & W. R. R. Co., 3 I. C. C. 502, 514.

(z) Carriers may lawfully accept the same aggregate, though less profitable, rates for longer distances, provided they do not "subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage." James & M. Buggy Co. v. Cincinnati, N. O. & T. P. R. Co. (Com.), 3 I. C. R. 682.

(aa) No device for evading the law could be more unfair or offensive than a manipulation of rates on similar, but noncompeting commodities, which had the effect of securing to a shipper, largely interested in both, an illegal advantage over a rival dealing in one. Rice v. C. W. & B. R. Co., 3 I. C. C. 842, 849.

(bb) A carrier cannot justify a discrimination in rates merely upon the ground that, unless it is given, the traffic obtained by giving it would go to a competing carrier. Interstate Commerce Commission v. Texas & P. R. Co., (C. C. S. D. N. Y.), 4 I. C. R. 114.

(cc) The fact that the rate from Cincinnati to Social Circle is greater than the joint tariff rate from Cincinnati to Augusta, constitutes no "undue or unreasonable prejudice or disadvantage" against Social Circle, and no "undue or unreasonable preference or advantage" in favor of Augusta Railway companies are only bound to give the same terms, to all persons alike, under the same conditions and circumstances; and any fact which produces an inequality of condition, and a change of circumstances, justifies an inequality of charge. Augusta and Social Circle are not "under the same conditions and circumstances." Interstate Commerce Commission v. Cincinnati N. O. & T. P. R. Co., 4 I. C. R. 332.

(ee) The facts, that one city is much larger and has more important and extensive business interests than another and has been treated by the carriers in making rates to surrounding points as a "trade center," is no justification for a continuation of discriminatory rates in favor of such city. The object of the Act to Regulate Commerce was to eradicate the existing system of rebates and unjust discriminations in favor of particular localities, special enterprises and favored individuals. Board of Trade v. Alabama Midland, 4 I. C. R. 348.

(ff) Unjust discrimination as between localities or individuals cannot in the nature of things be essential to the business prosperity of the carrier, and it is no valid objeciton to the correction of unlawful rates to one point that it involves a like correction as to other points. Board of Trade of Troy, Ala., v. A. M. R. Co., 4 I. C. C. 348, 362.

(gg) A railroad company cannot appropriate the grievance of a traffic or locality,, under the Interstate Commerce Act, § 3, prohibiting preference by a carrier to persons, firms, or corporations, and to localities and traffic, and complain on account of it. Oregon Short Line & U. N. R. Co. v. Northern P. R. Co. (C. C. App. 9th C.), 4 I. C. R. 718.

(hh) A person who receives cotton at Mobile from any particular point on the Alabama rivers, whether it comes by boat or wagon or any other way, and desires to ship it from Mobile to New Orleans by a railroad line, is entitled to have it shipped at the Mobile rate, as much as any person who receives his cotton from any other point or who may have bought it at Mobile; and it is no objection to such right that it would give every town located on such rivers equal facilities and advantages with those of Mobile, as that is the purpose of the In-

terstate Commerce Act. Bigbee & W. Rivers Packet Co. v. Mobile & O. R. Co. (C. C. S. D. Ala.), 4 I. C. R. 829.

(ii) Unjust discrimination as between localities or individuals cannot, in the nature of things, be essential to the business prosperity of the carrier, and it is no valid objection to the correction of unlawful rates to one point that it involves a like correction as to other points. Board of Trade of Troy, Ala. v. Ala. Mid. Ry. Co. et al., 6 I. C. C. 2.

(jj) That railroad investments may be as secure as other property, the reasonable rates should be liberal until earnings are sufficient large for a fair return on actual expenditure. Newland v. Northern P. R. Co., 6 I. C. C. 131.

(kk) The nearer of two competing points cannot be denied at least equal rates with the more remote, in fixing reasonable rates for shipments, where neither the cost, the value of the service, nor other conditions of transportation favor the latter. Hill v. Nashville, C. & St. L. R. Co., 6 I. C. C. 343.

(ll) That one town is able, under existing rates to and from such town, to compete with an adjacent town on practically even charges for the aggregate in and out transportation is no excuse for injustice in the rates to the former town as compared with the latter. Daniels v. Chicago R. I. & P. R. Co., 6 I. C. C. 458.

(mm) When rates are relatively unjust, so that undue preference is afforded to one locality or undue prejudice results to another, the law is violated and its penalties incurred, although the higher rate is not in itself excessive, and such a rule is especially applicable where a given relation in rates, long continued and concededly equitable, is suddenly and almost completely reversed, merely because other carriers to the longer distance point have disregarded their legal duty. Board of Trade of Lynchburg v. Old Dominion S. S. Co., 6 I. C. C. 632.

(nn) The interstate commerce law is violated and its penalties incurred where rates are relatively unjust so that undue preference is afforded to one locality or undue prejudice results to another, although the higher rate is not in itself excessive,—especially where a given relation in rates which has been long continued and is conceded to be equitable is suddenly reversed merely because other carriers to the longer distance point have disregarded their legal duties. Lynchburg Bd. of Trade v. Old Dominion S. S. Co., 6 I. C. C. 632.

(oo) The practice, if lawful, of giving to one city on shipments from one direction rates not higher than on similar shipments to a nearer point, furnishes no warrant for giving the latter place rates no higher than those to the former from points in another direction much nearer the latter place, where the circumstances and conditions in the two cases are essentially dissimilar. Commercial Club v. Chicago R. I. & P. R. Co., 6 I. C. C. 647.

(pp) Unreasonable disparity of the aggregate rates on hauls of different lengths to a common destination, whether by one carrier or by several jointly, is unlawful where it results in undue advantage to one locality or business or disadvantage to another. Colorado Fuel & Iron Co. v. Southern P. Co., 6 I. C. C. 488.

(qq) Inequality in treatment of shippers and localities is indefensible where it has no other justification than the diversion by the carrier of through traffic from a shorter route over which it participates in carriage, so as to secure for itself greater aggregate revenue through a long haul by a different route, over which it is also engaged in transportation. Colorado Fuel & Iron Co. v. Southern P. Co., 6 I. C. C. 488.

(rr) Rates charged by defendants for the transportation of freight articles from Cincinnati, Ohio, and Louisville, Ky., to Griffin, Ga., are materially higher than their rates on like traffic carried from Cincinnati and Louisville through Griffin to Macon, Ga., and Griffin and Macon are competing localities. HELD, upon the facts that Griffin is entitled to Macon rates from Louisville and Cincinnati, and that charging any higher rate to Griffin is an unjust discrimination under section 3 of the Act to Regulate Commerce. Brewer & Hanleiter v. Louisville & N. R. Co., 7 I. C. C. 224.

(ss) The right of railroad companies to earn a proper return upon their investment is subject to the limitation of the Interstate Commerce Act forbidding discrimination between localities, and charging more for a short than for a long haul. Brewer v. Louisville & N. R. Co., 7 I. C. C. 224.

(tt) While transportation charges should be liberal until the earnings are

sufficient for a fair return on actual investment it does not follow that rates long maintained and grossly discriminative should be continued on exacted year by year. Cary v. Eureka R. Co., 7 I. C. C. 286.

(uu) To justify interference by the Commission with the adjustment of rates as between rival localities it must appear that the preference and advantage to the one, and the corresponding prejudice and disadvantage to the other, are so appreciable, and established with such a degree of certainty, as to be justly declared unreasonable. Commercial Club of Omaha v. Chicago & N. R. Co., 7 I. C. C. 386.

(vv) The public right to a just relation of rates between rival communities arises from the statute which forbids discriminating charges, and that right cannot be abridged or enlarged by agreements of carriers with each other, nor by promises made to shippers. Commercial Club of Omaha v. Chicago & N. W. R. Co., 7 I. C. C. 386, 401.

(ww) Higher rates charged by defendants from New Orleans to LaGrange than for longer distances from New Orleans to Hogansville, Newnan, Palmetto to Fairburn, on like traffic carried under similar conditions and circumstances, and at less cost for the transportation service to LaGrange, are unreasonable and unjust to complainant, and subject him and other dealers at La Grange, their traffic, and, as a locality, the city of La Grange itself, to undue and unreasonable prejudice and disadvantage, and give undue preference and advantage to the localities of Hogansville, Newnan, Palmetto and Fairburn, traffic thereto, and dealers and merchants doing business therein, in violation of sections 1 and 3 of the act. Calloway v. Louisville & Nashville R. Co., 7 I. C. C. 431.

(xx) A preference by railroad companies, without legitimate excuse, of one locality over another, is of itself an undue and unreasonable preference within the prohibition of the Act to Regulate Commerce, § 3. New York Produce Exch. v. Baltimore & O. R. Co., 7 I. C. C. 612.

(yy) Railway companies are not prohibited by section three of the Act from preferring one locality over another unless the preference is undue or unreasonable, but a preference which is without legitimate excuse is, in and of itself, undue and unreasonable. New York Produce Exchange v. Baltimore & O. R. Co., 7 I. C. C. 613.

(zz) Discrimination to be unjust must be unlawful.—There can be no unjust discrimination in rates of which commissions and courts can take cognizance, unless it is also an unlawful one. Brewer & Hanlieter v. Central of Georgia Ry. Co., 7 I. C. C. App. III.

(3a) Discrimination must consist in the doing for or allowing to one party or place what is denied to another; it can not be predicated on action which in itself is impartial. Martin v. C. B. & Q. R. R., 2 I. C. C. 32, 37.

(3b) Discrimination in rates in favor of one locality against another necessarily gives the merchants of the former an advantage, and works a prejudice to those of the latter, in competition, where both compete for business in the same territory. Phillips, Bailey & Co. v. Louisville & N. R. Co., 8 I. C. C. 93.

(3c) Where the merchants of two localities compete for business in the same territory, discrimination in rates in favor of the one and against the other locality necessarily gives the former an advantage and works a prejudice to the latter in that competition. Phillips Bailey & Company v. L. & N. R. Co., 8 I. C. C. 93, 106.

(3d) The maintaining of higher rates by the Central of Georgia Railway Company and the Georgia & Alabama Railway Company from Nashville, Cincinnati and Chattanooga to Dawson than to Albany confers an undue advantage upon the latter over the former point, in violation of the Interstate Commerce Act, § 3. Board of Trade of Dawson v. Central of Georgia R. Co., 8 I. C. C. 142.

(3e) The Central of Georgia Railway Company gives an undue preference to Eufaula over Dawson, in violation of the Interstate Commerce Act, § 3, by maintaining higher rates from New York and other eastern points to the latter than to the former point. Board of Trade of Dawson v. Central of Georgia R. Co., 8 I. C. C. 142.

(3f) Neither of two railroad companies whose lines touch the same two points, there being no other competitor at either of such points, can justify a higher rate of freight to one point than to the other, under substantially the same commercial conditions, upon the ground that the other makes a similar

discrimination. Board of Trade of Dawson v. Central of Georgia R. Co., 8 I. C. C. 142.

(3g) The Central of Georgia Railway Company and the Georgia & Alabama Railway Company are not entitled, so long as the present system of rate-making is adhered to, to maintain higher rates from New York and other eastern points, from Nashville, Cincinnati, Chattanooga, or New Orleans, to Dawson than are maintained to Americus. Board of Trade of Dawson v. Central of Georgia R. Co., 8 I. C. C. 142.

(3h) A higher rate from an intermediate locality to a common destination constitutes a prejudice to that locality and shippers and traffic therefrom, and a preference to the more distant locality and shippers and traffic therefrom, which, if found to be without sufficient excuse, must be held unreasonable and undue and therefore in contravention of the 3d section. Re Alleged Violations of Act to Regulate Commerce, 8 I. C. C. 290.

(3i) A railroad is not justified in discriminating against a community or an individual by the fact that the person or locality so discriminated against is not directly injured. The law declares that under like circumstances and conditions every individual, every commodity and every community shall be treated alike, and the fact that they are not is a violation of law. The denial of a legal right is itself an injury. Kindel et al v. Atchison, T. & S. F. R. Co., 8 I. C. C. 608.

(3j) Competition not sufficient to warrant discrimination in rates.—Competition in transportation does not prevent "substantially similar circumstances and conditions," within the meaning of the Kentucky Constitution and statutes, but those words relate to the actual cost of transportation. Louisville & Nashville R. R. Co. v. Commonwealth of Ky., 8. I. C. C., App. LXXIII.

(3k) An adjustment of freight rates from Chicago, St. Louis, and other related points, on shipments to Wilmington, N. C., is unreasonable, and subjects the latter city to undue disadvantages, where it operates largely to deprive Wilmington, in its competition for trade in common territory with Norfolk and Richmond and other Virginia cities, of the benefits of those primary markets, and limits Wilmington to such intermediate points of supply as Cincinnati and Louisville, from which points the rate relations appear to be fair and reasonable. Wilmington Tariff Asso. of North Carolina v. Cincinnati, Portsmouth & Va. R. Co., 9 I. C. C. 118.

(3l) Preferences existing under relative rates to competing localities must be shown to result from wrongful action of the carrier before it can be required under the Act to Regulate Commerce to readjust the rates in question. Wilmington Tariff Asso. v. C. P. & V. R. Co., et al., 9 I. C. C. 118.

(3la) No unjust discrimination against complainant shippers in favor of other shippers is shown by evidence that, during the anthracite coal strike, defendant railroad companies gave a preference to bituminous coal, and also to live stock and perishable freights, which caused delay in the transportation of complainant's hay, where only two cars "slipped through" to destination, after the receipt and before the delivery of complainant's car, showing that the embargo was practically maintained and enforced. S. S. Daish & Sons v. Cleveland, A. & C. R. Co. 9 I. C. C. 513.

(3m) A discrimination under the third section to be undue must ordinarily be such that the prejudice arising out of it against one party is a source of advantage to the other. Railroad Commission of Kentucky v. L. & N. R. Co., 10 I. C. C. 173, 190.

(3n) Every shipper is legally entitled to fair opportunity and treatment in the use of the carrier's utilities, and any discrimination which in a substantial degree deprives shippers of such use must be considered unjust, unless forced by justifying conditions. In such a case the burden of proof is upon the complainant for the purpose of showing discrimination, and then upon the carrier to show that the discrimination was justified. Richmond Elevator Co. v. Pere Marquette R. Co., 10 I. C. C. 629.

(3o) Carriers must conduct and manage their business under the requirements and prohibitions of the regulating statute, and undue discriminations can not be justified by the fact of long standing agreements with favored mine operators and other shippers, nor is it a defense to the charge of discrimination that the facilities provided the favored persons may be withdrawn at the will of the one who grants them. Red Rock

Fuel Company v. B. & O. R. R., 11 I. C. C. 438, 452.

(3p) In unjust discriminatoin cases the difference in cost of manufacture to the competing shippers offers no ground of itself to the carriers nor to the Commission for adjustment of rates. A. J. Phillips Co. v. G. T. W. Ry., 11 I. C. C. 659, 664.

(3q) Not all discriminations, but only those which are unreasonable, are unlawful. C. & I. Asso. of Union Springs v. L. & N. R. R. Co., 12 I. C. C. 372.

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(3r) A carrier cannot lawfully so group its mines with respect of rates as to unduly discriminate against any locality. The duty imposed by law is to give equal treatment to all shippers who are in a position to demand it, and this includes the right to reach competitive markets on relatively equal terms. Where the same carrier serves two districts which by their location, the character of their output, and distance from markets, are in substantially similar circumstances and conditions, it cannot lawfully prefer one to the other in any manner whatsoever. Black Mountain Coal Land Co. v. S. Ry. Co., 15 I. C. C. 286, 292.

(3s) It is not for the Commission, in a search for justification of an award consented to by the carrier, to inquire in respect to every such transaction as to whether or not actual preference or prejudice has resulted in harm to any particular person. It would be a vain attempt in many cases to undertake to ascertain with reasonable certainty just what has resulted, and who has been injured by transactions of the kind. The lawmakers, assuming that such practice would naturally result in many instances in favoritism and irreparable wrong, have enacted the law which adjudges the practice itself to be wrong and forbids it. Armour Car Lines v. S. P. Co., 17 I. C. C. 461, 463.

(3t) Where one railroad is owned by another, although operated entirely separately, the Commission is supposed to regard the two railroads as one in determining whether the rates established by them unduly discriminate between different sections. Receivers' & Shippers' Ass'n of Cincinnati v. C. N. O. & T. P. Ry. Co., 18 I. C. C. 440, 457.

(3u) Carriers may not select certain points of production on their lines and give to them the benefit of rates that permit meeting competition of producers located upon other lines, and deny similar treatment to other producing points upon their lines that are similarly situated and as to which the same and long-established general basis of rates applies. Milburn Wagon Co. v. L. S. & M. S. Ry. Co., 22 I. C. C. 93, 100.

(3v) A railroad is justified, under the law, in discriminating in favor of one city as against another, if they are so differently circumstanced that at one point transportation forces are brought into play which are not or cannot be exercised at another point; but a carrier is not justified in deliberately adopting a policy of preference toward one city as against another. Only the preference or advantage that is due is justifiable, and that advantage which is bestowed upon a city by the mere policy of the carrier and not by reason of actual difference in conditions is undue. In Re Application of S. P. Co., 22 I. C. C. 366, 375.

(3w) All rules, regulations and charges affecting the ultimate cost of transportation must be made with reasonable regard for the nature of the commodity transported and without undue discrimination as between localities or shippers, though it has been held that the minimum cannot be fixed with regard to the needs and desires of purchasers of products. Sunderland Bros. Co. v. St. L. & S. F. R. R. Co., 23 I. C. C. 259, 262.

(3x) There may be a violation of section 3 for reasons other than those covered by section 4. Mayor & Council of Boston v. A. C. L. R. R. Co., 24 I. C. C. 50, 51.

(3y) The financial inabilty of carrier is no answer to a charge of undue prejudice. Mayor & Council of Boston v. A. C. L. R. R. Co., 24 I. C. C. 50, 52.

(3z) The acceptance by a railroad of a given division of a joint rate only on traffic transported via railroad-owned lake steamship lines does not constitute the discrimination against connecting carriers prohibited by section 3. Flour City S. S. Co. v. L. V. R. R. Co., 24 I. C. C. 179, 189.

(4a) There may be a violation of section 4 under a state of facts not constituting a violation of section 3. Kellogg Toasted Corn Flake Co. v. M. C. R. R. Co., 24 I. C. C. 604, 605.

(4b) Where dual rates: (1) An open

rate, and (2) a lower rate when the coke was for use in blast furnaces—were maintained to Chicago, Ill., only the open rate to Carondelet, Mo.; held not a violation of section 2. St. Louis Blast Furnace Co. v. V. Ry. Co., 25 I. C. C. 183.

(4c) While market competition should be considered in determining a question of undue prejudice under section 3, it is no defense to a charge of undue prejudice to urge that market competition compels the low rate at the favored point when similar conditions exist at the point discriminated against. North Fork Cannel Coal Co. v. A. A. R. R. Co., 25 I. C. C. 241, 246.

(de) Section 2 of the Act prohibits charging to one a greater or less compensation than is charged to another for a like and contemporaneous service under substantially similar circumstances and conditions. In re Advances in Demurrage Charges, 25 I. C. C. 314, 323.

(4f) While rates in distant sections of the country may be considered in passing upon the reasonableness of rates under section 1, especially if they are shown to be made under substantially similar condtiions of competition and transportation, they form no basis for a finding of discrimination under section 3, unless responsibility for such rates and the higher rates under attack is shown to rest with the same carrier or carriers. Hennepin Paper Co. v. N. P. Ry. Co., 27 I. C. C. 699.

(4g) Carriers cannot so adjust rates as to build up one port and close or prevent the opening of others. Aransas Pass Channel & Dock Co. v. G. H. & S. A. Ry. Co., 27 I. C. C. 403, 415.

(4h) Time has an undoubted weight in rate changing matters. It may often be controlling when a rate in daily use has been accepted by shippers for some years without criticism or complaint, especially in the case of a relation of rates under which different communities have competed with one another for some years. But time cannot be permitted to rob a group of communities of their right to relief from what, in view of changed conditions, would be a manifest rate discrimination if further continued. The Mississippi River Case, 28 I. C. C. 47, 55.

(4i) The third section of the Act forbids the giving of undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality; and while this section does not carry the phrase embodied in section 2, "under substantially similar circumstances and conditions," which is the same as that eliminated from section 4 by the amendment of June 18, 1910; nevertheless, it contains words of wider scope "in any respect whatsoever;" and as a matter of practical application the thought, if not the words, "under substantially similar circumstances and conditions," must be present to the mind in considering under section 3 what preferences or advantages are due or reasonable, or are undue or unreasonable. Board of Trade of Carrollton, Ga. v. C. of Ga. Ry. Co., 28 I. C. C. 154, 167.

(4j) Section 2 embodies the phrase, "under substantially similar circumstances and conditions," but this might be included in words "in any respect whatsoever," contained in section 3. Board of Trade of Carrollton v. C. of G. Ry. Co., 28 I. C. C. 154, 157, 168.

(4k) A fundamental maxim of rate-making is that the rate per ton-mile shall decrease as the distance increases. This is undoubtedly a rate-making maxim which ordinarily is and ought to be applied where conditions admit. It is not, however, a rule of such universal or imperative application that every shipper is as a matter of right entitled to the benefit of it, nor can it be said that to disregard this rule creates of necessity a discrimination. While the through rate should be less than the sum of the intermediates, nevertheless the mere existence of that rate adjustment does not of itself make out a case which calls for correction. It is necessary to go further and to show either that the rates are unreasonable or that some harmful discrimination results. Boston Chamber of Commerce v. A. T. & S. F. Ry. Co., 28 I. C. C. 230, 232.

(4l) When it is shown that industries have been established at favored points solely by reason of fares accorded them, the inference is inevitable that the denial of such rates to the other points has resulted in their being avoided by investors in the location of industrial enterprises, and a situation of discrimination is disclosed. Santa Rosa Traffic Assn. v. S. P. Co., 29 I. C. C. 65, 66.

(4m) A competitive relation must generally exist between commodities before there can be an undue prejudice between

them. Chicago Board of Trade v. A. T. & S. F. Ry. Co., 29 I. C. C. 438, 443.

(4n) Section 3 of the Act applies as well in a proceeding when one of the hauls is intrastate as when both are interstate. Pacific Coast Gypsum Co. v. O.-W. R. & Co., 30 I. C. C. 135, 139.

(4o) To refuse to eliminate a special privilege of many years' standing would be to perpetuate unjust discrimination. Merchants' & Mfrs. Asso. v. B. & O. R. R. Co., 30 I. C. C. 388, 394.

(4p) Though it be conceded that discrimination exists against a city in favor of another city or cities, it does not necessarily follow that the discrimination is due to unlawfulness in the rates to the first city. Chamber of Com., Washington- D. C., v. B. & O. R. R. Co., 30 I. C. C. 446, 452.

(4q) Where undue discrimination against one point or community and in favor of another is alleged, and it is shown that the carrier is not engaged in the transportation to or from the point or community said to be favored and has no voice in the making of the rates to or from such point, the charge of discrimination is not sustained. N. Y. Produce Exchange v. N. Y. C. & H. R. R. R. Co., 32 I. C. C. 212, 216.

(4r) Where a carrier establishes a certain rate for the transportation of coal and at the same time establishes and charges a higher rate for the transportation of the same commodity, because it is loaded and transported in a gondola car of the hopper bottom type the sides of which exceed 52 inches in height, it is held that this constitutes an unreasonable and unlawful regulation and restriction upon such traffic and the shippers thereof. C. G. Blake Co. v. M. St. P. & S. S. M. Ry., 32 I. C. C. 270, 271.

(4s) While carriers may determine and direct their respective business policies, even these are comprehended within the Act when they result in unjust discrimination. Anson, Gilkey & Hurd Co. v. S. P. Co., 33 I. C. C. 332, 340.

(4t) A carrier may unjustly discriminate against a point by participation in joint rates thereto or therefrom, although its line does not reach that point. By participating in joint rates each carrier in a measure becomes responsible for the actions of the other participating carriers, and the joint transportation via the different lines is an arrangement under which each of the carriers participating therein, is, in fact, serving any point to or from which the joint rate applies. If a carrier by participation in joint rates serves a point beyond its line, it certainly may compete with another carrier operating to that point. S. P. Co. Ownership of Oil Steamers, 34 I. C. C. 77, 80.

(4u) Uniform rates and practices may be discriminatory in absence of uniform circumstances and conditions. Lighterage and Storage Regulations at New York, 35 I. C. C. 47, 53.

(4v) Furnishing financial aid, to coal company constitutes unlawful discrimination against other shippers who are competitors. Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 240.

(4w) A carrier which is also a dealer and is in possession of a public franchise has opportunity to use its great power as a common carrier to discriminate against certain shippers with whom it is a competitor. Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 254.

(4x) The commission should not lightly, nor upon grounds which do not seem convincing, find that rate differences which may be capable of explanation or defense upon a complete record are tantamount to undue discrimination, especially where such finding would result in what may be an unnecessary disruption of a rate fabric established for intrastate traffic. Record held open to permit further hearing on issue of alleged unjust discrimination against LaCrosse, Wis. LaCrosse Shippers' Asso. v. C. & N. W. Ry. Co., 38 I. C. C. 453, 463.

(4y) It has often been held by the Commission and the courts that not every discrimination is forbidden by the statute, but only those that are unjust and therefore unreasonable. Meridian Grain & Elev. Co. v. A. & V. Ry., 38 I. C. C. 478, 480.

(4z) Carriers can not so adjust their relations with connections as to unduly prefer shippers via one connection over those shipping via another. Akron, Canton & Youngstown Ry. v. B. & O. R. R., 44 I. C. C. 305, 307.

(5a) Undue prejudice and disadvantage against a distributing point can not be predicated merely upon the fact that the combination of inbound and outbound rates exceeds the combination

available via a competitive distributing point. Wichita Wholesale Furniture Co. v. A. T. & S. F. Ry., 44 I. C. C. 339, 343, 344.

(5b) The fact that milk may cost more and in other ways may be more difficult for dealers to secure from comparatively near-by points, is no justification for the carriers to maintain unduly preferential rates from distant points. Rates on all traffic should be relatively reasonable from all points. While the service with respect to milk and cream traffic is special in the matter of equipment, speed, safe carriage, prompt delivery, and refrigeration, when necessary, the service is regular and specified equipment and crews can be constantly employed with all the economy resulting from such conditions. Milk and Cream Rates to New York City, 45 I. C. C. 412, 424.

(5c) Any adjustment of rates that results in the imposition of comparatively high rates for short distances, and comparatively low rates for long distances, takes from the producer within the short distance territory whatever advantage he is entitled to because of his proximity to the consuming market, and gives a producer who has no advantage of location access to the market on a basis of rates which unduly prefers him within the meaning of the Act. Milk and Cream Rates to New York City, 45 I. C. C. 412, 424, 425.

(5d) Under substantially similar transportation conditions the Commission has never held that a carrier has the right to discriminate against one point in favor of another because a shipper located at the former has a natural advantage over his competitor located at the latter. Cornell v. L. V. R. R. Co., 57 I. C. C. 157, 161.

(5e) Although the rate structure will undoubtedly become more logical and more stable as the rates approach more nearly in each instance to the cost of the service, the Commission can not condemn a rate solely because it is not constructed on that principle, unless it is clearly shown that the resulting discrimination is undue; and whether or not it is undue can best be determined by a careful consideration of the history of the rate, the reason for its establishment, the nature of the traffic, the competition between shippers and communities, and all other pertinent evidence. Inland Empire Shippers League v. Director General, 59 I. C. C. 321, 339.

(5f) Different rates for similar distances, the same rate blanketed over lines constituting substantial portions of entire hauls, lesser rates on higher grade commodities, higher rates over interstate than over intrastate routes, all are indicia of an unduly prejudicial rate adjustment. South Dakota R. R. Commrs. v. Director General, 73 I. C. C. 347, 356.

(5g) Unlawful discrimination against interstate commerce can not be found upon the mere assertion or admission of its existence by a carrier. Whether any undue, unreasonable, or unjust discrimination or other violation of the act exists is for the commission to decide upon the record. Klamath County Chamber of Commerce v. S. P. Co., 74 I. C. C. 207, 212.

(5h) Contention that in determining alleged prejudicial relationship between points there can not be considered rates on commodities of which there is no substantial movement. HELD: Whether or not there is an actual movement of each and every commodity considered from a point does not conclusively establish the existence or nonexistence of undue prejudice against that point, for the reason that the absence of actual movement may be attributable wholly to the prejudicial rate adjustment. Memphis-Southwestern Investigation, 77 I. C. C. 473, 483.

(5ha) Undue prejudice under section 3 of the act ordinarily requires prejudice suffered by one party to be the source of positive advantage to one alleged to be preferred and that a competitive relationship exists between the parties or commodities concerned. Boston Wool Trade Asso. v. B. & A. R. R. Co., 78 I. C. C. 178, 183.

(5i) A finding of unjust discrimination or undue prejudice must rest upon established facts and may not be predicated upon general representations. Kirbey Bonner Lumber Co. v. Director General, 78 I. C. C. 333, 336.

(5ia) Mere showing that rates from one point in a territory are higher than rates, blanketed or not, from other points in that territory, whether maintained by same or different carriers, does not establish undue prejudice or preference. State of Idaho ex rel. v. O. S. L. R. R. Co., 83 I. C. C. 4.

(5ib) Prejudice to be undue under section 3 must ordinarily be such that the

prejudice suffered by one person shall be a source of positive advantage to another and that a competitive relation shall exist between the persons or commodities affected. Garratt Callahan Co. v. A. C. L. R. R., 88 I. C. C. 103, 106.

(5ic) For undue prejudice to exist the parties alleged to be prejudiced and those alleged to be preferred generally must be upon a competitive basis. Barber Asphalt Co. v. L. & N. R. R., 88 I. C. C. 307, 309.

(5id) Ownership alone of capital stock in one corporation by another does not create an identity of corporate interest between the two companies, or render the stock holding company the owner of the property of the other, or create a relation of principal and agent or representative between the two; but held that a mere fiction of corporate entity could not justify what otherwise would be an unlawful discrimination. Barber Asphalt Co. v. L. & N. R. R., 88 I. C. C. 307, 310.

(5j) The determination whether in particular instances there has been an undue or unreasonable prejudice or preference is a question of fact. Interstate Commission v. Alabama Ry., 168, U. S. 144, 170, 18 Sup. Ct. 45, 42 L. Ed. 414. It necessarily follows that the court in determining whether the conclusions of the Commission as to the discriminatory and preferential practices is supported by the evidential facts set forth in the report, is to be governed by the same considerations as those hereinabove set forth in reference to its conclusion as to the reasonableness or unreasonableness of rates. And, as in the case of rates prescribed by the Commission, the court cannot interfere with practices established by it, "unless it is made plainly to appear that those ordered are void." L. & N. R. Co. v. United States, 216 Fed. 673, 682, 683.

(5k) It may be true, and there are decisions to the effect, that undue discrimination between two localities is not shown by difference of distance alone, or difference in rates alone, or by the mere fact that the difference in rates operates to the disadvantage of one locality as against another. St. Louis Southwestern Ry. Co. v. United States, 234 Fed. 688, 677.

(5l) If carriers find it necessary for competitive or other reasons to make comparatively low rates from certain points to certain destinations, they do so under the obligation imposed by law that the rates shall not be unduly preferential to one shipper, to the prejudice and disadvantage of another shipper who is entitled to equal rates. Gulf Lumber Co. v. M. L. & T. R. R. & S. S. Co., Unrep. Op. A-574.

(5m) Undue discrimination cannot be said to lie merely in the maintenance of different rates on articles of different grades or values, nor in withholding from a given point not similarly affected by transportation conditions rates which are acorded to other points. Scully Syrup Co. v. P. R. R. Co., Unrep. Op. A-360.

ALL OTHER CITATIONS

Banner Grain Co. v. Great N. Ry. Co., (Minn.) 1912), 137 N. W. 161; Missouri, K. & T. Ry. Co. v. The New Era Milling Co., 79 Kans. 435, 444, 100 P. 273; State v. Adams Express Co., 171 Ind. 138, 143, 85 N. E. 337 and 966; Pittsburgh, etc., Ry. Co. v. Mitchell, (Ind.) 1910), 91 N. E. 735, 740; Darling & Co. v. B. & O. R. R. Co., 15 I. C. C. 79, 87; Beatrice Creamery Co. v. I. C. R. R. Co., 15 I. C. C. 109, 128; National Petroleum Ass'n. v. L. & N. R. R. Co., 15 I. C. C. 473, 476; Standard Lime & Stone Co. v. Cumberland Valley R. R. Co., 15 I. C. C. 620; Avery Mfg. Co. v. A. T. & S. F. Ry. Co., 16 I. C. C. 20, 24; Cozart v. S. P. Ry. Co., 16 I. C. C. 226, 229; Douglas & Co. v. C. R. I & P. Ry. Co., 16 I. C. C. 232, 242; Hitchman Coal & Coke Co. v. B. & O. R. R. Co., 16 I. C. C. 512, 521; Merchants' Cotton Press & Storage Co. v. I. C. R. R. Co., 17 I. C. C. 98, 105; Columbia Grocery Co. v. L. & N. R. R. Co., 18 I. C. C. 502, 502; Douglas Shoe Co. v. Adams Express Co., 19 I. C. C. 539, 541; Sioux City Commercial Club v. C. & N. W. Ry. Co., 22 I. C. C. 110, 113; Federal Sugar Refining Co. v. B. & O. R. R. Co., 20 I. C. C. 200, 215; In Re Restricted Rates, 20 I. C. C. 426, 435; Meeker & Co. v. Lehigh Valley R. R. Co., 21 I. C. C. 129, 137; Carter White Lead Co. v. N. & W. Ry. Co., 21 I. C. C. 41; In Re Application of S. P. Co., 22 I. C. C. 366, 376; Virginia-Carolina Chemical Co. v. A. C. L. R. R. Co., 22 I. C. C. 394, 397; Fairmount Creamery Co. v. C. B. & Q. R. R. Co., 22 I. C. C. 252, 254; Southern Illinois Millers' Ass'n. v. L. & N. R. R. Co., 23 I. C. C. 672, 676, 678; In Re Advances on Fresh Meats and Packing-house Prod-

ucts, 23 I. C. C. 652, 655; Chamber of Commerce of Newport News v. S. Ry. Co., 23 I .C. C. 345, 356; Chamber of Commerce of Ashburn v. G. S. & F. Ry. Co., 23 I. C. C. 140, 147; R. R. Commission of La. v. St. L. S. W. Ry. Co., 23 I. C. C. 31, 41; Sioux City Terminal Elevator Co. v. C. M. & St. P. Ry. Co., 23 I. C. C. 98, 109; Crescent Coal & Mining Co. v. B. & O. R. R. Co., 23 I. C. C. 81, 83; Massee & Felton Lumber Co. v. S. Ry. Co., 23 I. C. C. 110; Cassassa v. P. R. R. Co., 24 I. C. C. 629, 631; Davis v. St. L. I. M. & S. Ry. Co., 24 I. C. C. 309; Resenbaum Bros. v. B. & O. R. R. Co., 24 I. C. C. 287, 289; Chamber of Commerce of Beaumont v. T. & N. O. R. R. Co., 25 I. C. C. 695; Standard Vitrified Brick Co. v. C. B. & Q. R. R. Co., 25 I. C. C. 669; In re Advances on Manganese Ore, 25 I. C. C. 663, 668; Wichita Board of Trade v. A. T. & S. F. Ry. Co., 25 I. C. C. 625, 632; Lindsay Bros. v. P. M. R. R. Co., 25 I. C. C. 368; Furniture Rates in the Northwest, 26 I. C. C. 655, 666; St. Louis Blast Furnace Co. v. L. & N. R. R. Co., 26 I. C. C. 355; Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 26 I. C. C. 53, 58; Commercial Club of Duluth v. B. & O. R. R. Co., 27 I. C. C. 639, 653; Consoliated Fuel Co. v. A. T. & S. F. Ry. Co., 27 I. C. C. 554, 557; Toledo Produce Exchange v. A. A. R. R. Co., 27 I. C. C. 536, 545; Board of Trade of Chicago v. C. & A. R. R. Co., 27 I. C. C. 530, 534; Sioux City Terminal Elevator Co. v. C. M. & St. P. Ry Co., 27 I. C. C. 457, 460, 463; Topeka Traffic Asso. v. A. & V. Ry. Co., 27 I. C. C. 428, 436; Port Arthur Board of Trade v. A. & S. Ry. Co., 27 I. C. C. 388; Wickwire Steel Co. v. N. Y. C. & H. R. R. Co., 27 I. C. C. 168, 172; Refugee Cotton Oil Co. v. St. L. I. M. & S. Ry. Co., 27 I. C. C. 117; Mayor and Council of Douglas, Ga., v. A. B. & A. R. R. Co., 28 I. C. C. 445, 450; In re Mileage Books, 28 I. C. C. 318, 324; Board of Carrollton v. C. of G. Ry. Co., 28 I. C. C. 145, 167, 168; Atlanta Journal Co. v. S. A. L. Ry., 28 I. C. C. 186, 190; Boston Chamber of Commerce v. A. T. S. F. Ry. Co., 28 I. C. C. 230, 232; Lebanon Commercial Club v. L. & N. R. R. Co., 28 I. C. C. 301, 304; Dairymen's Supply Co. v. P. R. R. Co., 28 I. C. C. 406, 408; Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 576; Johnson v. N. Y. N. H. & H. Ry. Co. (Me. 1913), 88 Atl. 988, 991; Adams & Sons Co. v. V. S. & P. Ry. Co., 29 I. C. C. 52, 60; Empire Coke Co. v. B. & S. R. R. Co., 31 I. C. C. 573, 577; Cheek & Sons v. C. P. Ry. Co., 31 I. C. C. 265, 269; Kaufman Commercial Club v. T. & N. O. R. R. Co., 31 I. C. C. 167, 171; Ligon v. St. L. & S. F. Ry. Co., (Mo. Opp. 1914), 168 S. W. 647, 649; Page Milling Co. v. N. & W. Ry. Co., 30 I. C. C. 605; Wickwire Steel Co. v. N. Y. & H. R. R. Co. 415, 422; St. L. I. M. & S. Ry. Co. v. U. S., 217 Fed. 80, 83; Eagle Distillery v. L. R. R. Co., 32 I. C. C. 195, 198; Corp. Comm. of Okla. v. A. T. & S. F. Ry., 31 I. C. C. 532, 543, 543; Colonial Salt Co. v. C. B. & Q. R. R. Co., 31 I. C. C. 559, 570; Pittsburgh & Southern Coal Co. v. W. P. T. Ry. Co., 31 I. C. C. 660, 661; Anson, Gilkey & Hurd Co. S. P. Co., 33 I. C. C. 332, 340; Chattanooga Packet Co. v. I. C. R. R. Co., 33 I. C. C., 384, 392; The Twin Cities Cases, 33 I. C. C. 577, 581; Meech & Stoddard v. G. T. Ry. of Can., 34 I. C. C. 39, 40; Lumber Rates from Points in Arkansas, 34 I. C. C. 102, 104; Shands v. S. A. L. Ry., 34 I. C. C. 214, 215; Rates on Logs from Stuttgart, Ark., 34 I. C. C. 216, 217; Second Industrial Railways Case, 34 I. C. C. 596, 607; Ellis v. I. C. C., 35 Sup. Ct. Rep. 646, 647; 237 U. S. 434, 59 L. ed.; Lighterage and Storage Regulations at New York, 35 I. C. C. 47, 53; Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 289; City Ice & Supply Co. v. C. & N. W. Ry., 36 I. C. C. 514, 517; American Coal & Coke Co. v. M. C. R. R. Co., 36 I. C. C. 195, 197; Philadelphia & R. R. Co. v. United States, 36 Sup. Ct. 354, 356, 240 U. S. 334, 60 L. ed. 675; Arkadelphia Milling Company v. St. Louis Southwestern Ry., 39 Sup. Ct. 237; Paducah Board of Trade v. I. C. R. R. Co., 37 I. C. C. 719, 725; Paducah Board of Trade v. C. B. & Q. R. R. Co., 37 I. C. C. 743, 752; Stimson Hardwood Co. v. C. R. I. & P. Ry., 41 I. C. C. 403; American Beet Sugar Co. v. S. P. Co., 41 I. C. C. 631, 638; Iron and Steel to Colorado Points, 41 I. C. C. 76, 81; Iron Ore Rate Cases, 41 I. C. C. 181, 214; Pub. Service Comm. of Wash. v. A. & V. Ry. Co., 42 I. C. C. 54, 63; R. R. Com'rs. of Fla. v. F. E. C. Ry. Co., 42 I C. C. 616, 617; Beaver Valley Milling Co. v. A. T. & S. F. Ry. Co., 41 I. C. C. 533, 537; Chamber of Commerce Houston, Tex. v. A. T. & S. F. Ry., 44 I. C. C. 349; LaCrosse Shippers' Assn. v. C. B. & Q. R. R., 44 I. C. C. 554; Bit-

uminous Coal to C. F. A. Territory, 46 I. C. C. 66, 99; Lewis Co. v. L. & B. R. R. R., 47 I. C. C. 79; Memphis Merchants Exchange v. F. E. C. Ry., 47 I. C. C. 251, 253; Traffic Bur. of Sioux City Com. Club. v. A. & W. Ry., 47 I. C. C. 347; Fidelity Cotton Oil Co. v. A. & V. Ry., 47 I. C. C. 542; Astoria Box Co. v. S. P. & S. Ry., 48 I. C. C. 481; Lincoln Com. Club. v. C. & S. Ry., 47 I. C. C. 557, 564; Shreveport-Texas Cattle, Lignite, Wood and Tanbark, 48 I. C. C. 283, 289; Railroad Comm. of La. v. A. H. T. Ry., 48 I. C. C. 312, 365, 370; Claims for Loss and Damage of Grain, 48 I. C. C. 530, 561; Laird v. L. & N. Ry., 48 I. C. C. 733, 736; Fogarty & Sons v. N. Y. N. H. & H. R. R., 49 I. C. C. 744; Private Wire Contracts, 50 I. C. C. 731, 761; Seaboard Air Line Ry. Co. v. United States, 249 Fed. 368; Terrell Commercial Club v. T. & P. Ry., 50 I. C. C. 6, 11; Port Huron & Duluth S. S. Co. v. P. R. R. Co., 50 I. C. C. 157, 165; Chamber of Commerce of Johnson City, Tenn. v. S. Ry. Co., 50 I. C. C. 605; In re Private Cars, 50 I. C. C. 652, 692; Arkadelphia Milling Co. v. St. Louis Southwestern Ry., 39 Sup. Ct. 237; Merchants Exchange of St. Louis v. T. R. R. Asso. of St. Louis, 50 I. C. C. 474, 476; Farmers & Ginners Oil Co. v. A. G. S. R. R., 51 I. C. C. 593; Hurst v. B. V. T. Co., 51 I. C. C. 697, 702; Pacific Lumber Co. v. N. W. P. R. R., 51 I. C. C. 738, 760; Natchez Chamber of Commerce v. Louisiana & Arkansas Ry. Co., et al., 52 I. C. C. 105; United States v. S. V. Ry. Co., 53 I. C. C. 607, 617, 618; United Iron Works v. M. P. Ry. Co., 53 I. C. C. 705; Illinois Classification, 55 I. C. C. 290, 302; Los Angeles Foundry Co. v. Director General, 57 I. C. C. 184; Grand Rapids Plaster Co. v. Director General, 57 I. C. C. 264; Western Pacific R. R. Co. v. S. P. Co., 55 I. C. C. 71, 79; Watertown Sash & Door Co. v. Director General, 55 I. C. C. 186, 193; Gallatin Coal & Coke Co. v. L. & N. R. R., 55 I. C. C. 491, 493; Curtis, Booth & Bentley Co. v. Director General, 55 I. C. C. 511; Memphis-Southwestern Investigation, 55 I. C. C. 515, 533, 557, 571, 576; Carnation Milk Products Co. v. Director General, 55 I. C. C. 665; Traffic Bureau of Aberdeen v. Director General, 56 I. C. C. 147, 153, 154, 156; Empire Steel & Iron Co. v. Director General, 56 I. C. C. 158, 174; Sugar Land Mfg. Co. v. B. S. L. & W. Ry., 56 I. C. C. 212; Bartlett-Collins Glass Co. v. St. L. & S. F. Ry., 56 I. C. C. 236, 245; Du Pont de Nemours & Co. v. H. & B. V. Ry., 56 I. C. C. 334; Portland Traffic & Transportation Asso. v. O. W. R. R. & N. Co., 56 I. C. C. 410; Hormel & Co. v. C. G. W. R. R., 56 I. C. C. 419; Dow Chemical Co. v. Director General, 56 I. C. C. 672; City of Warrenton v. Director General, 56 I. C. C. 714, 718; Texas Co. v. Director General, 57 I. C. C. 48, 51; Home Packing & Ice Co. v. Director General, 57 I. C. C. 691; Natchez Chamber of Commerce v. L. A. R. R. Co., 58 I. C. C. 610, 618; Lehigh Banana Case Co. v. Director General, 59 I. C. C. 113, 117; Tennessee Copper Co. v. Director General, as Agent, 59 I. C. C. 253, 256; Spartanburg Chamber of Commerce v. S. Ry. Co., 59 I. C. C. 346; Arkansas Jobbers and Mfrs. Asso. v. Director General, 59 I. C. C. 662, 669; Best Clymer Mfg. Co. v. Director General, 60 I. C. C. 153; Norfolk Feed Milling Co. v. P. R. R., 61 I. C. C. 738; Rock Products Traffic League v. C. B. & Q., 62 I. C. C. 105; Schlicher v. Director General, 62 I. C. C. 181, 183; Greater DesMoines Committee (Inc.), v. Director General, 60 I. C. C. 403, 409; National Industrial Traffic League v. A. & R. R. Co., 61 I. C. C. 120, 123; Southern Hardwood Traffic Asso. v. Director General, 61 I. C. C. 132, 142; American Creosoting Co. v. Director General, 61 I. C. C. 145, 151; Cairo Board of Trade v. A., T. & S. F. Ry. Co., 61 I. C. C. 219, 220; Division and Reconsignment Rules, 61 I. C. C. 385, 391; Nagase & Co. v. Director General, as Agent, 62 I. C. C. 422, 424; Natchez Chamber of Commerce v. L. & A. Ry. Co., 63 I. C. C. 288, 299, 300; Iowa Railroad Commissioners v. Director General, 63 I. C. C. 405; Chamber of Commerce of Johnson City, Tenn., v. S. Ry. Co., 64 I. C. C. 709; Corinth Grocery Co. v. M. & O. R. R., 66 I. C. C. 320; Minnesota By-Product Coke Co. v. Director General, 66 I. C. C. 480; Chittenden & Eastman Co. v. Director General, 68 I. C. C. 267; Natl. Wholesale Grocers' Asso. v. Director General, 69 I. C. C. 669, 672. Omaha Live Stock Exchange v. C. M. & St. P. Ry. Co., 69 I. C. C. 688, 694; Anaconda Copper Mining Co. v. Director General, as Agent, 78 I. C. C. 549; Southern Appalachian Coal Operators v. L. & N. R. R. Co., 83 I. C. C. 136, 139; Dolese Bros. Co. v. A. T. & S. F. Ry., 89 I. C. C. 110.

§3½. Previous Decision of Commission. See Previous Decision of Commission.

IMPORTANT CASES SINCE 1908

(a) Following Security Mills & Feed Co., 62 I. C. C., 657, rates applicable on velvet-bean meal from points on the Central of Georgia in Alabama and Georgia to Chattanooga, Tenn., found not unreasonable, but found unduly prejudicial to extent they exceed, on a distance basis, the rates to Nashville, Tenn., and to extent they are higher in relation to the rates on cottonseed meal to Nashville. Nonprejudicial basis of rates prescribed and reparation denied. Monarch Mills v. C. of G. Ry. Co., 73 I. C. C. 425.

ALL OTHER CITATIONS

West Virginia Rail Co. v. B. & O. R. R. Co., 73 I. C. C. 149; Maricopa County Highway Commission v. A. E. R. R. Co., 78 I. C. C. 33; Anson Gilkey & Hurd Co. v. S. P. Co., 78 I. C. C. 495, 522; Lake Charles Rice Milling Co. v. L. W. R. R. Co., 78 I. C. C. 709.

§4. Similar Conditions.

See Equalization of Rates §3; Evidence §56; Through Routes and Joint Rates §8.

CASES 1887-1908

(a) There is no unjust discrimination in charging more to Boston than to New York in rates from Chicago. Boston Chamber of Commerce v. Lake Shore & Mich. Southern R. Co. 1 I. C. R. 754 Export Trade of Boston, Re, 1 I. C. R. 18, 23, 25; Fitchburg R. Co., 1 I. C. R. 26.

(b) A higher rate on coal from Providence than from East Providence is an unjust discrimination, and under the circumstances it is not permissible to make an additional charge because of inconvenience attending transaction of business at East Providence. Providence Coal Co. v. Providence & Worcester R. Co., 1 I. C. R. 316, 363.

(c) Where the rate from Opelika to Savannah via Columbus & Georgia Central is fifty-two cents per 100, while the rate to the same point by the same system from both Montgomery and Columbus is but forty-five cents, and Opelika can obtain no other rate to New Orleans at all on cotton, although it has good and ample facilities for the handling of cotton, and the rate on cotton from Montgomery to New Orleans is forty-five cents per 100, and the local rate charged Opelika, on cotton, to Montgomery is twenty-seven cents, making seventy-two cents to New Orleans, thus cuting off that market, leaving Savannah as the only outlet—an order was made requiring defendants to cease and desist from such denial, the Commission finding from the evidence that through rates and through bills of lading on cotton offered for shipment at Opelika for New Orleans are unjustly and unreasonably refused by the defendant, the Western Railway of Alabama, while given by said road on other commodities, and at other points similarly situated, and while said defendant's connecting lines making the route to New Orleans are ready and willing to unite therein, and finding also, that Opelika is by such action of the defendant subjected to undue and unreasonable prejudice and disadvantage in violation of the provisions of the third section of the Act to Regulate Commerce. It is no defense against the issuing of such an order that some undisclosed connection of the defendant once made an offer of rebates to the merchants of Opelika for the purpose of getting the business away from what the defendant considered, its "ordinary and proper channel to New Orleans," it not being averred that the lines to New Orleans will not now unite in making the usual through rates and no reason whatever being stated why through rates and through bills of lading on cotton are not given over the line which forms the aforessaid "ordinary and proper channel." Harwell v. Columbus & Western R. R. Co., 1 I. C. R. 631.

(d) The spirit and purpose of the Act requires that where the circumstances and conditions will fairly admit of it the charges to all points for a like service should be made relatively equal; further, that a carrier is not compellable by law to give to merchants of a town on its line the privilege of shipping their goods from the point of purchase to their own locality and again from thence to the place at which the goods may be sold by them at the same rate which would have been charged had there been but one shipment from the point of purchase to the point of ultimate delivery. Martin v. C. B. & Q. R. R., 2 I. C. C. 32, 37.

(e) One locality is by law entitled to rates which shall not give an undue preference to any other locality; but its right in that regard is not increased, nor is the equal right of a competing locality dismissed, by municipal subscriptions which were advanced for the building of the road. Lincoln Board of Trade v. Burlington & Mo. River R. Co., 2 I. C. R. 95.

(f) The practice of making a uniform

rate upon milk destined for the daily consumption of the New York City market, from all stations within a distance of about 200 miles upon railroads running through the southern counties in the State of New York, west of the Hudson River to Jersey City, is not under the circumstances and demands of the traffic, an unjust discrimination in favor of the more distant shipping points, as against those nearer the common terminus. Howell v. New York, Lake Erie & Western R. Co., 2 I. C. R. 162.

(g) A tariff naming a rate from one locality lower than that enjoyed by its neighbor, when the circumstances are the same, tenders a preference or advantage to the first; and when any shipper is damaged by the exaction of an additional burden the preference becomes undue and unreasonable, unless it can be justified upon some sound and substantial ground. Re Tariffs of the Trans-Continental Lines, 2 I. C. R. 203.

(gi) Discriminations are made and undue advantages are given by special tariffs giving commodity rates to the east from certain preferred points and on certain commodities, and to certain named shippers, and in applying class rates to others similarly situated. Re Tariffs of the Trans-Continental Lines, 2 I. C. R. 203.

(h) A rate of ninety cents a ton on coal shipped to Lake Erie, for a district covering a radius of forty miles around Pittsburgh, Pennsylvania, embracing a large number of mines of substantially like cost of production and like character of coal, has prevailed since the Act to Regulate Commerce took effect. The coal from the different mines is in competition at Lake Erie, and is transported over several different and competing lines of railroad, all carrying at the same rate. The coal from the district is also in competition with similar coal from the Hocking Valley district in Ohio, and from other districts. The complainants' mines are near the center of the district, and some mines in competition with them are at a greater distance from the lake, varying from twenty miles to forty-three miles. On all the facts of the case, HELD, that the rate in itself not being unreasonable it does not appear that it subjects the complainants to undue prejudice, or that it gives an unreasonable preference to the more distant mines. Imperial Coal Co. v. Pittsburgh & L. E. R. Co., 2 I. C. R. 436.

(i) Unreasonable preference or advantage, or undue or unreasonable prejudice or disadvantage, involves the question whether the service was rendered under substantially similar circumstances and conditions. More traffic furnished by one than by the other does not render them dissimilar; and it is for the jury to say whether a difference of 12 cents per 100 pounds between a local rate of a carrier and its proportion of a through rate including another road was unreasonable. United States v. Tozer, 2 I. C. R. 540.

(j) Unlawful discrimination is not established by proof that a rate of freight on cotton from Vicksburg, Mississippi, to eastern points, given to one, is different from that given to another, when it also appears that such rate is only a part of a uniform through rate from a point beyond. Cowan v. Bond (C. C. S. D. Miss.), 2 I. C. R. 542.

(k) Equality in charges is required under circumstances and conditions substantially similar, and relative equality is necessary in the degree of similarity. Manufacturers & J. Union v. Minneapolis & St. L. R. Co. (Com.), 3 I. C. R. 115.

(l) The law in plainest terms forbids carriers to make or give undue preferences or advantages. This is a fundamental principle of transportation, and the equality of treatment intended by it is the underlying and paramount feature of the act. Shamberg v. D. L. & W. R. R. Co., 3 I. C. C. 502, 512.

(m) The proposition of the law seems to be that, where the circumstances and conditions of two localities are substantially similar there shall be no advantage or preference given to one which is not also freely offered to the other. To give an advantage or preference, under such circumstances, to one place would be undue, or in other words, would be giving to the favored locality an advantage, which did not of right belong to it, and producing an undue prejudice against the other locality. Anthony Salt Co. v. M. P. R. Co., 4 I. C. C. 33, 37.

(n) Complainant attacked as relatively unreasonable rates on lumber from Eau Claire, Wis., to various points on the Missouri River as compared with rates to the same points from LaCrosse, Wis., Winona, Minn., and various other lumber producing points. HELD, that the case must mainly be determined by comparing

the rate in question with the rates from neighboring towns, similar in size, situation and volume of competing traffic, and at approximately the same distance from common markets; that the rate complained of subjects Eau Claire to undue prejudice and disadvantage, and is unlawful; and that such rate should not exceed the rate from LaCrosse and Winona by more than 2 cents per 100 pounds, when, the rate from those points is not over 11 cents, nor by more than 2½ cents above the present rate of 16 cents from LaCrosse and Winona. Eau Claire Board of Trade v. C. M. & St. P. R. Co., 4 I. C. C. 65.

(o) Rates on wheat from points in North and South Dakota to Minneapolis as compared with the rate charged over considerably greater distances from the same points to Duluth and adjacent Lake Superior ports subject Minneapolis millers to undue and unreasonable prejudice and disadvantage. Defendants ordered to adjust their rates on wheat from said ports to Minneapolis and Duluth upon the basis of distance over nearest practicable routes. Chamber of Commerce of Minneapolis v. Great Northern R. Co., 4 I. C. R. 230.

(p) Complainant attacked rates on wheat from points in North and South Dakota to Minneapolis, Minn., as compared with the rates charged over considerably greater distances from the same ports to Duluth and adjacent Lake Superior ports as unreasonable and discriminatory. HELD, rates attacked subjected Minneapolis to undue prejudice and defendants ordered to adjust their rates to Minneapolis and Duluth on the basis of distance over nearest practicable routes. Chamber of Commerce of Minneapolis v. G. N. R. Co., 4 I. C. C. 230.

(q) No dissimilarity in circumstances or conditions justifying a discrimination in rates exists between a shipment of cotton from Mobile to New Orleans by a person who receives it by vessel from Demopolis, Alabama, and a person who receives it from any other part of Alabama or by rail, where there is no question of a proportion of rates under a joint traffic arrangement. Bigbee & W. Rivers Packet Co. v. Mobile & O. R. Co., (C. C. S. D. Ala.), 4 I. C. R. 829.

(r) Rates in force from Pueblo to San Francisco prohibit the movement of iron and steel articles from the former place to the latter, while greatly lower rates from other and far more distant points prevail on such traffic to San Francisco, and the carrier's cost of transportation is much less from Pueblo than from such more distant points of shipment: HELD, upon all the facts and circumstances in the case, that such rates from Pueblo are unreasonable and unjust, and subject complainant, the localities in the state of Colorado where its industry is carried on, and its traffic in iron and steel articles to San Francisco, to undue and unreasonable prejudice and disadvantage, and result in giving undue preference and unreasonable advantage to other shippers in the United States of iron and steel over the defendant roads to San Francisco. Colorado Fuel & Iron Co. v. Southern Pacific Co., 6 I. C. C. 488.

(s) A party to an interstate shipment cannot be excluded by the carrier from privileges afforded to other patrons in the same locality because of this refusal to pay excessive freight charges, even though an agreement to subsequently refund the excess should accompany the demand. Phelps v. Texas & P. R. Co., 6 I. C. C. 36.

(t) The relative equality enjoined by the statute requires substantial modification of the present disparity in rates from Chicago to Sioux City and Sioux Falls, and under present conditions such disparity in rates from Duluth to Sioux City and Sioux Falls should be discontinued. Daniels v. Chicago, R. I. & P. R. et al., 6 I. C. C. 458.

(ta) Rates for the transportation of cotton piece goods, molasses, sugar, rice, or coffee from Galveston, Houston, or other shipping points in Texas to Wichita Kansas, which are higher via defendants lines than rates on said commodities, respectively, from the same point of shipment to Kansas City and other "Missouri river points,"—HELD, to be in violation of the provisions of the Act to Regulate Commerce requiring reasonable and just transportation charges, and forbidding undue or unreasonable prejudice or disadvantage to any person, firm, corporation, or locality, or particular description of traffic, in any respect whatever. HELD, further, That such higher rates to Wichita than to Kansas City or other "Missouri river points" via the lines of the Atchison, Topeka & Santa Fe Railroad Company, and the Chicago Rock Island & Pacific Railway Company,

are in contravention of the fourth section of the Act to Regulate Commerce. Johnston-Larimer Dry Goods Co. v. A., T. & S. F. R. Co., 6 I. C. C. 568.

(u) The granting to one locality and denying to another, under substantially similar circumstances, of the privilege of stoppage in transit at an intermediate point in cases of shipment under a through bill of lading for a through rate to try the market, and of reshipping to the original destination at the balance of the through rate if the market is unsatisfactory, is an unjust discrimination against the second place. Commercial Club v. Chicago, R. I. & P. R. Co., 6 I. C. C. 647.

(v) It is a violation of the Interstate Commerce Act, §§1, 2, 3, for the Louisville & N. R. Co. to charge higher rates from New Orleans to LaGrange than for longer distances to Hogansville, Newman, Palmetto, or Fairburn on like traffic carried under similar conditions and circumstances, as such rates subject dealers at LaGrange and the city itself to undue and unreasonable prejudice and disadvantage, and give undue preference and advantage to the other localities and the dealers and merchants doing business therein. Calloway v. Louisville & N. R. Co., 7 I. C. C. 431.

(w) Where the merchants of two localities compete for business in the same territory, discrimination in rates in favor of the one and against the other locality necessarily gives the former an advantage and works a prejudice to the latter in that competition. Phillips, Bailley & Co. v. Louisville & Nashville R. Co. 8 I. C. C. 93.

(x) Upon complaint that defendants violate the Act to Regulate Commerce by charging higher freight rates to Dawson, Ga., than to Eufaula, Ala., and Americus and Albany, Ga., towns in the section of country surrounding Dawson, and after giving full and due consideration to the conditions and circumstances, including situation of the localities, possible transportation via the Chattahoochee River, railway competition and the competition of markets, and the basing-point system of rate making as practiced in the South,—HELD: (1) That it is undue preference for the Central of Georgia Railway Company to charge any higher rates on freight from New York or other eastern cities to Dawson than those which are maintained from the same points of shipment to Eufaula. (2) That it is undue preference for the Central of Georgia Railway Company or the Georgia & Alabama Railway Company to charge any higher rates on freight from Nashville, Cincinnati and Chattanooga to Dawson than those in effect from the same points to Albany. (3) That it is undue preferenc for the Central of Georgia or Georgia & Alabama to charge any higher rates on freight from New Orleans to Dawson than those which are in force from New Orleans to Americus or Albany. (4) That so long as the southern basing-point system of rate making is adhered to, it is undue preference for the Central of Georgia or the Georgia & Alabama to charge any higher freight rates to Dawson than those which may be in effect to Americus from any of the points of shipment above mentioned. Board of Trade of Dawson v. Central of Ga. Ry., 8 I. C. C. 142.

(y) The maintenance of higher rates from New Orleans to Dawson than to Americus or Albany, by the Central of Georgia Railway Company and Georgia & Alabama Railway Company, gives an undue preference to the latter points over the former point. Board of Trade of Dawson v. Central of Georgia R. Co., 8 I. C. C. 142.

(z) Common carriers are bound by every principle of justice and of law to accord equal rights to all shippers who are entitled to like treatment, both in the receiving of supplies and the shipment of their products, and a carrier who under any pretext whatsoever grants to one shipper an advantage which it denies another violates the spirit and thwarts the purpose of the law. Castle v. Baltimore & O. R. Co., 8 I. C. C. 333.

(aa) Inequality of charge is justified by dissimilarity of conditions.—Railway companies are only bound to give the same terms to all persons alike, under the same conditions and circumstances; and any fact which produces an inequality of condition and a change of circumstances justifies an inequality of charge. Citing: Interstate Commerce Commission v. Baltimore & O. R. Co., 145 U. S. 283, 36 L. ed. 706, 4 Inters. Com. Rep. 92. Interstate Commerce Commission v. Western & Atlantic R. R. Co., 8 I. C. C. App. XIII.

(bb) Freight rates on sugar from New Orleans to Tifton, Ga., are unjust and unduly prejudicial to Tifton, where they exceed the same rates on the same

commodity from New Orleans to Valdosta, Ga., the longer distance point, via Tifton, where the circumstances and conditions at Tifton are substantially similar to those at Valdosta. Mayor and Council of Tifton, Ga. v. Louisville & Nashville R. Co., 9 I. C. C. 160.

(cc) The rates from Chicago to Norfolk, Neb., are unjust and unreasonable, and should not exceed those in force from Chicago to Columbus, Neb., and the rates from Duluth to Norfolk should not exceed the rates in force from Duluth to Emerson, Neb., added to the present local rate in effect from Emerson to Norfolk. Johnson v. Chicago, St. Paul, Minneapolis & Omaha R. Co., 9 I. C. C. 221.

(dd) Defendant's lumber rates to Wichita are not unreasonable and unjust as compared with those in effect to Kansas City, Omaha, and Lincoln, where competitive conditions exist at such places which produce low rates to those points from the lumber territory in question, and which competitive conditions do not exist at Wichita. Mayor and City Council of Wichita, Kansas, v. Chicago, Rock Island & Pacific R. Co., 9 I. C. C. 569.

(ee) A charge of a higher rate on lumber from western points to Wichita Kansas, than for the longer distance through Wichita to Topeka, Kan., violates the Interstate Commerce Act, where the circumstances and conditions at Topeka do not differ from those at Wichita. Mayor and City Council of Wichita, Kansas v. Chicago, Rock Island and Pacific R. Co., 9 I. C. C. 569.

(ff) As a general rule, subject to certain exceptions, Denver must receive the same treatment that is accorded to cities of the Middle West and Missouri River territory in making trans-continental rates. Kindel v. Atchison, T. & S. F. R. Co., 9 I .C. C. 606.

(gg) Defendants are not justified in maintaining rates from the Pacific Coast which are lower to Missouri River points than to Denver, upon seashells, vanilla beans, whalebone, whale oil foots, hair, copper, cement, glue, honey, mohair, hides, wool, sealskins, goatskins, sheepskins, and skins of various fur-bearing animals. Kindel v. Atchison T. & S. F. R. Co., 9 I. C. C. 606.

(hh) Under present rate conditions the Cannon Falls shipper is subjected to disadvantage as follows: First: The combination of rates on rye and other coarse grain from Cannon Falls to Minneapolis and Minneapolis to Chicago is ½ cent less than the straight rate from Cannon Falls to Chicago, and this is without justification. Second: The favorable location of Cannon Falls with reference to Minneapolis and Duluth and the competitive advantage to which the Cannon Falls dealer is entitled by reason of the route via Duluth, are neutralized to an extent by manipulation of billing at Minneapolis whereby Cannon Falls grain sold in Minneapolis can be reconsigned to Duluth under a substituted billing and the balance of a through rate, relating in a less total charge from Cannon Falls to Duluth than the charge on a through shipment from Cannon Falls to Duluth. Third: The rate on rye, barley and other coarse grain from Cannon Falls to Louisville or East St. Louis is wrongfully higher than the rate on wheat between the same points. Cannon Falls Farmers' Elev. Co. v. C. G. W. R. Co., et al., 10 I. C. C. 650.

(ii) Defendant carries coal to Baltimore destined finally to "points outside the Capes" (largely to New England seaboard points) and shipments of the same coal may also be made to Norfolk, an Atlantic seaport. The rate to Baltimore on coal reshipped to "outside the Capes" points is forced by the competition of lines from other mines, and under such rate defendant secures a large annual tonnage via its line to the port of Baltimore. The rate to Baltimore on coal for Norfolk is the local rate to Baltimore. If the shipments to Norfolk and points outside the Capes be regarded as through shipments, on what are in essence through rates, the competition stated might justify a higher rate to Baltimore when the final destination is Norfolk than when it is a point outside the capes; but if this coal is all purely local to Baltimore, there is much doubt whether, as a matter of law, defendant can charge for the haul to Baltimore more in one case than in the other. Similar question involved in another pending proceeding and decision reserved upon that branch of this case. HELD: That this constitutes wrongful prejudice and unjust discrimination, and that while defendant continues to give a rate less than its local to Baltimore on coal destined to "outside the Capes points," it cannot lawfully deny the same rate on coal forwarded by water from Baltimore to Norfolk. Complainant granted rep-

aration. City Gas Co. v. Baltimore & O. R. Co., 11 I. C. C. 371.

(jj) Upon complaint that defendants violate the Act to Regulate Commerce by charging higher rates on canned goods, grain, flour, hay, and packing house products from Cincinnati, Ohio, and Memphis, Tenn., to Helena and McRae, Ga., than to Cordele and Fitzgerald, Ga., towns in the section of country surrounding Helena and McRae, after giving due consideration to the circumstances and conditions, including situation of localities, railway competition, competition of markets, and the basing-point system of rate making as practiced in the South, HELD: That, upon the record made in this case, the situation of Helena and McRae is not so similar to that of Cordele as to require the application of Cordele rates to the first-named places, but that the rates in question from Cincinnati and Memphis to Helena and McRae are unreasonable and unjust and should not exceed those now in effect to Fitzgerald from such points of origin. Davenport v. Southern R. Co., et al, 1 I. C. C. 650.

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(kk) A water port is entitled to whatever advantage it can obtain through transportation by water, but its location does not entitle it to lower rates by rail, and although such preference may be lawfully accorded by a carrier in the protection of its own interests, it should not be required, except in cases where manifest wrong would otherwise result. Darling & Co. v. B. & O. R. R. Co., 15 I. C. C. 79. 87.

(ll) Every locality competing in a common market is entitled to rates which are relatively reasonable and just in comparison with rates from other localities served by the same carrier. Black Mountain Coal Land Co. v. S. Ry. Co., 15 I. C. C. 286, 294.

(mm) When unjust discrimination against one point and undue preference in favor of another are alleged, because of lower rates to the latter, and equality of rates is demanded as a cure for such unjust discrimination against the former, it must be shown that the circumstances and conditions at each of the points are substantially similar, and that the lower rates at the one point were the result of the voluntary action of the carriers at that point. Bainbridge Board of Trade v. L. H. & St. L. Ry. Co., 15 I. C. C. 586, 593.

(nn) Because of additional expense, a higher rate for delivery in one part of town than in another may not be unlawful. Pierce v. P. & L. E. R. R. Co., 23 I. C. C. 89, 90.

(oo) Where a railroad company participates in the carrying trade of a certain city and controls the rates applied to that trade, it is no defense to a charge of undue prejudice in rates to that city to say that its rails do not extend to such city. Chamber of Commerce of Newport News v. S. Ry. Co., 23 I. C. C. 345, 353.

(pp) It is no defence to a charge of undue preference against one point in favor of others, to urge that competition exists at the favored points, when similar conditions obtain at the point discriminated against. Mfrs. & Mchts.' Assn. v. A. & A. R. R. Co., 24 I. C. C. 331, 336; in re Advances on Barley, 24 I. C. C. 664, 670; Board of Trade of Morristown v. A. C. L. R. R. Co., 24 I. C. C. 372, 377; Mayor and Council of Boston v. A. C. L. R. R. Co., 24 I. C. C. 50.

(qq) Two manufacturers located at the same point, and both dependent upon the same mines and the same carriers for their coal supply, are ordinarily entitled to equal rates, irrespective of the character, use or disposition of their products. A lower rate to one than to the other cannot be justified merely upon the absence of competition in the sale of their products. Union Tanning Co. v. S. Ry. Co., 25 I. C. C. 112, 114.

(rr) To permit one shipper to grind ore and ship it from the grinding point at the balance of the import rate while denying this privilege to other shippers constitutes undue prejudices. In re Advances on Manganese Ore, 25 I. C. C. 663, 669.

(ss) Where the short-line carrier makes a rate other carriers must meet it if they are to participate in the traffic. The sway of such competition is none the less because the rate made by the short line is lower than the rate permitted by a state commission for the same haul. But it is also true that where the carriers themselves have established that rate to points which, in relation to other points, are similarly situated and competitive, such rate can hardly be deemed unreasonably low, and should be considered in determining

whether the rates to such other points are unreasonably high. Coffeyville Merc. Co. v. M. K. & T. Ry., 33 I. C. C. 122, 124.

(tt) When it appears that the favored point secures an advantage through the granting to it of a privilege not compelled by competition and that there is no substantial dissimilarity of conditions, transportation or otherwise, surrounding the transportation to the favored and to the complaining cities, a showing of the rate situation, from which it is evident that the prejudice and disadvantage are real and substantial, is as convincing a showing of a violation of section 3 as it is generally practicable to make. Duncan & Co. v. N. C. & St. L. Ry., 35 I. C. C. 477, 483.

(uu) The mere maintenance of higher rates to one point than to another is not an unjust discrimination; it is only when general conditions of transportation and the general circumstances surrounding traffic are substantially similar and such a rate relationship adversely affects the commerce of one point and thereby materially benefits the commerce of the other point that it may be said to involve the preferences and discriminations prohibited by law as between different communities served by the same carriers. City of Astoria v. S. P. & S. Ry. Co., 38 I. C. C. 16, 24.

(vv) Where the complainant shows that the rates from competing points of origin are lower than those under attack, and makes out a prima facie showing of substantial similarity in operating conditions, it becomes the duty of the carrier to explain the discrimination. Oklahoma Cottonseed Crushers' Assn. v. M. K. & T. Ry. Co., 39 I. C. C. 497, 501.

(ww) Where the same carrier or carriers serve two shippers, who, by their location, the character of their output, and distance from markets are in substantially similar circumstances and conditions, the serving carrier or carriers cannot lawfully prefer one to the other in any manner whatsoever. In re Private Cars, 50 I. C. C. 652, 692.

(xx) Nothing that has resulted from the control of the defendant carriers by the federal government is warrant for a continuance of an unlawful adjustment of rates and charges, but on the contrary the operation of all railroads under federal control as a unified and coordinated national system serves only to emphasize the impropriety of according to some shippers advantages that are denied to others under substantially similar conditions. Southern Rice Growers Asso. v. T. & N. O., 53 I. C. C. 197, 206.

(yy) Where transportation conditions are substantially similar, the Commission has never held that a carrier has the right to discriminate against one point in favor of another because a shipper located at the former has a natural advantage over its competitor located at the latter. Cornell v. L. V. R. R. Co., 57 I. C. C. 157, 161.

(zz) Where rates are higher, distance considered, than those generally prevailing from near-by points to the same destinations or to points in that vicinity, over the same or other routes, whether they are unreasonable or unduly prejudicial can not be determined from that standpoint alone, but consideration must be given to all the circumstances and conditions surrounding the traffic. National Fireproofing Co. v. Director General, as Agent, 62 I. C. C. 49, 55.

(3a) Discrimination occurs when a difference is made between connecting lines similarly situated. A difference founded on actual dissimilarities in the service or in the convenience of interchange, and adapted to the difference in circumstances, is not discrimination. York Mfrs. Assn. v. P. R. R. Co., 73 I. C. C. 40, 46.

(3b) Rates may not be made solely with regard to the resultant ability of shippers to meet commercial competition. If carriers elect to reduce rates in order to enable shippers to find a market for their products in a particular field, they must, under the law, accord equal opportunity to competing shippers at other points who are dependent upon them for transportation. Pig Iron from Southern Producing Points, 74 I. C. C. 330, 334.

(3c) Under section 2 of the Act forbidding a discrimination in rates between shippers for a haul under "like circumstances and conditions," the circumstances and conditions meant are those which arise within the field of haulage, and not those which exist outside. Penn. R. R. Co. v. International Coal Mining Co., 173 Fed. 1, 5.

(3d) Undue prejudice may result from the relationship of two rates each of which lies within the zone of reasonable-

ness. Lackawanna Steel Co. v. Pennsylvania R. R., 88 I. C. C. 759, 762.

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§4½. Special Rates.

See Classification §17, §18; Evidence §12.

CASES 1887-1908

(a) Unlawfulness under the second section of the act is the doing of a service by a carrier in the manner forbidden by the statute, and if no such service has been done a contravention of the act has not occurred. Griffee v. B. & M. R. R. R. 2 I. C. C. 194, 195.

(aa) Special tariffs giving different rates to places named and those not named, to manufactured articles named and those not named, to jobbers at places named and those not named, and to manufacturers and jobbers and other dealers, discriminate and give undue advantages. Re Tariffs of Transcontinental Lines (Com.), 2 I. C. R. 203.

(b) The carriers are the common servants of all shippers, and are bound to serve them all reasonable and without unjust discrimination but it is not the duty of carriers to disregard distance or natural advantages of location, and equalize access to markets for all engaged in a common business though differently situated. No producer or shipper has an exclusive right to supply a market, and the interests of consumers and of the general public may justi-

fy carriers in enlarging the field from which the demand for a commodity may be supplied on terms of equality for transportation. That is only a recognition of the principle that the general interests are paramount to individual or local interests. Imperial Coal Co. v. P. & L. E. R. Co., 2 I. C. C. 436, 441.

(c) The difference in the quantity of shipments is an insufficient and unwarrantable reason for discrimination in rates. United States v. Tozer (D. C. E. D. Mo.), 2 I. C. R. 540.

(d) Where a carrier by its published general tariff charges the general public from and to all points upon a large portion of its lines certain rates upon a class of freight, and at the same time publishes and puts into force a special tariff by which it charges a class of persons named, from and to the same points on its lines, less than one half in amount of the rates on the same class of freight that it charges the general public in its general tariffs, such a discrimination is v. I. C. R. R., 2 I. C. C. 804, 805.
unjust and is violative of the act. Elvey

(e) Discrimination in freight rates from Chicago to New York cannot be accomplished by a railroad company either (a) by applying a twenty-two-cent through rate to freight originating west of Chicago on roads not in the arrangement and to which is paid more than its pro rata share of such rate to New York, or (b) by applying such rate to grain in store, by paying a "draw back" or "expense bill" based upon the fiction that the grain was still in transit on the twenty-two-cent rate, thus bringing the shippers' rate from Chicago to New York down to eighteen and two-tenths cents instead of the regular twenty-two cent rate. U. S. v. Mich. Central R. Co., 3 I. C. R. 287.

(f) It is unjust discrimination to base the rate of freight charges to several shippers upon the quantity shipped. Kinsley v. Buffalo, N. Y. & P. R. Co. (C. C. W. D. Pa.), 3 I. C. R. 318.

(fa) The term "a like kind of traffic," as it occurs in section 2 of the Act to Regulate Commerce, and as used in this report and opinion, does not mean traffic that is identical, but it means traffic that is of "a like kind," with other freight in the element of a fair and just classification for the purpose of arriving at a just and reasonable rate and a rate that will avoid unjust discrimination and unlawful preference. N. Y. Board of Trade & Transportation v. Pa. R. Co., 3 I. C. R. 417.

(g) An allegation of unjust discrimination resulting from shipments of oil in tank cars owned by the shipper and low return rates on cotton-seed oil and turpentine in the same tanks, in connection with mileage paid for use of tank cars, cannot be sustained without evidence showing mutuality of interest between the two classes of shippers or the payment of excessive car mileage. Rice v. Cinn., W. & B. R. Co., 3 I. C. R. 841.

(h) Unless within the authorized exceptions to the general rule of the statute, discriminations in charges upon like shipments of the same commodities, based solely upon the purpose or "business motive" of the shipper, are unlawful, whether affected directly or indirectly by methods of classification. Duncan v. Atchison, T. & S. F. R. Co., 6 I. C. C. 85.

(i) Whether an agreement entered into by a carrier mainly for the purpose of developing its milk traffic, and under which compensation is afforded to the other contracting party equal to a considerable share of the gross receipts from such traffic, involves extravagant expenditure of revenue and is disadvantageous to the carrier, is matter for it to determine; but extraordinary or unnecessary cost of operation or management cannot be permitted to excuse unreasonable or unjust rates, discriminations, preferences, or prejudices. Milk Producers' Proctective Asso. v. Delaware, L. & W. R. Co., 7 I. C. C. 92.

(j) Notice by a carrier of special rates to other shippers entitled thereto by difference of conditions need not be given to regular shippers in order to protect the carrier from the charge of unreasonable discrimination. The court says that differences in freight rates on coal to manufacturers and to mere dealers are and have been for many years in universal practice and not a single case other than this has as yet reached the courts of last resort in England or in the United States questioning the entire legality and propriety of such differences, and that circumstance is ample proof that both the professional and the lay mind have assented to the practice. A. M. Hoover et al. v. Penn. Ry. Co., 7 I. C. C. App. II.

(k) Preferential rates on coal to manufacturer lawful.—Giving lower rates for

transportation of coal to a manufacturing company than to a coal dealer is not undue or unreasonable discrimination in violation of the Pennsylvania Constitution, where the manufacturing company consumes the coal in creating products which furnish a large amont of additional transportation to the carrier, and especially where the coal carrier was bound to give such company the lower rate by a contract made years before the coal dealer began business. A. M. Hoover et al. v. Penn. Ry. Co., 7 I. C. C. App. II.

(l) A manufacturing company violates its right to accept lower rates for the transportation of coal than are given to a coal dealer if it sells coal even to its own employees; and the carrier on notice of such sales must charge such company the same rates that are charged to coal dealers. A. M. Hoover et al v. Penn. Ry. Co., 7 I. C. C. App. II.

(m) Defendants make two rates on grain and sixth class merchandise from Chicago to Boston. If the commodity is for local consumption the rate is 2 cents above the rate to New York; but if the commodity is to be exported the Boston rate is the same as the New York rate. The export traffic is delivered to the ocean carrier at East Boston, which is a few miles more distant than Boston from Chicago, and the export rate, which is essentially the inland carrier's division of a through export rate, applies in fact only to East Boston. The domestic rate to Boston is substantially as fixed by the Commission in Kemble v. Lake Shore & Michigan Southern R. Co. 3 Inters. Com. Rep. 830 I. C. C. Rep. 166. Whether, as a matter of fact, the domestic rate to Boston is unreasonably high, or whether the export rate through Boston unduly discriminates against Boston, are questions which were involved in cases heretofore decided by the Commission; and their reconsideration in this case is not warranted by any facts developed at the hearing. HELD, That the fourth section is not violated by the lower export rate to East Boston than the domestic rate for the shorter distance to Boston, and that the petition should be dismissed. Kemble, v. Boston & Albany R. R. Co., 8 I. C. C. 110.

(n) An undue discrimination is made by the defendants in fixing their rates for transporting lumber to points on the New York & Long Branch Railroad by adding to the rate to New York city an arbitrary charge of 5 cents per 100 lbs. when the shipping point is Saginaw, Mich., but only 2 cents per 100 lbs. when the shipping point is Buffalo, N. Y. Water competition between Buffalo and New York affects the rates to New York, but it justifies no wider difference in the rates from Saginaw and Buffalo to these interior destinations than exists in the rates from these shipping points to New York. Mershon S. P. & Co. v. Central R. Co., 10 I. C. C. 456.

(o) Defendants' joint rate of 90 cents per ton on bituminous coal from Norwood, N. Y., to Montpelier, Vt., when intended for "railroad supply," and their combination rate of $1.85 per ton, applied on such coal carried between the same points and used for manufacturing or any other industrial or domestic use, constitute unlawful discrimination. Capital City Gas Co. v. Central Vermont R. Co., 11 I. C. C. 104.

(p) If a special rate be granted to a commodity or locality reasonable in itself and profitable to the carrier, it may become a discrimination as against other points or other commodities not so favored. Kindel v. B. & A. R. Co., 11 I. C. C. 495, 507.

(q) The rate per 100 pounds on cement plaster, in carloads, from Quanah, Tex., to St. Louis, Mo., 728 miles, is 18 cents, and to Kansas City, Mo., 571 miles it is 13 cents, while on cement plaster, in carloads, from Cement, Okla., to St. Louis, 602 miles, a rate of 10 cents, and to Kansas City, 445 miles, a rate of 8 cents are maintained. On complaint that these rates unlawfully discriminate against complainant's plaster shipped from Quanah, it appeared that the St. Louis & San Francisco Railroad Company made the rates from Cement to enable plaster from that point to compete with other plasters in the St. Louis and Kansas City markets, that the cost of transportation is not greater over the line from Quanah to Cement than from Cement to St. Louis, and that defendants would make the same profit if they hauled Quanah plaster at the same rate per ton per mile that is applied from Cement. The rate from Quanah is over the connected lines of defendants, but the St. Louis, San Francisco & Texas Railway Company is controlled by the St. Louis & San Francisco Railroad Company, and both are operated as one system. HELD: (1) That a railroad company cannot arbitrarily determine that a particular mill shall compete in a certain market with other localities and that other mills

on its lines shall not so compete, particularly where the discrimination is not justified by operating conditions. (2) That the rates from Quanah to St. Louis and Kansas City are unlawful, that a rate per 100 pounds not exceeding 10¼ cents from Quanah to Kansas City and not exceeding 12 cents from Quanah to St. Louis should be maintained by defendants so long as the rates per 100 pounds to Kansas City and St. Louis from Cement are 8 and 12 cents, respectively, and that in case of change in said rates from Cement the rate from Quanah to Kansas City shall not be more than 128 per cent of the rate from Cement to Kansas City, and the rate from Quanah to St. Louis shall not be more than 120 per cent of the rate from Cement to St. Louis. (3) That complainant is entitled to recover from defendants the sum of $121.55, with interest from August 28, 1906, as reparation for unjust and unreasonable charges on specified shipments made under the rates complained of in this case. Texas Cement Plaster Co. v. St. Louis & S. F. R. Co., 12 I. C. C. 68.

(r) Defendants' rates on cotton-piece goods from New England mills through Pacific coast points to the Orient is $11.25 for 40 cubic feet of measured space, equivalent to about 85 cents per 100 pounds; their rates on the same article from southern mills over the same route is $1.25 per hundred pounds. HELD, upon complaint that this adjustment is unreasonable in itself and also discriminates against southern mills in favor of New England mills, that the complaint is not sustained. Enterprise Manufacturing Company v. Georgia R. R. Co. et al., 12 I. C. C. Rep. 130, cited and approved. China & Japan Trading Co. v. Ga. R. R. Co. et al., 12 I. C. C. 236.

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(s) Policy of state commission in removing undue prejudice against interstate commerce to select lowest interstate rate that can be readily found and which may move some traffic and measure it with the entire body of intrastate rates, if carried to its logical conclusion, would be so destructive of existing rate structures and of sound and well-established principles and methods of ratemaking that to state it is to condemn it. Kansas Rates, Fares, and Charges, 64 I. C. C. 679, 681.

(t) Allegation relating to section 2 of the Act not considered, there being no showing of discrimination between shippers in same community. Dean Mill Co. v. M. P. R. R. Co., 80 I. C. C. 174.

(u) A competitive relationship among shippers is not essential to a finding of unjust discrimination and competition between carriers does not justify an otherwise unlawful discrimination under section 2 of the Act. Barber Asphalt Co. v. L. & N. R. R., 88 I. C. C. 307, 309.

(v) Preferential treatment of a class of traffic, ordinarily harmless may become undue, because, under the special circumstances, it results in prejudice, or disadvantage to some other person, commodity, or locality, or to interstate commerce. Nashville, C. & St. L. Ry. v. State of Tenn., 43 Sup. Ct. 583.

ALL OTHER CITATIONS

Tidewater Oil Company v. Director General, as Agent, 62 I. C. C. 226, 227; Nagase & Co. v. Director General, as Agent, 62 I. C. C. 422, 424; East Springfield Citizens Club v. American Railway Express Co., 68 I. C. C. 482, 483; Pioneer Cooperage Co. v. B. & O. R. R., 68 I. C. C. 645; Providence Fruit & Produce Exchange v. Rhode Island Co., 69 I. C. C. 422, 424; Rates on Bunker Coal, 73 I. C. C. 51, 62, 74, 75; Standard Brick Co. v. G., F. & A. Ry. Co. 74 I. C. C. 553; Anson Gilkey & Hurd Co. v. S. P. Co., 78 I. C. C. 495, 522; Iowa Malleable Iron Co. v. Director General, as Agent, 78 I. C. C. 667; Dean Mill Co. v. M. P. R. R. Co., 80 I. C. C. 174; Green Lumber Co. v. A. A. R. R. Co., 80 I. C. C. 185; Western Coal Rates, 80 I. C. C. 383, 440; Slack Coal from Arkansas-Oklahoma Mines, 80 I. C. C. 194, 203, 204; Wood Iron & Steel Co. v. P. R. R. Co., 83 I. C. C. 503, 506.

§4¾. State Rates.

See Supra §2½; State Rates and Regulation

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(a) The language used in section 3 is broad enough to cover every discrimination growing out of the relation between intrastate and interstate commerce which injuriously affects the latter. Intrastate Rates within Illinois, 59 I. C. C. 350, 362.

(b) The Transportation Act of 1920 is not unconstitutional when construed to authorize the Interstate Commerce Commission to prescribe intrastate rates to bring them up to the general level of interstate rates necessary to give the carriers the return specified by that act, since Congress in the exercise of its affirmative power in developing interstate commerce can impose any reasonable condition on any use in intrastate

commerce it deems necessary and advisable. Railroad Commission of Wisconsin v. Chicago, B. & Q. R. Co., 42 Sup. Ct. 232.

ALL OTHER CITATIONS

Tennessee Rates and Charges, 63 I. C. C. 160; Missouri Rates and Charges, 63 I. C. C. 160; Minimum Rates and Charges, 64 I. C. C. 233; Kansas Rates and Charges 64 I. C. C. 679, 681; Intrastate Rates Within Illinois, 66 I. C. C. 350; Intrastate Rates Within the State of Texas, 68 I. C. C. 25; National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co., 68 I. C. C. 213, 241; Indiana Passenger Fares of C., L. S. & S. B. Ry. Co., 69 I. C. C. 180; Surchange in Sleeping or Parlor Cars in Georgia, 69 I. C. C. 623; Oklahoma Rates and Charges, 69 I. C. C. 635; Oklahoma Corp. Comm. v. A. R. R., 80 I. C. C. 607, 617, 618; Ohio-Michigan Coal Cases, 80 I. C. C. 663, 690; Perry County Coal Corp. v. E. Et. L. & S. Ry. Co., 80 I. C. C. 711; Atlas Portland Cement Co. v. C., B. & Q. R. R. Co., 81 I. C. C. 1, 3. 11, 12; Nebraska Rates, Fares and Charges, 81 I. C. C. 290; Pittsburgh Coal Producers' Asso. v. P. C. C. & St. L. R. R. Co., 83 I. C. C. 145; Sioux City Live Stock Exchange v. C., St. P. M. & O. Ry. Co., 83 I. C. C. 243, 246.

§5. Test of Discrimination.

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(a) The duties of a common carrier are bounded by its rights and powers. Where there is no right or power to render a particular service there can be no duty in that respect. And there can not be unjust discrimination, nor undue preference or prejudice, in refusing a service that it has no right by statute or contract to perform. Alford v. C. R. I. & P. R. Co., 2 I. C. C. 771, 775.

(b) Exact mathematical equality between all localities is not attainable. Some slight differences in the immense complication of localities and of roads are inevitable, and if these differences are substantially reasonable there is no unjust discrimination. Lehmann Higginson & Co. v. S. P. Co., 3 I. C. C. 80, 92.

(ba) It is unjust discrimination to base the rate of freight charges to several shippers upon the quantity shipped. Kinsley v. Buffalo, N. Y. & Pa. R. Co., 3 I. C. R. 318.

(c) The welfare of the communities occupying the localities where goods are delivered is to be considered, as well as that of the communities which are in the locality of the place of shipment, in considering the question of undue preference or advantage between localities. Texas & P. R. Co. v. Interstate Commerce Commission, 5 I. C. R. 405.

(d) The question whether a preference by railroad companies in freight rates charged in favor of certain localities as opposed to others is undue or unreasonable within the Act to Regulate Commerce, § 3, is one of fact in each individual case. New York Produce Exch. v. Baltimore & O. R. Co., 7 I. C. C. 612.

(e) Defendants exact higher rates for transporting cattle and hogs than for transporting live-stock products to Chicago from points west, northwest and southwest thereof, including Missouri River points and South St. Paul, Minn. Upon all the facts and circumstances. HELD: (1) That such discrimination is not justified by difference in cost of transportation or otherwise, and subjects the traffic in cattle and hogs at Chicago and other points, and those interested therein, to undue and unreasonable prejudice and disadvantage, and gives to the traffic in the products of hogs and cattle, and to shippers and localities interested in such traffic, undue and unreasonable preference and advantage, in violation of the Act to Regulate Commerce. Chicago Board of Trade v. C. & A. R. Co., (4 I. C. C. Rep. 158) reaffirmed and the principle therein announced extended to the transportation of cattle and their products. (2) That the desire of a carrier to secure additional business for its line of road does not justify a change in the relation of rates resulting in a higher rate upon cattle and hogs, the raw material, than upon live-stock product, the manufactured article, where, as in this case, the articles are in sharp competition with each other in markets of purchase and sale, where it appears that upon other lines and in other sections rates are generally no higher, and in many instances much lower, on the traffic prejudiced than on that favored by the change, and where numerous and important industries, which have been built up and maintained under the former adjustment, and those interested in such industries, will be injuriously affected by the action taken. Chicago Live Stock Exchange v. C. G. W. R. Co., et al., 10 I. C. C. 428.

(f) Not all discriminations, but only those which are unreasonable, are unlawful. Commercial and Industrial Asso. of Union Springs, A. A. v. L. & N. R. R., 12 I. C. C. 372.

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(g) Not all discriminations are unlawful, but only such as are undue or unreasonable; if based on reason and good cause, discriminations cannot be condemned as unreasonable. The evidence and effectiveness of competition between carriers, whether by rail or water, whether subject to the Act or not, and competitions of markets, or the absence of such competition, are, among other things, pertinent to the question of similarity of circumstances and conditions involved in the ultimate question of fact under sections 3 and 4, and as to whether the discrimination complained of is or is not undue or unreasonable. Discriminations in sections 3 and 4 of the Act, in so far as they result from the bona fide action of a carrier in meeting circumstances and conditions not of its own creation, and which are reasonably necessary, do not of necessity fall under the condemnation of the law. Pittsburgh Plate Glass Co. v. P. C. C. & St. L. Ry. Co., 13 I. C. C. 87, 99.

(h) The carrier may not determine by rate adjustments the markets to which grain will move. Under reasonable and non-discriminatory rates, the producers dealers in, and consumers of the grain have the right to select the markets to which they will ship it, at which they will handle it, and the routes via which it shall move. Commercial Club of Superior, Wis., v. G. N. Ry. Co., 24 I. C. C. 96, 109.

(i) It would be unjust discrimination against a junction-point mine not to give recognition to its natural advantages. In re Mine Ratings, 25 I. C. C. 286, 298.

(j) The test of discrimination is the ability of one of the carriers participating in two through routes to put an end to the discrimination by its own act. Elevation Allowances at St. Louis and E. St. Louis, 30 I. C. C. 696, 699.

(k) Not all discriminations are unlawful, but only such as are undue or unreasonable; if based on reason and good cause, discriminations cannot be condemned as unreasonable. Louisiana Sugar Planters' Asso. v. I. C. R. R. Co., 31 I. C. C. 311, 318.

(l) A carrier is not guilty of unjust discrimination because its rates for particular kinds of traffic to a common point of delivery are not as low as the rates of other carriers from other territories of origin. Consumers Co. v. C. & N. W. Ry., 36 I. C. C. 259, 261.

(m) It has long been a settled doctrine that the mere maintenance of higher rates to one point than to another is not an unjust discrimination within the meaning of the Act; it is only when the general conditions of transportation and the general circumstances surrounding the traffic are substantially similar and such a rate relationship adversely affects the commerce of one point and thereby materially benefits the commerce of the other point that it may be said to involve the preferences and discriminations prohibited by law as between different communities served by the same carriers. City of Astoria v. S. P. & S. Ry., 38 I. C. C. 16, 24.

(n) In the last analysis the test of unjust discrimination as between rates from two competing points is to be found in an examination of the rates applicable from those points rather than in the differing principles by which those rates may be made. Where, however, it is apparent that to withhold arbitrarily from one or two points similarly situated the principle of rate making which is accorded to the other results in a less favorable adjustment than would otherwise be accorded, the failure to apply the same principle to both is unjustly discriminatory. The Missouri River-Nebraska Cases, 40 I. C. C. 201, 259.

(o) Differences between rates on wheat and flour from points in Utah and Idaho to points in Nevada and California challenged as a "protective tariff" framed for benefit of California millers as an "iron wall" so constructed as to exclude Utah and Idaho millers from the California markets. Allegation of prejudice sustained. Utah-Idaho Millers and Grain Dealers Asso. v. D. & R. G. R. R. 44 I. C. C. 714, 720, 721.

(p) The Commission must, to make a finding of discrimination, be shown the fact of discrimination, not merely the difference in ratings without the cause and reason for the difference. Uniformity is desirable and in some instances it is necessarily required; but its absence does not prima facie connote illegality, as differences in transportation conditions may, and frequently do, require a deviation from uniformity in particular instances to accomplish the legality and reasonableness of rates which the law exacts. Natl. Confectioners' Asso. v. A. & R. R. R., 49 I. C. C. 566, 576.

(q) Ordinarily discrimination under section 3 to be undue must be such that it is a source of disadvantage to one party and of benefit to another and generally there must be a competitive relation between the persons, localities or

commodities concerned. Omaha Livestock Exchange v. C. M. & St. P. Ry., 69 I. C. C. 690, 694.

(r) The parallel between preferences and prejudices in respect of rates is manifestly close with preferences and prejudices in respect of service; indeed, with a low-grade commodity such as coal, it often happens that an inequality with respect to car distribution, controlling, as it does, quantity of production possible, is much more important to shipper than amount of transportation charge he pays. Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 520, 556.

ALL OTHER CITATIONS

Indianapolis Freight Bureau v. C. C. & St. L. Ry. Co., 16 I. C. C. 56, 66; Association of Union-Made Garment Manufacturers v. C. & N. W. Ry. Co., 16 I. C. C. 405, 408; Fort Dodge Commercial Club v. I. C. R. R. Co., 16 I. C. C. 572, 581; Sondheimer Co. v. I. C. R. R. Co., 17 I. C. C. 60, 64; Greater Des Moines Committee v. C. M. & St. P. Ry. Co., 18 I. C. C. 73, 79; Board of Trade of Chicago v. A. C. R. R. Co., 20 I. C. C. 504; Elk Cement & Lime Co. v. B. & O. R. R. Co., 22 I. C. C. 84, 88; Alpha Portland Cement Co. v. B. & O. R. R. Co., 22 I. C. C. 446, 449; Chamber of Commerce of Newport News v. S. Ry. Co., 23 I. C. C. 345, 351; Larkin Co. v. E. & W. T. Co., 24 I. C. C. 645; Mfrs. & Merchants Assn. v. A. & A. R. R. Co., 24 I. C. C. 331, 337; Santa Rosa Traffic Asso. v. S. P. Co., 24 I. C. C. 46, 48; Arkansas Fertilizer Co. v. St. L. I. M. & S. Ry. Co., 25 I. C. C. 645; Rates on Knitting-Factory Products, 25 I. C. C. 634, 639, 640; Fullerton Lumber & Shingle Co. v. B. B. & B. C. R. R. Co., 25 I. C. C. 376, 378; In re Advances in Demurrage Charges, 25 I. C. C. 314, 323; Wharton Steel Co. v. D. L. W. R. R. Co., 25 I. C. C. 303, 305; Baker Commercial Club v. O. W. R. R. & N. Co., 25 I. C. C. 281, 283; North Fork Cannel Coal Co. v. A. A. R. R. Co., 25 I. C. C. 241, 242; Applachia Lumber Co. v. L. & N. R. R. Co., 25 I. C. C. 193, 196; Union Tanning Co. v. S. Ry. Co., 25 I. C. C. 112, 113; Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 26 I. C. C. 53, 58; In re Rates from Western Points to Stations on the Line of the Rhode Island Company, 26 I. C. C. 51, 52; Coke Producers' Assn. of Connellsville v. B. & O. R. R. Co., 27 I. C. C. 125, 247; Traffic Asso. of St. Louis Coffee Importers v. I. C. R. R. Co., 28 I. C. C. 484; Columbia Chamber of Commerce v. S. Ry. Co., 28 I. C. C. 338, 346, 348; J. A. Adams & Sons Co. v. V. S. & P. Ry. Co., 29 I. C. C. 52, 60; Board of Trade of Chicago v. A. T. & S. F. Ry. Co., 29 I. C. C. 438, 443; Board of Trade of Chicago v. C. of G. Ry. Co., 28 I. C. C. 154, 167, 168; Iowa State Board of R. R. Com'rs v. A. E. R. R. Co., 28 I. C. C. 193, 200; In re Mileage Brooks, 28 I. C. C. 318, 324; Dairymen's Supply Co. v. P. R. R. Co., 28 I. C. C. 406, 408; Springfield Commercial Asso. v. P. R. R. Co., 28 I. C. C. 511, 514; Santa Rosa Traffic Assn. v. S. P. Co., 29 I. C. C. 65, 68; Chicago Board of Trade v. A. T. & S. F. Ry. Co., 29 I. C. C. 438, 443; Eagle Distillery v. L. H. & St. L. R. R. Co., 32 I. C. C. 195, 198; Chamber of Commerce, Houston, Texas, v. I. & G. N. Ry. Co., 32 I. C. C. 247 251; St. Louis, I. M. & S. Co. v. United States, 217 Federal 280, 283; Snow Lumber Co. v. R. C. & S. Ry., 33 I. C. C. 587; Krauss Bros. Lum. Co. v. N. C. & St. L. Ry., 36 I. C. C. 285; Emery & Co. v. B. & M. R. R., 38 I. C. C. 636; Commercial Exchange of Philadelphia v. P. R. R. Co., 38 I. C. C. 675; Memphis Freight Bureau v. St. L. I. M. & S. Ry. Co., 39 I. C. C. 303, 311; Pardee Works v. C. R. R. Co. of N. J., 39 I. C. C. 162, 165; Traffic Bureau, Sioux City Commercial Club v. Am. Exp. Co., 39 I. C. C. 703, 721; Nashville Flour Transit Rules, 41 I. C. C. 483, 496; Business Men's League of St. L. v. A. T. & S. F. R. R. 44 I. C. C., 308, 388; Chamber of Commerce of La Crosse v. G. L. T. Corp., 44 I. C. C. 506, 508; Lincoln Club v. C. & S. Ry., 47 I. C. C. 557, 563; California Walnut Growers Assn. v. A. & R. R. R., 50 I. C. C. 558, 568; Royster Guano Co. v. A. C. L. R. R., 50 I. C. C. 34, 41; Diamond Coal & Coke Co. v. P. R. R., 50 I. C. C. 144; Chaney Co. (Ltd.) v. G. N. Ry., 50 I. C. C. 332, 337; Great Falls Gas Co. v. C. B. & Q. R. R., 50 I. C. C. 357; Toledo Produce Exchange v. N. Y. C. R. R., 50 I. C. C. 515, 519, 521; Chamber of Commerce of Johnson City, Tenn. v. S. Ry., 50 I. C. C. 605; Town of Torrington v. C. B. & Q. R. R., 51 I. C. C. 414; Crossett Lumber Co. v. A. & L. M. Ry., 51 I. C. C. 438; Byrd-Matthews Lumber Co. v. G. & N. W. R. R., 51 I. C. C. 456; Natchez Chamber of Commerce v. L. & A. Ry., 52 I. C. C. 105; Loyd v. A. & C. R. R., 51 I. C. C. 121, 123; Pacific Lumber Co. v. N. W. P. R. R., 51 I. C. C. 738, 760;

Illinois Classification, 55 I. C. C. 290, 302; Portsmouth Asso. of Commerce v. S. A. L. Ry., 55 I. C. C. 377, 380; Western Pacific R. R. Co. v. S. P. Co., 55 I. C. C. 71, 79, 81; Wholesale Coal Trade Assn. v. Director General, 58 I. C. C. 15, 33; California Citrus League v. Director General, 58 I. C. C. 373, 393; Natchez Chamber of Commerce v. L. & A. R. R., 58 I. C. C. 610, 618; State of Washington v. Director General, 58 I. C. C. 701, 706; Shrader v. Steubenville, East Liverpool & B. V. T. Co., (W. Va., 1919), 99 S. E. 207; Lehigh Banana Case Co. v. Director General, 59 I. C. C. 113, 117; Texas Refining Co. v. Director General, as Agent, 59 I. C. C. 548, 549; National Spring & Wire Co. v. Director General, 60 I. C. C. 564, 566; Diversion and Reconsignment Rules, 61 I. C. C. 385, 391; Whitaker-Glessner Co. v. B. & O., 63 I. C. C. 47, 58; Cairo Board of Trade v. A. F. & S. F. Ry. Co., 61 I. C. C. 219, 220; Anthony v. Director General, as Agent, 63 I. C. C. 219, 220; Lake Charles Rice Milling Co. v. A. & N., 63 I. C. C. 18; Atlas Portland Cement Co. v. C. V. Ry. Co., 63 I. C. C. 420; Cincinnati Grain & Hay Exchange Co. v. A. & R. Ry. Co., 80 I. C. C. 114; Wood Iron and Steel Co. v. P. R. R. Co., 83 I. C. C. 503, 507.

III. JUSTIFICATION.

§5½. In General.

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(a) In determining the question of undue prejudice from a rate, distance is only one of the factors, and other material facts, such as character and quality of the commodity, cost of production, extent and nature of the competition in the business itself and by other transportation lines, and the interests of the public in the use of the commodity and its market cost, are to be considered. Imperial Coal Co. v. Pittsburgh & L. E. R. Co., 2 I. C. R. 436.

(b) The other issue upon which this case was tried, namely, that an unlawful preference was shown to the Standard Oil Trust and the companies, firms and associations affiliated to the said Standard Oil Trust by the all-rail carriers in making low rates for them and for their benefit to certain California points where there were receiving tank stations erected by the said Standard Oil Trust and its affiliated companies, firms and associations, and then by shipment afterwards from said receiving tank stations to adjacent localities on low rates made for short local hauls in California, whereby an unlawful preference was shown to said Trust and its affiliated firms, companies and associations, is not sustained by the evidence in this proceeding. Rice v. Atchison, Topeka & Santa Fe Ry. Co., 3 I. C. R. 263.

(c) Common carriers may, within the limits of fairness and impartiality, consult their own interests in making contracts for the carriage of goods. Cleveland, C. C. & I. R. Co. v. Closser, 3 I. C. R. 387.

(d) An agreement by a common carrier to give one shipper a favor and advantage over others by a rebate is illegal at common law. Fitzgerald v. Grand Trunk Co., 3 I. C. C. 633.

(da) LaCrosse is on a direct route from points on defendant's Southern Minnesota division to Milwaukee or Chicago, and Minneapolis is not, but the short line distances from points on that division are considerably less to Minneapolis than to LaCrosse. Defendant's charges on wheat from Southern Minnesota division points to LaCrosse and Minneapolis are the same, and its rates on flour from those cities to Milwaukee or Chicago are also the same; but LaCrosse has milling or transit rates which are less than the sum of such locals, while at Minneapolis shipments to and from the mills are made under established in and out charges. Transit rates at LaCrosse on wheat from points on said division to Milwaukee or Chicago bear the same relation to wheat rates from such points that the rates on wheat in and on flour out of Minneapolis bear to grain rates from points on defendant's more northerly Hastings & Dakota division. Alterations in any of defendant's flour rates from Minneapolis are followed by corresponding changes in transit rates at LaCrosse. The legality of milling in transit rates is not involved, and what, if any, prejudice results to complainant under transit milling at LaCrosse and regular in and out rates at Minneapolis, is not shown. HELD, That no undue prejudice results at LaCrosse or the complaining miller in that city from milling rates enforced by defendant at LaCrosse or the relations of such rates to those established by defendant from Minneapolis. Listman Mill Co. v. Chicago, M. & St. P. R. Co., 8 I. C. C. 47.

(db) The present adjustment of rates

on freight traffic from Chicago, St. Louis and other related points of shipment to Wilmington, N. C., operates largely to deprive that city in its competition for trade in common territory with Norfolk and Richmond and other Virginia cities of the benefits of those primary markets and to limit Wilmington to such intermediate points of supply as Cincinnati and Louisville, from which points the rate relations appear to be fair and reasonable, and this subjects Wilmington to disadvantages which are in substantial degree undue and unreasonable and for which the defendant carriers are to that extent responsible. Wilmington Tariff Asso. v. C. P. & V. R. Co., et. al. 9 I. C. C. 118.

(e) Defendant's rates from Memphis to points in Arkansas as compared with the Arkansas Commission mileage rates, including those applying from Little Rock and Pine Bluff, Arkansas, constitute a discrimination for which it is doubtful whether defendant can be held responsible. Re Freight Rates between Memphis and Points in Arkansas, 11 I. C. C. 180.

(f) The uncompressed cotton rates from points north of Fair Oaks favor Memphis by 5 cents per hundred pounds, as against Cairo or St. Louis. The rates on compressed cotton to Boston from Cairo and St. Louis place Memphis at a disadvantage of 3 cents in the Boston market as compared with St. Louis, and 1 cent as compared with Cairo. HELD, that, considering the relative distances from most points north of Fair Oaks to Cairo especially, if not to St. Louis, the difference of 5 cents in favor of Memphis from the originating stations in Arkansas is perhaps not unjust. Re Freight Rates between Memphis and Points in Arkansas, 11 I. C. C. 180.

(g) Defendant transports coal from Pennsylvania mines to Baltimore, which may be carried from Baltimore by water to Norfolk and to various other points on Chesapeake Bay, termed in its tariffs "points inside the Capes." The rate to Baltimore on coal reshipped by water to "inside the Capes points" is materially less than its rate to Baltimore on coal reshipped by water to Norfolk. HELD, that this constitutes wrongful prejudice and unjust discrimination, and that while defendant continues to give a rate less than its local to Baltimore on coal destined to "inside the Capes points," it cannot lawfully deny the same rate on coal forwarded by water from Baltimore to Norfolk. City Gas Co. v. Baltimore & O. R. Co., 11 I. C. C. 371.

(h) A difference in charge by defendant on coal carried from Pennsylvania mines to Baltimore for local consumption, and on coal carried on its Curtis Bay or Locust Point docks in Baltimore is based upon dissimilar circumstances and conditions, and is not unlawful. City Gas Co. v. Baltimore & O. R. Co., 11 I. C. C. 371.

(i) Carriers must conduct and manage their business under the requirements and prohibitions of the regulating statute, and undue discriminations cannot be justified by the fact of long-standing agreements with favored mine operators and other shippers; nor is it a defense to the charge of discrimination that the facilities provided the favored persons may be withdrawn at the will of the one who grants them. Red Rock Fuel Co. v. Baltimore & O. R. Co., 11 I. C. C. 438.

(j) The circumstances and conditions governing hay traffic from Columbus and Pataskala, O., appear to have been substantially dissimilar at a time when a lower rate from Columbus than from Pataskala to Greenville and Wilmington was in force; and complainant's demand for reparation based upon the rate then in force from Columbus is not sustained. Dewey Bros. Co. v. Baltimore & O. R. Co., 11 I. C. C. 475.

(k) Cleveland and Charleston, Tenn., take the Chattanooga rate on lumber to Cincinnati, but the conditions at these points are not the same as at Dalton, and no wrongful discrimination results from the existing adjustment of rates. Farrar v. Southern R. Co., 11 I. C. C. 632.

(l) In unjust discrimination cases, the difference in cost of manufacture to the competing shippers offers no ground, of itself, to the carriers or to the Commission for adjustment of rates. A. J. Phillips Co. v. Grand Trunk Western R. Co., 11 I. C. C. 659.

(m) It appears that defendant's rates on woodenware are higher from Menasha, Wis., to North Pacific coast terminal points than from such pacific coast terminals to Missouri River and Mississippi River points and to Chicago common points, including Menasha. Upon complaint that such rate adjustment results

in unreasonable rates from Menasha and undue preference to Pacific coast woodenware shipments, HELD: (1) That there is no sufficient basis in the record for a conclusion that the rates involved are unreasonably excessive; (2) that existing disparities in the rates eastbound and westbound on the traffic in question constitute undue discrimination against complainant, but this record furnishes no sufficient basis for such specific order respecting the exact adjustment of the rates on the different articles involved as would fulfill the requirements of the law as to justice and equality; and (3) that no order will be made at this time, but it is expected that defendants will so readjust the rates as to remove the undue discrimination. Menasha Wooden Ware Co. v. Atchison, T. & S. F. R. Co., 11 I. C. C. 666.

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(n) Where there is no competition between an intermediate and a farther-distance point, and the rate to the intermediate point is not shown to be unreasonable, there is no violation of section 3, though the farther-distant point enjoys a lower rate. Kellogg Toasted Corn Flake Co. v. M. C. R. R. Co., 24 I. C. C. 604, 605.

(o) A carrier cannot serve one community at the expense of another or build a rate wall around one point to advance the interests of a competing point. Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 26 I. C. C. 53, 58.

(p) Discrimination cannot be justified merely on ground of difference in amount of traffic to different points. Beach v. A. A. R. R. Co., 26 I. C. C. 410, 412.

(q) That certain cities happen to be assembling points cannot give to those points a better freight rate than is enjoyed by towns beyond. Iowa State Board of R. R. Comm'rs. v. A. E. R. R. Co., 28 I. C. C. 193, 200.

(r) If undue prejudice exists it must be found primarily in the case of the shipper, community or description of traffic which is thus affected; but when different shippers are charged the same rates for services the value of which to them is the same, it is difficult to say how any such prejudice can exist. Transportation and traffic conditions may well be considered after the existence of prejudice is found. They may then properly bear on the question whether that prejudice is undue. American Round Bale Press Co. v. A. T. & S. F. Ry. Co., 32 I. C. C. 458, 463.

(s) Mutually beneficial reciprocal arrangements are not a justification for discrimination. C. M. & St. P. Ry. v. G. N. Ry., 49 I. C. C. 302, 307.

(t) Rules governing the relations between common carriers can not be pleaded as justification for unreasonable or prejudicial rates or practices. Merchants Exchange of St. Louis v. T. R. R. Asso. of St. Louis, 50 I. C. C. 474, 476.

(u) No possible justification can be found under a unified and coordinated national control for a different treatment when shipments are destined to points on lines other than the Santa Fe. Kaw River Sand & Material Co. v. A. T. & S. F. Ry., 51 I. C. C. 350, 354.

(v) Undue prejudice and disadvantage against a distributing point cannot be predicated merely upon the fact that the combination of inbound and outbound rates through that point exceeds the combination available through a competitive distributing point. Advantages of location, competitive conditions, the volume and flow of traffic, and numerous other considerations must be given due weight in determining the adjustment of rates in and out of different jobbing points. What was said with respect to distributing points applies equally to assembling points. Johnson v. A. T. & S. F. Ry., 51 I. C. C. 356.

(w) Fact that a city is a thriving jobbing center, and in spite of rate differences does business in a territory in competition with other cities, does not deprive it of the right to have rates that are not unduly prejudicial in favor of those competing cities. Meridian Traffic Bureau v. S. Ry. Co., 60 I. C. C. 5, 11.

(x) And the fear of the carrier that a large part of the tonnage would be lost to it and routed via another line if it were to comply with the Commission's order for removal of undue prejudice, affords no justification for the maintenance of the unreasonable or unduly prejudicial rates found to exist. Empire Steel & Iron Co. v. Director General, 62 I. C. C. 157, 160.

(y) So trackage agreements can not be used as a cloak to cover unjust discrimination, and where such arrangements do not result in unjust discrimination they are not to be condemned. Benton Coal Mining Co. v. C., B. & Q. R. R. Co., 63 I. C. C. 396, 399.

(z) Carriers seek to justify a proposed rate structure on the ground that otherwise manufacturing will tend to be further concentrated on the congested Atlantic seaboard. They represent that their proposed rate structure will beneficially distribute manufacturing throughout the Middle and Central West. But this they may not do, unless it can be done without creating undue rate preferences. Transcontinental Cases of 1922, 74 I. C. C. 48, 82.

(aa) Condition of contract by which railroad sold mill property to lumber company, requiring lumber company to deliver to the railroad all freight tonnage originating on or tributary to the logging road of the lumber company, did not constitute an assent to a discriminatory rate, though then being charged. United States v. Illinois Cent. R. Co. 44 Sup. Ct. 189.

ALL OTHER CITATIONS

Mayor and Council of Boston, Ga., v. A. C. L. R. R. Co., 24 I. C. C. 50, 52; American Insulated Wire & Cable Co. v. C. & N. W. Ry. Co., 26 I. C. C. 415, 416; Regulations Restricting the Dimensions of Baggage, 26 I. C. C. 292, 303; Wichita Falls System Joint Coal Rate Cases, 26 I. C. C. 215, 222, 223; Keogh v. M. St. P. & S. Ste. M. Ry. Co., 26 I. C. C. 73, 76; Allentown Portland Cement Company v. P. & R. Ry. Co., 27 I. C. C. 48; Standard Mirror Co. v. P. R. R. Co., 27 I. C. C. 200; Lagrange Chamber of Commerce v. A. & W. P. R. R. Co., 28 I. C. C. 178, 184; Ontario Iron Ore v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 566; Hans Rees' Sons v. S. Ry. Co., 30 I. C. C. 585; Morris, Johnson, Brown Mfg. Co. v. I. C. R. R. Co., 30 I. C. C. 443; Santa Rosa Traffic Asso. v. S. P. Co., 29 I. C. C. 65, 66; Oklahoma Traffic Assn. v. A. T. & S. F. Ry. Co., 29 I. C. C. 129, 132; Pardee Works v. C. R. R. Co. of N. J., 29 I. C. C. 500, 502; Campbell's Creek Coal Co. v. A. A. R. R. Co., 29 I. C. C. 682, 683; St. Louis Cotton Exch. v. M. K. & T. Ry. Co., 32 I. C. C. 501; Empire Coke Co., v. B. & S. R. R. Co., 31 I. C. C. 573, 577; Through Rates to Points in Louisiana and Texas, 38 I. C. C. 153, 162; City of Memphis v. C. R. I. & P. Ry., 39 I. C. C. 256; Grasseli Chemical Co. v. L. & N. R. R., 40 I. C. C. 109; Reopening Fourth Section Applications, 40 I. C. C. 35, 41; Nashville Lumbermen's Club v. L. & N. R. R. Co., 40 I. C. C. 59, 61; Dallas Chamber of Commerce v. A. T. & S. F. Ry. Co., 40 I. C. C. 619, 644; New England Milk Case, 40 I. C. C. 699, 724; Milk and Cream Rates to New York City, 45 I. C. C. 412, 424; Barber Agency Co. v. K. & E. Ry., 46 I. C. C. 523; Coal to South Dakota, 46 I. C. C. 628; Kath Co. v. A. T. & N. Ry., 47 I. C. C. 42; Royster Guano Co. v. A. C. L. R. R., 50 I. C. C. 34, 41; Portage Silica Co. v. Erie R. R., 51 I. C. C. 242; Merchants Exchange of St. Louis v. T. R. R. Asso. of St. L., 50 I. C. C. 474, 476; Willamette Valley Lumbermen's Asso. v. S. P. Ry., 51 I. C. C. 250, 254, 261, 262; Kaw River Sand & Material Co. v. A. T. & S. F. Ry., 51 I. C. C. 350, 355; Crown Wilamette Paper Co. v. Houston & Brazos Valley Ry. Co., et al., 52 I. C. C. 176; Ohio Valley Coal Operators Association v. L. & N. R. R. Co. et al., 52 I. C. C. 187; Texas Cement Plaster Co. v. A. T. & S. F. Ry., 52 I. C. C. 283; Southern Hardwood Traffic Asso. v. Director General, 53 I. C. C. 191; South San Francisco Chamber of Commerce v. S. P., 53 I. C. C. 285, 292; Sheboygan Asso. of Commerce v. C. & N. W. Ry., 55 I. C. C. 140, 144; Avella Coal Co. v. P. W. V. Ry. Co., 58 I. C. C. 313; Corporation Commission of New Mexico v. Director General, 63 I. C. C. 1; Nebraska Seed Co. v. Director General, as Agent, 64 I. C. C. 75; Owensboro Chamber of Commerce v. L. H. & St. L. Ry. Co., 81 I. C. C. 145; American Asphalt Roof Corp. v. A. T. & S. F. Ry. Co., 81 I. C. C. 522.

§6. Carrier as Shipper or Consignee.

See Evidence §46; Forwarders II; Reasonableness of Rates §23; Restricted Rates.

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(a) A carrier as shipper over lines of another carrier may not lawfully be given any preference in application of tariff rates on interstate shipments. Hitchman Coal & Coke Co. v. B. & O. R. R. Co., 16 I. C. C. 512, 517.

(b) A carrier as a shipper over the lines of another carrier may not have any preference in the application of transportation rates and charges. Conversely, it may have the same privileges under the tariffs as any other shipper. In Re Transportation of Company Material, 22 I. C. C. 439, 440.

(c) The fact that a railroad in fuel coal does not come into competition with commercial coal and is in competition with coals coming upon the line of the

consuming railroad, at other points, does not constitute such a difference in circumstances as to warrant the carriers under section 2 and 3 of the Act in according a different rate to fuel coal than to commercial coal, and the practice of extending such a difference in rates amounts to unjust discrimination under said sections of the Act. I. C. C. v. B. & O. R. R. Co., 225 U. S. 326, 32 Sup. Ct. 742, 747; 56 L. ed. 1107.

ALL OTHER CITATIONS

Cedar Hill Coal & Coke Co. v. A. T. & S. F. Ry. Co., 15 I. C. C. 73, 78; Board of Mayor and Alderman v. V. & S. W. Ry. Co., 15 I. C. C. 453, 456; Hitchman Coal & Coke Co. v. B. & O. R. R. Co., 16 I. C. C. 512, 518; In Re Restricted Rates, 20 I. C. C. 426, 435; Beekman Lumber Co. v. St. L. & S. F. R. R. Co., 21 I. C. C. 270, 272, 273, 275; Doran & Co. v. N. C. & St. L. R. R., 33 I. C. C. 523, 531; Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 254; Rates on Railroad Fuel and Other Coal, 36 I. C. C. 1, 11.

§7. Carriers Not Serving Prejudiced Point.

See Evidence §23.

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(a) A carrier is not made responsible for rates made by a connecting road because merely of its giving them in connection with its own rates to parties desiring through shipments. Crew v. R. & D. R. R. Co., 1 I. C. R. 703.

(b) A railroad cannot be said to discriminate against a town which it does not reach and in whose carrying trade it does not participate; therefore, no case is made out against the carriers which were made parties at the request of the original defendant, because none of them have lines extending to Eau Claire. Preference, prejudice and other like terms imply comparison, and the basis of comparison is wanting unless the rates compared are made by the same carrier. But these parties having defended and endeavored to justify the differential found excessive, while not technically subject to an order for its correction, have no more right to render it ineffectual than to openly disregard a direction clearly within the scope of the Commission's authority. The intervening defendant, the Omaha road, though serving the complaining town, need not, for reasons stated, be included in the order directing the reduced rate, but the case will be held open as against that company for such direction as may hereafter be required. Eau Claire of Trade v. Chicago, M. & St. P. R. Co., 4 I. C. R. 65.

(c) Preferences existing under relative rates to competing localities must be shown to result from wrongful action of the carrier before it can be required under the Act to readjust the rates in question. Wilmington Tariff Asso. v. P. C. & V. R. R., 9 I. C. C. 118, 157.

(d) Dismissal as to defendant carrier where it appears that such defendant does not participate in the rates in question. Chicago Live Stock Exchange v. Chicago G. W. R. Co., 10 I. C. C. 428.

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(e) A carrier cannot discriminate within the meaning of the statute except as between those whom it serves or whom it may lawfully be required to serve. It is not guilty of discrimination merely because it does not afford as favorable rates as others served in different territory, though the products carried by each are brought to the same market. The law does not deal in these matters with all carriers collectively as a single unit or system, but its commands are directed to each with respect to the service which it is required to perform. Chicago Lumber & Coal Co. v. T. S. Ry. Co., 16 I. C. C. 323, 332.

(f) Where two carriers serve same destination from two different points of origin, neither can be held to discriminate against mills at that destination because it sees fit to make or refuse a rate lower than is inherently reasonable. Saginaw & Manistee Lumber Co. v. A. T. & S. F. Ry. Co., 19 I. C. C. 119, 125.

(g) It is no violation of the Act to maintain joint rail-lake-and-rail rates higher than rail-and-lake rates to farther distant points, where lake boats did not stop at the complaining point. City of Ashland v. N. Y. C. & H. R. R. R. Co., 20 I. C. C. 3.

(h) If a particular line alone delivers at a point, participating in through routes and joint rates thereto from two points of production not directly served by its own lines, it may not be a party to a preferential joint or proportional rate from either point of production. The test of the discrimination is the ability of one of the carriers participating in the two through routes from the

two points of origin to the same point of destination to put an end to the discrimination by its own act. Ashland Fire Brick Co. v. S. Ry. Co., 22 I. C. C. 115, 120.

(i) The fact that carriers serving a certain milling center but not serving a competitive center establish transit privileges at the former and thus compel a carrier serving both milling centers to similarly establish such privilege at the one, but not at the other, where no competition between carriers exist, does not in law render the carriers not serving the competitive milling center guilty of subjecting it to undue prejudice or disadvantage. Blodgett Milling Co. v. C. M. & St. P. Ry. Co., 23 I. C. C. 448, 449.

(j) Where two roads are under a substantially common ownership and control, they are considered as one system, notwithstanding the fact that they may be operated separately, and each is considered as having its rails extended to points directly served by the other. Commercial Club of Superior v. G. N. Ry. Co., 24 I. C. C. 96, 111, 117.

(k) For an interstate carrier to apply to state traffic lower rates than are contemporaneously applied by it under like conditions to interstate traffic is a violation of the law forbidding undue discrimination even though the lower rates were used by a state in the exercise of its lawful powers, and for that reason made effective by the interstate carrier. Keogh v. M. St. P. & S. Ste. M. Ry. Co., 26 I. C. C. 73, 76.

(l) Rates in distant sections of country form no basis for finding of discrimination under section 3 unless responsibility for both rates with same carrier or carriers. Hennepin Paper Co. v. N. P. Ry. Co., 27 I. C. C. 699, 701.

(m) There can be no undue prejudice within section 3, unless it is within the power of the carrier charged with the discrimination to do away with it by its own act. Richmond Cham. of Com. v. S. A. L. Ry., 44 I. C. C. 455, 463.

(n) Where a rate adjustment is found to result in undue prejudice by reason of separately established factors, the carriers parties to the components of the through rates which are not attacked, and which do not in any way contribute to the undue prejudice found to exist, are proper but not necessary parties. Indianapolis Chamber of Commerce v. C. C. C. & St. L. Ry., 46 I. C. C. 547, 556.

(o) No carrier has the right to so adjust rates on its own lines as unduly to prejudice shippers on other lines or to deprive such shippers of reasonable and just rates, merely through a desire to serve shippers on its own lines. Willamette Valley Lumbermen's Asso. v. S. P. Co., 51 I. C. C. 250, 261.

(p) One of the tests of the presence of undue prejudice is: Can one of the carriers participating in two through routes from two points of origin to the same destination put an end to the prejudice by its own act? Peters Cartridge Co. v. Director General, as Agent, 73 I. C. C. 311, 313, 314.

(q) It is not within the province of defendants to remove any discrimination that may exist by reason of a different rate adjustment over the lines of other carriers. Ohio-Michigan Coal Cases, 80 I. C. C. 663, 677.

(r) It is a well established principle that undue prejudice or preference may not be said to exist as between shippers or communities unless the same carrier serves them or participates in their traffic and the transportation conditions are shown to be substantially similar. Kokomo Opalescent Glass Co. v. P. C. C. & St. L. R. Co., 81 I. C. C. 352, 354.

(s) There can be no undue prejudice under section 3 of the Act, unless it be within power of carrier charged with the discrimination to remove it by its own act. Wood Iron & Steel Co. v. P. R. R. Co., 83 I. C. C. 503, 507.

(t) It is well established principle that undue prejudice or preference may not be said to exist between shippers and communities unless the same carrier serves them or participates in their traffic. Wichita Motors Co. v. A. & V. Ry., 88 I. C. C. 152, 156.

(u) The Commission has frequently found and ordered the removal of undue prejudice and preference where the originating carriers were different but the delivering carriers were the same. Lake Dock Coal Cases, 89 I. C. C. 170, 185.

ALL OTHER CITATIONS

Schmidt & Sons v. M. C. R. R. Co., 19 I. C. C. 535, 537; St. Louis Blast Furnace Co. v. V. Ry. Co., 21 I. C. C. 215; Roberts Cotton Oil Co. v. I. C. R. R. Co., 21 I. C. C. 248, 250; Johnson & Co. v. A. T. & S. F. Ry. Co., 21 I. C. C. 637, 639; Elk Cement & Lime Co. v. B. & O. R. R. Co., 22 I. C. C. 84, 89; Maricopa County Commercial Club v.

P. & E. R. R. Co., 22 I. C. C. 218, 220; Sunflower Glass Co. v. M. P. Ry. Co., 22 I. C. C. 391, 392; R. R. Commissioners of Kansas v. A. T. & S. F. Ry. Co., 22 I. C. C. 407, 413, 416; Nebraska State Ry. Commission v. C. B. & Q. R. R. Co., 23 I. C. C. 121; Chamber of Commerce of Newport News v. S. Ry. Co., 23 I. C. C. 345, 353; Blodgett Milling Co. v. C. M. & St. P. Ry. Co., 23 I. C. C. 448, 453; Chamber of Commerce of Newport News v. G. S. & F. Ry. Co., 23 I. C. C. 345, 352; Chamber of Commerce of Ashburn v. G. S. & F. Ry. Co., 23 I. C. C. 140, 149; Ashland Fire Brick Co. v. S. Ry. Co., 22 I. C. C. 115, 121; Indiana Steel & Wire Case, 16 I. C. C. 155, followed; Railroad Commission of Tennessee v. A. A. R. R. Co., 17 I. C. C. 418, 421; Friend Paper Co. v. C. C. C. & St. L. Ry. Co., 18 I. C. C. 178; Utica Traffic Bureau v. N. Y. C. & H. R. R. R. Co., 18 I. C. C. 271, 272; Consumers' Ice Co. v. A. T. & S. F. Ry. Co., 18 I. C. C. 277; National Petroleum Assn. v. M. P. Ry. Co., 18 I. C. C. 593, 594; Holland Blow Stave Co. v. A. C. L. R. R. Co., 24 I. C. C. 81, 88; Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co., 24 I. C. C. 55, 75; Southern Furniture Mfrs. Ass'n. v. S. Ry. Co., 25 I. C. C. 379, 386; Galveston Commercial Ass'n. v. A. T. & S. F. Ry. Co., 25 I. C. C. 216, 227; Mfrs. & Mchts. Assn. v. A. & A. R. R. Co., 251 I. C. C. 116, 118; Partridge & Sons Co. v. P. R. R. Co., 26 I. C. C. 484, 486; Allentown Portland Cement Co. v. P. & R. Ry. Co., 27 I. C. C. 448, 450; Aransas Pass Channel & Dock Co. v. G. H. & S. A. Ry. Co., 27 I. C. C. 403, 414; Chamber of Commerce of Macon v. C. N. O. & T. P. Ry. Co., 27 I. C. C. 263, 265; Montezuma, Ga. v. C. of G. Ry. Co., 28 I. C. C. 280; Lagrange Chamber of Commerce v. A. & W. P. R. R. Co., 28 I. C. C. 178, 184; Rates from Walsenburg Coal Field, 26 I. C. C. 85, 89; Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co., 28 I. C. C. 250, 258; Greenbaum Co. v. C. & O. Railway Co., 25 I. C. C. 352, 355; Order in Chamber of Commerce of Newport News v. S. Ry. Co., 23 I. C. C. 245; Lagrange Chamber of Commerce v. A. & W. P. R. R. Co., 28 I. C. C. 178, 184; Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co., 28 I. C. C. 250, 258; Montezuma v. C. of G. Ry. Co., 28 I. C. C. 280, 283; Lumber Rates, Texas, etc., to Oklahoma and Missouri, 28 I. C. C. 471, 474; Memphis Freight Bureau v. B. & O. R. R. Co., 28 I. C. C. 543, 547; Molasses Rates from Mobile, 28 I. C. C. 666, 669; Rates on Gasoline Engines and Windmills , 29 I. C. C. 643, 645; Hughes Creek Coal Co. v. K. & M. Ry. Co., 29 I. C. C. 671, 680; S. J. Greenbaum Co. v. L. & N. R. R. Co, 31 I C. C. 699, 707; St. L. I. M. & S. Ry. Co., v. U. S. 217 Fed. 280, 283; Cement Rates to Stations on the M. C. R. R. , 32 I. C. C. 540, 541; Greenbaum Co. v. L. & R. R. Co., 31 I. C. C. 699, 707; S. P. Co. Ownership of Oil Steamers, 34 I. C. C. 77, 80; Rates on Lumber from Southern Points, 34 I. C. C. 652, 671; Class and Commodity Rates form Louisville, 36 I. C. C. 317, 321; Commercial Exchange of Philadelphia v. Penn. R. R. , 38 I. C. C. 675, 678; Henderson Cotton Mills v. L. & N. R. R. Co., 39 I. C. C. 399, 405, 406; Galloway Coal Co. v. A. G. S. R. R. Co., 40 I. C. C. 311, 315; Iron Ore Rate Cases, 41 I. C. C. 181, 191; Lumber from Oklahoma, 42 I. C. C. 567, 569; St. L. Southwestern Ry. Co. v. U. S., 234 Fed. 668, 679; Lehigh Portland Cement Co. v. B. & O. S. W. R. R. Co., 42 I. C. C. 406, 413; Nephi Plaster & Mfg. Co. v. D. & R. G. R. R., 45 I. C. C. 433; Creamery Package Mfg. Co. v. K. C. S. Ry., 47 I. C. C. 84; St. L. S. W. Ry. v. U. S., 38 Sup. 49, 245 U. S. 136, 62 L. Ed. 199; Acid from Hillsboro to Ohio River Points, 60 I. C. C. 583, 585; Southern Hardwood Traffic Asso. v. Director General, 61 I. C. C. 132, 142; Stone Products Co. v. Director General, 61 I. C. C. 51, 54; Werner State Co. v. Director General, 63 I. C. C. 442, 444; Tennessee Rates and Charges, 63 I. C. C. 160, 166; Tribune v. A. & P. Ry. Co., 64 I. C. C. 557; Abrasive Co. v. Director General, as Agent, 69 I. C. C. 630, 633; Central R. Co. of New Jersey v. United States 42 Sup. Ct. 80; Interstate Cotton Oil Refining Co. v. St. L. S. W. Ry. Co., 81 I. C. C. 67, 69, 70; Southern Appalachian Coal Operators v. L. & N. R. R. Co., 83 I. C. C. 136, 139; Hooker Electro Chemical Co. v. A. C. R. Co., 83 I. C. C. 196.

§7½. Use of Commodity.

See Classification §10.

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(a) Tariffs which contain rates applicable only to the shipments of certain consignees or when a commodity is put to a particular use and the rates which are so restricted to the use of certain shippers and not open to all shippers alike are in violation of section 2 of the act, and unjustly discrimina-

tory in violation of section 3 of the act, and therefore unlawful. Rates on bunker Coal, 73 I. C. C. 62, 71.

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Anthony v. Director General, as Agent, 61 I. C. C. 366, 368; I. C. C. v. B. & O. R. R. Co., 225, U. S. 326, 32 Sup. Ct. 472, 56 L. Ed. 1107, Ann. Cas. 1914A, 504.

§8. Competition.

(1) In General.

See Competition.

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(ab) Dissimilar circumstances and conditions may be made out by the existence of actual competition which is of controlling force in respect to traffic important in amount; and the limitations suggested by this rule are applicable, when the controlling force of water competition is invoked in respect to the second and third sections of the Act, as well as in respect to the fourth. The exceptional circumstances to be proved is "actual competition"—not possible competition likely to arise if rates are raised—"of controlling force"—not when the rail line is the controlling force, but when the competing water line is able to dictate rates which will control the traffic, unless met by the railroad—"in respect to traffic important in amount"—not when competition in a single direction or for the transportation of a single article or class of articles exists, but general competition of the character stated, controlling the carriage of the traffic on which the discrimination is made. That "railroads have water competition and are compelled to meet it," without more, is not sufficient to justify the lesser charge for the greater distance, much less to justify the making of such tariffs as the petitioners seek relief from. Harwell v. Columbus & Western R. R. Co., 1 I. C. R. 631.

(c) On a question of unjust discrimination the fact of competition may be properly considered, for all the circumstances of situation ought to be known to enable the proper judgement to be formed; but it may happen that as between a large town and a small the reason why there is no competition is because the more favorable rates to the former have built it up and kept the latter in a condition of subordination and dependence. It would be difficult to conceive of discrimination more unjust than that which has such a blighting effect; and the wrong would be emphasized and aggravated if the very helplessness which the injustice has begotten could in law be an answer to any complaint for redress. Stone & Marten v. D. G. H. & M. R. Co., 3 I. C. C. 60, 63.

(d) Upon complaint by dealers at Humboldt, Kan., against the respondent lines for unjust discrimination in charging a rate of 65 cents per hundred pounds on sugar transported from San Francisco to Kansas City, and 85 cents per hundred pounds upon the same commodity from San Francisco to Humboldt, more than a hundred miles shorter distance but not on a through line, HELD, That the reduced rate to Kansas City being forced upon the carriers by competitive conditions beyond their control, and the rate to Humbolt not being unreasonable in itself but lower than it would be except for the influence of the competitive conditions at Kansas City, and it not appearing that substantial injustice results from the higher rate at Humboldt, the lower rate to Kansas City and the higher rate to Humboldt are not deemed to be in contravention of the Statute. Lehman, Higginson & Co. v. Southern Pacific Co., 3 I. C. C. 80.

(e) Charges of the Louisville & Nashville Railroad for the transportation of petroleum to several points on its lines are not only apparently unreasonable in themselves, but the existing disparity in rates to neighboring localities creates presumption of extortion in exacting the higher charges; moreover, as between tank and barrel shipments of petroleum this adjustment of rates operates to the general advantage of the former mode of conveyance. Water competition to various points on its lines may furnish justfication for rates to intermediate inland points somewhat higher than the railroad must accept to participate in business to the more remote locality favored with water carriage, but when charges for the shorter distance on these lines are three times those for the longer, the disparity is absurd and inexcusable. The lower figure must be unremunerative or the higher must be extortionate. This defendant ordered to revise and correct its charges on petroleum to

many interior and local points on its lines, and make such reductions and modifications therein as will remove the gross disproportions and inequalities now found to exist. Rice v. Cinn., W. & B. R. Co., 3 I. C. C. 841.

(f) The circumstance of competition at one of two places, the rates to which from a third place, made by a carrier, are claimed to be discriminative, must be taken into consideration in determining as to such discrimination and the reasonableness of the rates. Interstate Commerce Commission v. Louisville & N. R. Co. (C. C. M. D. Tenn.), 5 I. C. R. 656.

(g) Among the circumstances and conditions to be considered, as well in the case of traffic originating in foreign ports, as in the case of traffic originating within the limits of the United States, competition that affects rates should be considered and in deciding whether rates and charges made at a low rate to secure foreign freights which would otherwise go by other competitive routes are or are not undue and unjust, the fair interests of the carrier companies and the welfare of the community which is to receive and consume the commodities are to be considered. Interstate Commerce Commission v. Alabama M. R. Co., 5 I. C. R. 685.

(h) The competition of carriers by water from San Francisco to Gulf of Mexico and Atlantic seaports, and by the competition of refineries on the eastern seaboard with refineries on the Pacific coast, operate, in conection with transportation rates in effect from the east and south to Omaha, to render the circumstances and conditions governing carriage of sugar by defendants from San Francisco to Omaha, Nebr., substantially dissimilar in comparison with those applying on the transportation for the shorter distance over the same line from San Francisco to Kearney, Nebr., and to justify a rate of 65 cents per 100 pounds to Kearney, while a rate of 50 cents per 100 pounds is in force to Omaha; but a rate of 77 cents per 100 pounds as compared with the rate of 50 cents in force to Omaha, is not justified. Gustin v. Burlington & M. R. R. in Nebraska, 8 I. C. C. 481.

(i) While the location of Palatka on the St. John's River, and the fact that there is more competition by rail at Palatka than at Hampton, may justify rates to Palatka somewhat lower than to Hampton, the Hampton rates should not be higher than the Palatka rates by the locals from Palatka to Hampton; and in fixing the Hampton rates the carriers are bound to take into account the interest of the community at Hampton as well as its own interest, and they must not put in rates to Hampton which prohibit its citizens from the transaction of business in competition with Palatka. Board of Trade v. Nashville, C. & St. L. Ry. Co., 8 I. C. C. 503.

(j) The Interstate Commerce law was enacted to encourage normal competition, but it is not in accord with the spirit or letter of the law to recognize as a condition justifying a discrimination against one locality, competition at a more distant locality, when competition at the nearer point is stifled or reduced, not by normal restrictions, but by agreement between those who otherwise would be competing carriers. The difference in conditions thus produced is effected by a restraint upon trade and commerce, which is not only violative of the common law, but of the so-called Federal anti-trust act. Board of Trade of Hampton, Fla., v. N. C. & St. L. Ry. 8 I. C. C. 503, 528.

(k) The building up of one locality at the expense of another, by rates favoring the former and discriminating against the latter, was undoubtedly one of the principal evils which the Act was designed to remedy, and it would seem that due allowance might and should be made for the effect of competition without defeating the object of the law. Board of Trade of Hampton, Fla. v. N. C. & St. L. R. Co., 8 I. C. C. 503, 522.

(l) If Los Angeles has means at its command by which it may force a rate from the two railroad lines, or either of them, which serve it and San Bernardino, which the latter place does not possess, that is an element to be considered in determining the legality of a lower rate from the east to Los Angeles, the longer distance point; but the mere fact that it is a larger town, with more business, and thereby creating a fiercer competition between the lines, does not justify the difference in charges. Holdzkom v. Michigan Central R. Co., 9 I. C. C. 42.

(m) It is the duty of the Commission to consider all circumstances and conditions that reasonably apply to the situa-

tion, the legitimate interests of the carrying companies as well as those of traders and shippers, and the wefare of the communities at localities where the goods are delivered as well as that of communities in the places of shipment, and to give effect to this rule a much broader view must be taken than that of the competition of carriers alone. Mayor and Council of Tifton, Ga. v. Louisville & Nashville R. Co., 9 I. C. C. 160.

(n) The principle of relative justice applied is that when a carrier, by reason of competitive conditions or for other reasons, serves certain localities at very low rates and concessions made must not subject other localities or other patrons dependent on the same carrier to undue and unreasonable prejudice or disadvantage, but there must be an equitable adjustment of rates, so that there is no unjust discrimination between competitors in like pursuits. Johnson v. St. P. M. & O. R. Co., 9 I. C. C. 221, 241.

(o) With water competition compelling low all-rail freight rates from New York to San Francisco and other Pacific Coast terminals, a showing that the distance is less, and that graded rates were formerly in force, is not sufficient to warrant an order requiring lower rates from Chicago and other interior points than from New York on traffic carried by rail to Pacific Coast destinations. Business Men's League of St. Louis v. Atchison, T. & S. F. R. Co., 9 I. C. C. 318.

(p) There is no unjust discrimination in charging higher rates for the transportation of ice to and from points in Michigan to Springfield than for the longer distance to Columbus, where other and shorter delivering lines compete for traffic to Columbus and the short line distance to Columbus is less than the short line distance to Springfield. Ulric & Williams v. Lake Shore & Michigan S. R. Co., 9 I. C. C. 495.

(q) On complaint by the City of Wichita, Kans., alleging that defendant's rates on coal in carloads from Minden, Mo., McAlester, I. T., and Russellville, Ark., to Wichita are unlawful as compared with defendant's coal rates from the same points to Kansas City, it appeared that the rates to Kansas City are controlled and actually forced by competitive conditions governing the transportation of coal to that city but that such rates are remunerative and that the rates to Wichita can not be found excessive upon the record as made in this case: HELD, That the complaint should be dismissed without prejudice. Mayor and City Council of Wichita v. A. T. & S. F. Ry. Co. et al, 9 I. C. C. Rep. 534, cited and applied. Mayor, etc., of Wichita v. A. T. & S. F. Ry. Co. et al., 9 I. C. C. 558.

(r) The defendants' rates on coal in carloads from Minden, Mo., McAlester, I. T., and Russellville, Ark., to Wichita do not unjustly discriminate in favor of Kansas City, by charging a lower rate to that city, where the rates to Kansas City are controlled and actually forced by competitive conditions governing the transportation of coal to that city, and are remunerative. Mayor and City Council of Wichita v. Atchison, T. & S. F. R. Co., 9 I. C. C. 558.

(s) On complaint of the City of Wichita, Kansas, alleging that rates from lumber shipping points west of the Mississippi River in Louisiana, Arkansas and Texas to Wichita are unreasonable and unduly prejudicial as compared with rates on like traffic from the same points to Kansas City. Mo., Omaha and Lincoln Nebr., and Topeka, Kans., and that such rates are higher via the lines of the defendants, the Santa Fe and Rock Island systems, for the shorter distance to Wichita than for the longer distance through Wichita and Kansas City, and the other destination points mentioned, it appeared that competitive conditions existing in Kansas City, Omaha, and Lincoln produce low rates to those points from the lumber territory in question and that such competitive conditions do not exist at Wichita; that there is no substantial dissimilarity in the circumstances and conditions governing the transportation of lumber from such territory to Wichita and through Wichita to Topeka by the Santa Fe and Rock Island Systems; that the rate from such lumber producing territory to Wichita is excessive to the extent of one cent per 100 pounds. HELD, That for reasons set forth in Wichita v. A. T. & S. F. R. Co., 9 I. C. C. Rep. 534, based upon decisions of the United States Supreme Court there cited, the defendants' lumber rates to Wichita as compared with those in effect to Kansas City, Omaha, and Lincoln from the lumber shipping territory herein involved are not in violation of the third and fourth

sections of the Act to regulate commerce; that all of the defendants do violate section three of the Act; that the Santa Fe and Rock Island Systems violate section four by maintaining higher lumber rates from such territory to Wichita than to Topeka; and that the lumber rate from the territory described to Wichita is unreasonable and should be reduced. Mayor etc., of Wichita v. C., R. I. & P. Ry. Co., et al., 9 I. C. C. 569.

(t) The defendants are justified in maintaining rates from the Pacific Coast which are lower to Missouri River points than to Denver upon rice, hemp, baking powder, blankets, books, boot and shoe heels, chocolate, cocoa, and extracts, as exceptions to the general rule that in the making of transcontinental rates, Denver must receive the same treatment that is accorded to cities in the Middle West and Missouri River territory. Kindel v. Atchison, T. & S. F. R. Co., 9 I. C. C. 606.

(ta) No undue discrimination results to Sheridan by reason of the fact that the rate from that place to Boston is 2 cents per 100 lbs. more than from Indianapolis to Boston, although the latter is the longer-distance point by the defendant's line, which runs north from Indianapolis through Sheridan, connecting at various points with lines to Boston; as Indianapolis is a competitive point, and the short lines from Sheridan to the east are through Indianapolis, and by those lines Sheridan is a longer distance point. G. C. Pratt Lumber Co. v. Chicago, I. & L. R. Co. 10 I. C. C. 29.

(u) Prior to April 25, 1903, defendant had in effect rates per 100 pounds on bananas in carloads from Charleston, which were 43 cents to Danville and 20 cents to Lynchburg. The rate of 20 cents to Lynchburg was 13 cents below the rate which was justified by competition from Baltimore or elsewhere. Such relation of rates was in violation of section three of the Act to Regulate Commerce. Gardner & Clark v. Southern R. Co., 10 I. C. C. 342.

(v) The rates from Cannon Falls, a point in Minnesota 48 miles from Minneapolis, to Chicago, East St. Louis, and Louisville, are competitive rates, as are also the rates from Minneapolis; and Cannon Falls, with its competition with Minneapolis, is entitled to as low a rate to common points as the difference in conditions will permit. In view, however, of the desirability of keeping open the Minneapolis market to Cannon Falls grain, the short distance between those points, and the low rate from Minneapolis forced by competition, it is apparently not unjust that the grain rate from Cannon Falls should be as high as the local rate to Minneapolis plus a 7½ cent rate therefrom to Chicago, provided the Cannon Falls dealer is not thereby subjected to disadvantage as compared with the Minneapolis grain dealer. Cannon Falls Farmers' Elevator Co. v. Chicago G. W. R. Co., 10 I. C. C. 650.

(w) With competition for the carriage of grain to and via Duluth and other northern lake ports, rates of 10 cents on wheat and 7½ cents on other grain from Minneapolis to Chicago are as high as can be obtained by the all-rail lines between those points, and competition by lines other than the defendants from Minneapolis to East St. Louis has fixed the rate by all lines at 10 cents per 100 pounds, and this also controls the rate to Louisville. The rates from Cannon Falls, a point in Minnesota 48 miles from Minneapolis, to Chicago, East St. Louis and Louisville, are also competitive rates, and in its competition with Minneapolis, Cannon Falls is entitled to as low rates to common points as the difference in conditions will permit. In view, however, of the desirability of keeping open the Minneapolis market to Cannon Falls grain, the short distance between those points, and the low rate from Minneapolis forced by competition, it is apparently not unjust that the grain rate from Cannon Falls should be as high as the local rate to Minneapolis plus a 7½ cent rate therefrom to Chicago, provided the Cannon Falls dealer is not thereby subjected to disadvantage as compared with the Minneapolis grain dealer. Cannon Falls Farmers' Elevator Co. v. C. G. W. R. Co., et al., 10 I. C. C. 650.

(x) Substantial dissimilarity of circumstances and conditions exists between Goodhue and Red Wing, Minn., and consequently no undue discrimination arises out of the fact that the defendant charges a rate on grain of 15 cents per one hundred pounds from Goodhue, Minn., to Chicago, Ill., while it charges only 12½ cents per one hundred pounds from Red Wing, Minn., to Chicago, 14 miles farther off, the traffic

passing through Goodhue. Goodhue v. Chicago Great Western R. Co., 11 I. C. C. 683.

(y) Defendant transports coal from Pennsylvania mines to Baltimore which may be carried from Baltimore by water to Norfolk and to various other points on Chesapeake Bay termed in its tariffs as "points inside the Capes." The rate to Baltimore on coal reshipped by water to "inside the Capes points" is materially less than its rate to Baltimore on coal reshipped by water to Norfolk. Defendant's service and expense to Baltimore is the same whether the coal finally goes to Norfolk or to other points on Chesapeake Bay. By agreement between the carrier of coal from the various mines to Norfolk, Newport News, and other Chesapeake Bay points, competition has been suppressed, and while defendant does want to carry traffic to designated "inside the Capes points," it does not desire to participate in the coal traffic to Norfolk. HELD, That this constitutes wrongful prejudice and unjust discrimination, and that while defendant continues to give a rate less than its local to Baltimore on coal destined to "inside the Capes points," it cannot lawfully deny the same rate on coal forwarded by water from Baltimore to Norfolk. Complainant granted reparation. City Gas Co. v. Baltimore & O. R. Co., 11 I. C. C. 371.

(z) A difference in charge by defendant on coal carried from Pennsylvania mines to Baltimore for local consumption and on coal carried to its Curtis Bay or Locust Point docks in Baltimore, is based upon the dissimilar circumstances and conditions and is not unlawful. City Gas Co. v. Baltimore & O. R. Co., 11 I. C. C. 371.

(aa) Cleveland and Charleston, Tenn. take the Chattanooga rate on lumber to Cincinnati, but the conditions at those points are not the same as at Dalton, and no wrongful discrimination results from the existing adjustment of rates. Farrar v. Southern R. Co. et al., 11 I. C. C. 632.

(bb) The competitive conditions existing at Afton, Minn., prevent the maintenance of higher coal rates than those now in effect, and consequently there is no unjust discrimination between places by reason of the fact that defendant's rate on coal is 35 cents per ton less from Superior, Wis., to Afton than from Superior to Hastings, although the traffic to Afton passes through Hastings. Hastings Malting Co. v. Chicago, M. & St. P. R. Co., 11 I. C. C. 675.

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(cc) It is well settled that distance is always a factor to be taken into consideration in determining either the reasonableness of a rate by itself or in considering its relation to rates to other points, but it is equally well settled that distance alone is not controlling. Competition is an important element and there are various other considerations, all of which must be taken into account in determining the fact whether a particular rate or a system is entitled as a matter of law to rates that are reasonable and that do not operate to unduly discriminate against them. Corporation Commission of North Carolina v. N. & W. Ry. Co., 19 I. C. C. 303, 309.

(dd) Competition of controlling force cannot be ignored by the Commission in determining whether an advantage in rate at the competitive point is undue, or is one not chargeable to the carriers defendant because involuntarily made. Sioux City Terminal Elevator Co. v. C. M. & St. P. Ry. Co., 23 I. C. C. 98, 107.

(ee) The fact that a carrier may voluntarily accept lower rates than it can be required to accept and that whether or not a carrier will meet competitive conditions at a particular point rests primarily with the carrier, does not relieve the carrier by meeting competitive conditions at one point and refusing to meet them at a neighboring point. Chamber of Commerce of Newport News v. G. S. & F. Ry. Co., 23 I. C. C. 140, 149.

(ff) The public interest may demand that a carrier shall not avail itself of competitive conditions to produce discrimination. Chamber of Commerce, Ashburn, Ga. v. G. S. & F. Ry. Co., 23 I. C. C. 140, 150.

(gg) The "like circumstances and conditions" referred to in section 2 are those which arise within the field of haulage and do not include competition. Chattanooga Packet Co. v. I. C. C. R. R., Co., 33 I. C. C. 384, 392.

(hh) It is well established that competitive conditions at a given point may render the circumstances substantially dissimilar and justify a discrimination in rates against a competing point where such competitive conditions do not ex-

ist; but where competitive conditions present at both points the discrimination in rates should bear some relation to the difference in competitive conditions. Du Pont Wholesale Grocery Co. v. A. T. & S. F. Ry. Co., 42 I. C. C. 79,82.

(ii) Carriers may meet competition, when no unjust discrimination results, without being compelled to extend similar rates to points where no competition exists. Pacific Creamery Co. v. S. P. Co., 42 I. C. C. 93, 96.

(jj) In connection with the issue of discrimination competitive conditions must frequently be considered, but it is not within the province of the Commission to probe into mining costs as a factor affecting the ability of rival coal operators to compete with each other. This is obvious when we consider all the elements affecting the question. The cost of mining coal varies greatly not only by districts but even by mines. It may and does change from day to day. The character and quality of the coal, the depth at which it is found, the thickness and purity of the vein, the cost, and nature of the mining equipment, the wages of the miners, the hours of labor, the efficiency of the organization, the extent of the operations, the output of the mine, the regularity of the demand, the capital invested, the interest paid on loans and many other elements enter into the determination of mining costs. These ever-changing factors afford no basis for a rate adjustment. Bituminous Coal to C. F. A. Territory, 46 I. C. C., 66, 142.

(kk) Maintenance by interstate carriers of the two divergent systems of rates inevitably tended to restrain and interfere with the free movement of interstate commerce between Shreveport and Texas points. R. R. Comm. of La. v. A. H. T. Ry., 48 I. C. C. 312, 371.

(ll) Ordinarily undue prejudice does not exist in the absence of competition. Tidewater Oil Co. v. Director General, as Agent, 62 I. C. C. 226. 227.

(mm) But the absence of competition does not prevent a finding of unjust discrimination under section 2 of the Act. Tidewater Oil Company v. Director General, as Agent, 62 I. C. C. 226, 227.

(nn) In fixing rates carriers may give consideration to competitive conditions as well as distance so long as no undue prejudice or undue preference results, and the commission may properly consider such conditions when the validity of a specific rate or general adjustment is in issue. Coal from Southwest to Omaha, 73 I. C. C. 536, 539.

(oo) Undue prejudice under section 3 of the act ordinarily requires the prejudice suffered by one party to be the source of positive advantage to the one alleged to be preferred and that a competitive relationship exist between the parties or commodities concerned. Boston Wool Trade Asso. v. B. & A. R. R., 78 I. C. C., 178, 183.

(pp) In measuring comparative distance from competing points to determine question of prejudice it has been custom of the commission to consider shorter and more direct routes rather than circuitous routes. Reduced Rates from New York Piers, 81 I. C. C. 312, 324.

ALL OTHER CITATIONS

Nebraska State Railway Commission v. U. P. R. R. Co., 13 I. C. C. 349, 355; Darling & Co. v. B. & O. R. R. Co., 15 I. C. C. 79, 87; Planters' Gin & Compress Co. v. Y. & M. V. R. R. Co., 16 I. C. C. 131, 133; Montgomery Freight Bureau v. L. & N. R. R. Co., 17 I. C. C. 521, 529; Acme Cement Plaster Co. v. L. S. & M. S. Ry. Co., 17 I. C. C. 30, 36; Penn. Tobacco Co. v. Old Dominion S. S. Co., 18 I. C. C. 197, 200; Chamber of Commerce of Newport News v. S. Ry Co., 23 I. C. C. 345, 353; Johnson & Son v. C. & O. Ry. Co., 24 I. C. C. 698, 700; Slider v. S. Ry. Co., 24 I. C. C. 312, 313; Business Men's League of Albert Lea v. B. & O. R. R. Co., 24 I. C. C. 125, 127, 128; Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co., 24 I. C. C. 55, 75; In re Advances on Manganese Ore, 25 I. C. C. 663, 668; Arkansas Fertilizer Co. v. St. L. I. M. & S. Ry. Co., 25 I. C. C. 645, 648; North Fork Cannel Coal Co. v. A. A. R. R. Co., 25 I. C. C. 241, 246; Mfrs. & Merchants Assn. v. A. & A. R. R. Co., 25 I. C. C. 116, 119; Southern Furniture Mfrs. Assn. v. S. Ry. Co., 25 I. C. C. 379, 386; Wichita Wholesale Furniture Co. v. St. L. I. M. & S. Ry., 26 I. C. C. 107; Chamber of Commerce of Macon v. C. N. O. & T. P. Ry. Co., 27 I. C. C. 263, 265; Meridian Board of Trade v. A. G. S. R. R. Co., 28 I. C. C. 360; Kenner Truck Farmers' Assn. v. I. C. R. R. Co., 32 I. C. C. 1, 10; Transcontinental Commodity Rates, 32 I.

C. C. 449, 454; Bowling Green Business Men's Assn. v. L. & N. R. R. Co., 31 I. C. C. 1, 4; Great Western Oil Refining Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-937; Memphis Grain and Hay Asso. v. I. C. R. R. Co., 34 I. C. C. 315, 318; San Toy Coal Co. v. A., C. & Y. Ry. Co. 34 I. C. C. 93, 98; Ludowici-Celadon Co. v. M. K. & T. Ry. Co., 37 I. C. C. 709, 710; Railroad Commission of Florida v. C. of G. Ry., 38 I. C. C. 711; Eastern Shore of Virginia Produce Exchange v. N. Y. P. & N. R. R., 40 I. C. C. 328, 334; Henderson Cotton Mills v. L. &. N. R. R. Co., 39 I. C. C. 399, 405, 406; Casey Hedges Co. v. C. N. O. & T. P. Ry. Co., 39 I. C. C. 569, 572; Eastern Shore of Va. Produce Exchange v. N. Y. P. Crossings, 43 I. C. C. 458, 465; Drayage Absorption, 43 I. C. C. 472, 475; Southeastern Cotton Goods, 43 I. C. C. 530, 536; Wichita Wholesale Furniture Co. & N. R. R. Co., 40 I. C. C. 328, 334; Cameron & Co. v. A. & S. Ry., 41 I. C. C. 521; American Beet Sugar Co. v. S. P. Co., 41 I. C. C. 631; Phoenix-American v. A., T. & S. F. Ry., 44 I. C. C. 339, 343; Natchez Chamber of Com. v. Y. & M. V. R. R., 46 I. C. C. 60; Shreveport-Texas Cattle, Lignite, Wood and Tanbark, 48 I. C. C. 283, 285; Russian Poultry & Egg Co. v. St. L. & S. F. R. R., 51 I. C. C. 108; Dothan Chamber of Pipe Works v. M. P. Ry. 42 I. C. C. 585; Machin v. Union Pacific R. R., 42 I. C. C. 715; Proportional Rates to Ohio River Commerce v. Director General, 58 I. C C. 537; Chamber of Commerce of Cedar Rapids, Iowa, v. Director General, 59 I. C. C. 624; Boise Gas Light & Coke Co. v. Director General, as Agent, 66 I. C. C. 607; Jiffy Dessert Co. v. Director General, as Agent, 73 I. C. C. 525.

§8 (2) Artificial Competition.

See Competition.

CASES 1887-1908

(a) A system of rate-making under which a comparatively few places arbitrarily selected are designated competitive points and given preferential rates, while adjacent points are classed as local and made to pay much higher rates violates the equality provisions of the Act to Regulate Commerce, including those requiring all rates to be reasonable and just. Hill v. Nashville C. & St. L. R. Co., 6 I. C. C. 343.

IMPORTANT CASES SINCE 1908

(b) Where carriers through discriminatory rates produce competitive conditions at one point they cannot set up such conditions as a reason for maintaining discriminatory rates at a neighboring point. Chamber of Commerce, Ashburn, Ga., v. G. S. & F. Ry. Co., 23 I. C. C. 140, 150.

§8 (2½) Potential Competition.

See Competition; Evidence §14 (2).

IMPORTANT CASES SINCE 1908

(a) Possibility of actual competition developing on a river justifies a slight difference in rates between a river point and one not so situated. Planters' Gin and Compress Co. v. Y. & M. V. R. R. Co., 16 I. C. C. 131, 133.

§8 (3) Railroads in General

See Railroad Competition.

CASES 1887-1908

(a) Competition between railroad companies may afford a legitimate reason for a preference by railroad companies to one city over another. Cattle Raisers' Asso. v. Fort Worth & D. C. R. Co., 7 I. C. C. 513.

(b) Competition between railroad companies may justify the preference of one locality to another as to freight rates charged to such localities, although it does not necessarily justify such preference. New York Produce Exchange v. Baltimore & O. R. Co., 7 I. C. C. 612.

(c) Under decisions of the United States Supreme Court,—Import Rate Case, Interstate Commerce Commission v. Texas & P. R. Co., 162 U. S. 197, 40 L. ed. 940, 5 Inters. Com. Rep. 405, and the Troy Case, Interstate Commerce Commission v. Alabama Midland R. Co., 168 U. S. 144, 42 L. ed. 414,—railway competition may, but it does not necessarily, justify a preference to a particular locality or commodity, and therefore, granting that discrimination against a locality which is based on such competition is excusable in theory, the question still remains whether under the third section it is undue or unreasonable; and that question is one of fact in each case. New York Produce Exchange v. Baltimore & O. R. Co., 7 I. C C. 613.

IMPORTANT CASES SINCE 1908

(d) Railroad competition held to justify difference in rates. Coke Producers' Assn of Connellsville v. B. & O. R. R. Co., 27 I. C. C. 125.

(e) While carriers may and frequently do, establish and maintain rates lower than they could be required to publish to meet competitive or other conditions at a particular point, they are not thereby relieved from the obligation imposed by law to remove unjust discrimination which may arise from meeting competition or other conditions at one point and refusing to meet the same conditions at another point entitled to the same consideration. San Toy Coal Co. v. A. C. & Y. Ry., 34 I. C. C. 93, 98.

(f) There can be no question of undue prejudice to a specific point where the carrier serving that point is in no way responsible for lower rates accorded competitors who ship from other points to the same destinations. Equity Co-Operative Packing Co. v. Director General, as Agent, 64 I. C. C. 615, 616.

(g) Class and commodity rates from Boston, Mass., and Providence, R. I., via ocean and rail and from interior New England via rail, ocean and rail to points in the Southeast, found not unreasonable or unduly prejudicial. A previously existing relationship by which Boston and Providence were accorded the same rates as New York, N. Y., and Philadelphia, Pa., was brought about by carrier competition in which distance and cost of service were disregarded. In connection with the readjustment following Fourth Section Violations in the Southeast, 30 I. C. C. 153, and 32 I. C. C. 61, and subsequent general increases and reductions such rates were made differentials over the rates from New York. Boston Chamber of Commerce v. O. S. S. Co., 73 I. C. C. 233.

ALL OTHER CITATIONS

New Albany Furniture Co. v. M. J. & K. C. R. R. Co., 13 I. C. C. 594, 599; Miller Walnut Co. v. A. T. & S. F. Ry. Co., 13 I. C. C. 43, 45; The Traffic Bureau, St. Louis v. M. P. Ry., 13 I. C. C. 11, 13, 14; Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 15 I. C. C. 504, 516; Board of City of Brisol, Tenn. v. So. Ry. Co., 15 I. C. C. 487, 490; Kansas City Transportation Bureau v. A. T. & S. F. Ry. Co., 16 I. C. C. 195, 203; New Orleans Board of Trade v. L. & N. R. R. Co., 17 I. C. C. 231, 237; Decision of Commission sustained, 184 Fed. 118, but order subsequenty enjoined, 195 Fed. 541; Colorado Coal Traffic Ass'n. v. C. & S. Ry. Co., 18 I. C. C. 572, 576; Paragon Plastter Co. v. N. Y. C. & H. R. R. R. Co., 19 I. C. C. 480; Corporation Commission of North Carolina v. N. & W. Ry. Co. v. U. S., 195 Fed. 953; Blake & Son Hardware & Mfg. Co. v. B. & O. R. R. Co., 20 I. C. C. 139; American Cigar Co. v. P. & R. Ry. Co., 20 I. C. C. 81, 82; I. C. C. v. C. B. W. Ry. Co., 209 U. S. 108, 122, 28 Sup Ct. 493, 52 L. Ed. 705, affirming 141 Fed. 1003; Commercial Club of Superior v. G. N. Ry. Co., 24 I. C. C. 96, 103; Arkansas Fertilizer Co. v. St. L. I. M. & S. Ry. Co., 25 I. C. C. 645, 648; Gund & Co. v. C. B. & Q. R. R. Co., 25 I. C. C. 326, 329; Massie & Pierce Lumber Co. v. N. & W. Ry., 33 I. C. C. 14; Ennis, Brown Co., v. S. P. Co., Unrep. Op. 2078; Consumers Co. v. C. & N. W. Ry. Co., 36 I. C. C. 259, 261; Hettler Lumber Co. v. A. & V. Ry., 38 I. C. C. 117, 118; Seaboard Air Line Ry. Co. v. United States, 249 Fed. 368; Clark & Davis Coal Co. v. Director General, 53 I. C. C. 357; World Publishing Co. v. Director General, 53 I. C. C. 491, 494; Aberdeen Commercial Club v. Director General, 56 I. C. C. 147.

§8. (4) Short-Line Carriers.

See Competition.

ALL CITATIONS

Randolph Lumber Co. v. Seaboard Air Line Ry., 13 I. C. C. 601, 603; Fort Dodge Commercial Club v. I. C. R. R. Co., 16 I. C. C. 572. 578 579, 581, 583; Ocean County Coal Co. v. Central R. R. of N. J., 17 I. C. C. 383, 384; Wilson-Leuthold Lbr. Co. v. C. M. & S. P. Ry., 34 I. C. C. 146; Haskew Lumber Co. v. N. C. & St. L. Ry., 34 I. C. C. 333; Chamber of Commerce of Milwaukee v. C. M. & St. P. Ry., 34 I. C. C. 581.

§8. (5) Water Carriers.

See Water Carrier.

CASES 1887-1908

(a) The defense of water competition from Chicago and the lake shipping points to seaboard points east, as a justification for an otherwise unjustifiable discrimination in rate between corn and its direct products from Indianapolis to said seaboard points, was held to be untenable, owing to the situation of Indianapolis as to the lakes and to the location of the territory where the corn was mainly raised that was marketed at Indianapolis, and to the other facts established in this case. Bates v. Pennsylvania R. Co., 2 I. C. R. 715.

(b) To justify discrimination because of water competition the freight must have been able to reach destination by water.—In order to justify a greater haul for shorter distance because of water competition the transportation as to which such competition exists must be concerning freight to the longer distance point which if not carried to such point by the road giving the rate complained of could reach such point by water transportation. So, the competition of one transportation line cannot be said to meet that of another for the carriage of traffic from any particular locality so as to constitute dissimilar conditions justifying a greater charge for a short than a long haul unless one line could perform the service if the other did not. Competition existing by water between Chicago and the North Alantic ports, and competition by rail between Memphis and Charleston, together with the competition of markets, do not constitute dissimilar circumstances or conditions which will justify a greater charge from Memphis to Summerville than for the longer distance from Memphis to Charleston. Behlmer v. Louisville & Nashville R. R. Co., 8 I. C. C. App. XXXIV.

(c) Conditions affecting traffic, including carriages and buggies, from eastern points, are rendered substantially different at Los Angeles than at San Barnardino, a shorter distance point on the same line, by the competition of carriers wholly by water from the Atlantic seaboard to Port Los Angeles, a point on the Pacific coast near Los Angeles and the effect of such competition by water direct to San Francisco is properly recognized at Los Angeles by giving that city all-rail rates from the east as low as those in effect to San Francisco. Holdzkom v. Michigan Central R. Co., 9 I. C. C. 42.

IMPORTANT CASES SINCE 1908

(d) Carriers may, for the purpose of meeting water competition, make rates lower than would otherwise be justifiable, even to the extent of charging a less rate to the more distant point. The carrier may determine for itself whether it will or will not meet such water competition. While, however, the carrier may in the first instance settle its policy in this respect, it must act under certain limitations. It cannot be permitted to compete at one point and decline to compete at another, where all conditions are the same; nor should it, ordinarily, be allowed to compete one day and decline to compete the next. The public has the right to require equal and uniform treatment within the bounds of reason. Cases might therefore arise where the Commission would require the continuance of a rate established to meet such competition. Darling & Co. v. B. & O. R. R. Co., 15 I. C. C. 79, 87.

(e) Water competition at given point may render circumstances and conditions dissimilar and justify discrimination against points where such competition is not controlling. Planters Gin and Compress Co. v. Y. & M. V. R. R. Co., 16 I. C. C. 131, 133.

(f) Where a carrier has nullified water competition at one city through a community of interest with water carriers it is not justified in granting a lower rate at related points on the ground that water competition at such other points compels a lower rate. Bowling Green Business Men v. L. & N. R. R. Co., 24 I. C. C. 228, 237.

(g) If water competition at a given point compels a carrier to discriminate in rates against a point not so favorably situated, the amount of the discrimination must not be greater than the dissimilarity of circumstances demand. Tezarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 582.

(h) While a carrier, in the exercise of its discretion, may establish rates to meet water competition, it can not be compelled to do so, so long as no unjust discrimination or undue preference is thereby created. Nephi Plaster & Mfg. Co. v. D. & R. G. R. R. Co., 45 I. C. C. 433, 434.

ALL OTHER CITATIONS

Bainbridge Board of Trade v. L. H. & St. L. Ry. Co., 15 I. C. C. 586, 590, 593; Green Bay Business Men's Ass'n. v. B. & O. Ry. Co., 15 I. C. C. 59, 62, 64; Commercial Club of Hattieburg v. A. G. S. R. R. Co., 16 I. C. C. 534, 545; Planters Gin and Compress Co. v. Y. & M. V. R. R. Co., 16 I. C. C. 131, 133; Montgomery Freight Bureau v. L. & N. R. R. Co., 17 I. C. C. 521, 530 531; Hellstrom v. N. P. Ry. Co., 17 I. C. C. 580; Receiver's and Shippers' Ass'n. of Cincinnati v. C. N. O. & T. Ry. Co., 18 I. C. C. 440, 466, decision sustained, Hooker v. I. C. C., 188 Fed. 242; Columbia Grocery Co. v. L. & N. R. R. Co., 18 I. C. C. 502, 506; International Salt Co. v. G. & W. R. R. Co., 20 I. C. C. 530; DuPre Co. v. B. R. & P. Ry. Co.,

23 I. C. C. 226; Holland Blow Stave Co. v. A. C. L. R. R. Co., 24 I. C. C. 81, 87, 88; Escanaba Business Men's Ass'n. v. A. A. R. R. Co., 24 I. C. C. 11; Arkansas Fertilizer Co. v. St. L. I. M. & S. Ry. Co., 25 I. C. C. 645, 648; Lebanon Commercial Club v. L. & N. R. R. Co., 28 I. C. C. 301, 304; Transcontinental Commodity Rates, 32 I. C. C. 449, 455; Texarkana Freight Bureau, 38 I. C. C. 55, 58; Casey-Hedges Co. v. N. O. & T. P. Ry., 39 I. C. C. 569; City of Memphis v. C. R. I. & P. Ry. Co., 39 I. C. C. 256, 269; Du Pont Wholesale Grocery Co. v. A. T. & S. F. Ry., 42 I. C. C. 79; Helena Traffic Bureau v. M. P. Ry., 48 I. C. C. 307, 309; Pelican Lumber Co. v. V. S. & P. Ry., 50 I. C. C. 540; Portland Traffic & Transportation Association v. C. M. & St. P. Ry. Co., et al., 52 I. C. C. 169; Murfreesboro Board of Trade v. L. & N. Ry., 55 I. C. C. 648, 654; American International Shipbuilding Corp. v. Director General, 58 I. C. C. 367; Greater Des Moines Committee v. Director General, 60 I. C. C. 403; Freight Bureau of Chamber of Commerce of Macon, Ga. v. N. Y. N. H. & H. , 63 I. C. C. 327.

§8. (6) State Rates.

See State Rates and Regulation.

IMPORTANT CASES SINCE 1908

(a) Complaint alleges undue prejudice of intrastate commerce and preference of interstate commerce, which it is urged the commission has power to remove under section 13 of the act. Such prejudice is claimed to result from the application of interstate rates which are lower than the corresponding intrastate rates, but such allegation of undue prejudice not proved. Mathieson Alkali Works v. C., C. & O. Ry., 77 I. C. C. 150, 153.

ALL OTHER CITATIONS

McCormick & Co. v. S. P. Co., 37 I. C. C. 234; Holmes & Hallowell Co. v. G. N. Ry. Co., 37 I. C. C. 627; The Missouri River-Nebraska Cases, 40 I. C. C. 201, 254; Memphis Freight Bureau v. St. L. I. M. & S. Ry., 41 I. C. C. 530; Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 43 I. C. C. 224, 226; Coffeyville Vit. Brick & T. Co. v. A. T. & S. F. Ry. Co., 44 I. C. C. 513; Shreveport-Texas Cattle, Lignite, Wood and Tanbark, 48 I. C. C. 283, 289, 371; R. R. Comm. of La. v. A. H. T. Ry., 48 I. C. C. 312, 371; Chattanooga Sewer P. & F. B. Co. v. S. Ry., 48 I. C. C. 642; Nat. chez Chamber of Commerce v. L. & A. Ry. Co., 63 I. C. C. 288, 298; Memphis-Southwestern Investigation, 77 I. C. C. 473, 482, 484, 490, 491; Oklahoma Corp. Comm. v. A. R. R., 80 I. C. C. 607, 617, 618; Ohio-Michigan Coal Cases, 80 I. C. C. 663, 690.

§8. (7) Market Competition.

See Market Competition.

CASES 1887-1908

(a) The provision of the third section of the act prohibiting carriers from making or giving any undue or unreasonable preference or advantage to any particular firm, person, company, corporation or locality, or any particular description of traffic, in any respect whatsoever, not only applies to relative rates on one description of traffic shipped to or from competing localities, but also to relative rates on differently described articles which are competitive in the same markets; and when carriers have established rates on articles of competitive traffic which are relatively reasonable and fair, they cannot arbitrarily select particular articles of such traffic and materially raise or lower rates so established thereon without violating that provision of the statute. Squire & Co. v. M. C. R. R. Co., 3 I. C. C. 515, 520;

(b) If any articles are competitive in the markets, the clause in the law which makes it unlawful for a common carrier to give any undue and unreasonable advantage to one over another, applies. In contemplation of the act, these competitive articles are to be treated as one subject by the carriers in providing for their transportaion. This situation demands for such articles relative rates of freight, and when the carriers establish a rate upon one of them they would make a rate on the other, relatively smaller or greater, basing the relation in rates upon the differing cost of the service as to each. Squire & Co. v. M. C. R. Co., 3 I. C. C. 515, 523.

(c) A charge of higher rates from certain points to a place than is made on traffic carried through such place to another place in competition therewith constitutes an unjust discrimination under the Interstate Commerce Act, §3. Brewer v. Louisville & N. R. Co., 7 I. C. C. 224.

(d) Defendant has had in force since April 25, 1903, rates per 100 lbs., on bananas in carloads from Charleston, S. C., which are 43 cents to Danville, Va., and

35½ cents to Lynchburg, Va., the transportation to the latter point by defendant's line being through Danville. The lower rate to Lynchburg is forced upon defendant by the competition of bananas coming from Baltimore. The 43-cent rate to Danville is not found to be unreasonable, and upon these facts the higher rate to Danville is not in violation of the Act to Regulate Commerce. Gardner & Clark v. Southern R. Co., 10 I. C. C. 342.

IMPORTANT CASES SINCE 1908

(e) The fact that there is competition between communities for the purchase of a commodity does not justify the carrier transporting the same to levy an unreasonable rate on one community. Nebraska State Railway Commission v. U. P. R. R. Co., 13 I. C. C. 349, 355.

(f) While market competition may be considered in determining a violation of section 3, it is no defense to a charge of undue prejudice that competition compels the low rate at the favored point, when similar conditions obtain at the point discriminated against. North Fork Channel Coal Co. v. A. A. R. R. Co., 25 I. C. C. 241, 246.

(g) It is a foregone conclusion that competition between jobbing houses and factories for trade cannot exist without the jobbing houses and factories, and if a certain adjustment of rates prevents one town from securing the jobbing houses and factories in competition with another a situation is presented which the Act was designed to correct. When the question of rates enters into the competition of cities and towns in any respect, whatever, whether the competition is one for trade factories or people, complaints alleging unjust discrimination will be entertained. Transcontinental Commodity Rates, 32 I. C. C. 449, 454;

(h) There need not be a direct and substantial commercial competition in a common market between merchants at two points in order to come within the provisions of section 3. Without attempting to enumerate the various classes of cases it may be said that the section is broad enough to include any undue prejudice to one description of traffic, including interstate commerce, and undue preference of another description of traffic, that interferes with the free movements of such interstate commerce, whatever form the discrimination may take. Railroad Comm. of La. v. A. H. T. Ry., 48 I. C. C. 312, 363.

(i) Fact that a city is a thriving jobbing center, and in spite of rate differences does business in a territory in competition with other cities, does not deprive it of the right to have rates that are not unduly prejudicial in favor of those competing cities. Meridan Traffic Bureau v. S. Ry. Co., 60 I. C. C. 11.

(j) Any superiority which one point may have over another as a market may not be urged as a reason for denying a nonprejudicial adjustment of freight rates. Indianapolis Chamber of Commerce v. C. C. C. & St. L. Ry. Co., 60 I. C. C. 67, 73.

ALL OTHER CITATIONS

Murfreesboro Board of Trade v. L. & N. Ry., 55 I. C. C. 648; Green Bay Ass'n. of Commerce v. C. & N. W., 56 I. C. C. 326, 332; Hormel & Co. v. C. G. W. R. R., 56 I. C. C. 419, 425; Meridan Traffic Bureau and Hannah Distributing Co. et al. v. Director General, 57 I C. C. 107; Silcia Sand Producers Asso. v. Director General, 58 I. C. C. 549; Wholesale Coal Trade Asso. v. Director General, as Agent, 58 I. C. C. 15, 32; Michigan Paper Mills Traffic Asso. v. A. T. & S. F., 59 I. C. C. 649; In the matter of intrastate rates in Illinois, 60 I. C. C. 92, 98; Montgomery Chamber of Commerce v. Director General, 60 I. C. C. 203; Silicia Sand Producers Traffic Asso. of Illinois v. Director General, 60 I. C. C. 453; Lehigh Portland Cement Co. v. Director General, 61 I. C. C. 613; Security Mills & Feed Co. v. Director General, 62 I. C. C. 657; Meridian Traffic Bureau v. S. Ry. Co., 60 I. C. C. 5, 11; United Iron Works Co. v. Director General, as Agent, 61 I. C. C. 33, 38; Certain-Teed Products Corp. v. A. T. & S. F. Ry. Co., 63 I. C. C. 65, 72; Waggoner & Gates Milling Co. v. Director General, as Agent, 69 I. C. C. 83, 86; Farley & Loetscher Mfg. Co. v. Director General, as Agent, 73 I. C. C. 704; Atchison Board of Trade v. A., T. & S. F. Ry. Co., 80 1. C. C. 350; Oklahoma Corp. Comm. v. A. R. R., 80 I. C. C. 607, 617, 618; Melcroft Coal Co. v. I. C. V. Ry. Co., 81 I. C. C. 251.

§8½. Difference in Conditions.

IMPORTANT CASES SINCE 1908

(a) Rate on molding sand from Ottowa, Ill., to Chattanooga, Tenn., found not unduly prejudicial as compared with lower rate to Pittsburgh, Pa., Buffalo,

N. Y., and other points in the same group as the transportation conditions obtaining from and to these points are dissimilar. Rock Producers Traffic League v. C. B. & Q. R. R. Co., 62 I C. C. 105.

ALL OTHER CITATIONS

Empire Steel & Iron Co. v. Director General, 62 I. C. C. 157.

§9. Disadvantage of Location.

See Equalization of Rates §3.

CASES 1887-1908

(a) A distributing center, however great or important, cannot demand as a matter of right that the rates from a common source of supply to more distant and smaller towns shall be made up of the sum of the rate to itself and the rate thence to such smaller towns; but the carriers may make rates from the common source of supply to the smaller towns directly, as single rates; and if the single rate is less than the sum of the two which are made to and from the distributing center, it is not for that reason necessarily objectionable. Martin v. Chicago, Burlington & Quincy R. Co., 2 I. C. R. 32.

(b) The fact that under rates which are impartially arranged as between large and small towns one large distributing center may have an advantage over another in competition for the business of the small towns, does not make out a case of undue preference in favor of the one distributing center as against the other. Impartial rates are not rendered illegal by their effect upon the business of localities. Martin v. Chicago, Burlington & Quincy R. Co., 2 I. C. R. 32.

(c) The fact that one city is much larger and has more important and extensive business interests than another, and has been treated by the carriers in making rates to surrounding points as a "trade center," is no justification for a continuation of discriminatory rates in favor of such city. Troy Bd. of Trade v. Alabama M. R. Co. (Com), 4 I. C. R. 348.

(d) A person who receives cotton at Mobile from any particular point on the Alabama rivers whether it comes by boat or wagon or any other way and desires to ship it from Mobile to New Orleans by a railroad line is entitled to have it shipped at the Mobile rate as much as any person who receives his cotton from any other point or who may have bought it at Mobile, and it is no objection to such right that it would give every town located on such rivers equal facilities and advantages with those of Mobile, as that is the purpose of the Interstate Commerce Act. Bigbee & Warrior Rivers Packet Co. v. Mobile & Ohio R Co., 4 I. C. R. 829.

(e) A city is entitled to benefits arising from its location, and the fact that it enjoys exceptional advantages in one respect is no reason why it should be subjected to discrimination in other respects. Freight Bureau of Cincinnati v. N. O. & T. P. R. Co., 7 I. C. C. 180.

(f) That a city from its location obtains better rates from the points of origin, upon articles which it distributes to a certain territory, than another city, constitutes no reason for subjecting it to discrimination, in favor of such other city, in rates to such territory. Freight Bureau v. Cincinnati, N. O. & T. P. R. Co., 7 I. C. C. 180.

(fa) A city is entitled to benefits arising from its location, and the fact that it enjoys exceptional advantages in one respect is no reason why it should be subjected to discrimination in other respects. Freight Bureau Cincinnati Chamber of Commerce v. C. N. O. & T. P. R. Co., 7 I. C. C. 180, 189.

(fb) Complainant attacked rates between Omaha or South Omaha, Neb., and points in Iowa west of the Mississippi River as unjustly discriminatory against Omaha in favor of Council Bluffs. The rates from Omaha are made by adding to the rates in force between Council Bluffs and such Iowa points the prevailing bridge tolls over railway bridges across the Missouri River at or near Omaha and Council Bluffs, while on practically all other freight transported to or from Council Bluffs, Omaha and South Omaha the same rates are applied. Council Bluffs, on the east bank of the Missouri River, is more favorably located than Omaha, on the west side of that river, in regard to traffic with points in Iowa, and the defendant carriers are not to be condemned for recognizing such natural advantages of location in adjusting their charges; nor does it follow that rates should be the same from Omaha and Council Bluffs into Iowa because they are the same from those cities into Nebraska. HELD, the charge of unjust discrimination against Omaha is not sustained, and complaint

dismissed. Commercial Club of Omaha v. C. & N. W. R. Co., 7 I. C. C. 386.

(g) In cases of preference between places, the question is not merely that some form of competition exists at the more favored point which is not found at the other, but rather do all the circumstances and conditions, giving due regard to the interests of all parties, excuse the preference. Holdzkom v. Michigan Central R. Co., 9 I. C. C. 42.

(h) If Los Angeles has means at its command by which it may force a rate from the two railroad lines, or either of them which serve it and San Bernardino, which the latter place does not possess, that is an element to be considered in determining the legality of a lower rate from the east to Los Angeles, the longer distance point; but the mere fact that it is a larger town with more business, and thereby creating a fiercer competition between the lines, does not justify the difference in charges. Holdzkom v. Michigan Central R. Co., 9 I. C. C. 42.

IMPORTANT CASES SINCE 1908

(i) If a city is large and prosperous by virtue of natural advantages it may justly be given the benefit of its location even though that may result in apparent discrimination against smaller intermediate points; but the mere fact that a market is important and a large consumer is not of itself this kind of a natural advantage. One purpose of the Act was to stop discrimination against the weak, whether individual or locality. In re Application Under Fourth Section as to Rates on Salt, 24 I. C. C. 192, 194.

(j) That a city is recognized as a commercial center is no reason for giving it unduly preferential rates. Bowling Green Business Men v. L. & N. R. R. Co., 24 I. C. C. 228, 239.

(k) Unjust discrimination by carriers cannot be predicated upon their failure or declination to remove by preferential rates, services or privileges, the natural disadvantages of location under which one community rests in competition with another more favorably located. Port Arthur Board of Trade v. A. & S. Ry. Co., 27 I. C. C. 388, 402.

(l) The mere fact that a city is thriving does not deprive it of the right to have rates that are not unduly discriminatory in favor of other cities. Board of Trade of Carrollton, Ga., v. C. of Ga. Ry. Co., 28 I. C. C. 154, 167.

(m) Difference in cost of production cannot be recognized as a basis for the adjustment of freight rates between different localities. Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co., 28 I. C. C. 250, 262.

ALL OTHER CITATIONS

Banner Milling Co. v. N. Y. C. & H. R. R. R. Co., 13 I. C. C. 31, 34; Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 16 I. C. C. 276, 280, 281 282, 284; Avery Mfg. Co. v. A. T. & S. F. Ry. Co., 16 I. C. C. 20, 24; Indian Steel & Wire Co. v. C. R. I. & P. Ry. Co., 16 I. C. C. 155, 160, 161; Railroad Commissioners of Florida v. S. A. L. Ry., 16 I. C. C. 1, 4, 5; Highland Iron & Steel Co. v. Vandalia R. R. Co., 18 I. C. C. 601, 603; David Scott v. M. C. R. R. Co., 18 I. C. C. 582, 587; Stacy Merchantile Co. v. M. St. P. & S. Ste. M. Ry. Co., 18 I. C. C. 550, 551; Williamette Pulp & Paper Co. v. M. P. Ry. Co., 18 I. C. C. 388; Delray Salt Co. v. Penn. R. R. Co., 18 I. C. C. 259, 260; California Sugar Co. v. S. P. L. A. & S. L. R. R., 19 I. C. C. 6, 9; Harbor City Wholesale Co. v. S. P. Co., 19 I. C. C. 323, 331; Record Oil Refining Co. v. M. V. R. Co., 19 I. C. C. 132; Corporation Commission of North Carolina v. N. & W. Ry. Co., 19 I. C. C. 303, 309, decision of Commission sustained, N. & W. Ry. Co. v. U. S., 195 Fed. 953; Truck Growers Ass'n. v. A. C. L. R. R. Co., 20 I. C. C. 190; East St. Louis Cotton Oil Co., 20 I. C. C. 37; Sinclair & Co. v. C. M. & St. P. Ry. Co., 21 I. C. C. 490, 492, 498, 505, 509, 510; Investigation of Alleged Unreasonable Rates on Meats, 22 I. C. C. 160, 163; Sioux City Commercial Club v. C. & N. W. Ry. Co., 22 I. C. C. 110; Board of Trade of Laredo, Tex., v. I. & G. N. R. R. Co., 22 I. C. C. 28; Chamber of Commerce of Newport News v. S. Ry. Co., 23 I. C. C. 345, 352; New Orleans Board of Trade v. L. & N. R. R. Co., 23 I. C. C. 429, 431; Slider v. S. Ry. Co., 24 I. C. C. 312; Omaha Grain Exchange v. C. M. & St. P. Ry. Co., 24 I. C. C. 122; Commercial Club of Superior, Wis., v. G. N. Ry. 24 I. C. C. 96, 116; Holland Blow Stave Co. v. A. C. L. R. R. Co., 24 I. C. C. 81, 88; Escanaba Business Men's Ass'n. v. A. A. R. R. Co., 24 I. C. C. 11; Western Fruit Jobbers Ass'n. v. C. R. I. & P. Ry. Co., 27 I. C. C. 417, 422; Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co., 27 I. C. C. 238, 244; Columbia Chamber of Commerce v. S. Ry. Co., 28 I. C. C. 339,

347; Gottron Bros. Co. v. G. & W. R. R. Co., 28 I. C. C. 38; Becker v. P. M. R. R. Co., 28 I. C. C. 645, 657; Milburn Wagon Co. v. A. A. R. R. Co., 32 I. C. C. 582; Anson, Gilkey & Hurd Co. v. S. P. Co., 33 I. C. C. 332, 338; Empress Coal Co. v. O. W. R. R. & Nav. Co., 51 I. C. C. 345; Indianapolis Chamber of Commerce v. C. C. C. & St. L. Ry. Co., 60 I. C. C. 67, 73; Belber Trunk & Bag. Co. v. W. J. & S. R. R., 66 I. C. C. 490.

§10. Encouragement of Own Territory.

See Evidence §40½; Origin of Traffic; Through Routes and Joint Rates §9.

CASES 1887-1908

(a) But rates and charges not unreasonably high of themselves, can be so adjusted in their relations to each other as to give the undue preference and produce the unreasonable disadvantage which the third section of the Act to Regulate Commerce makes unlawful, and if the railway company in establishing its charges on the different divisions and branches of its road, so adjusts them as to divert trade and business to one locality, which naturally under an equitable adjustment of charges would go to another, such unreasonable preference for one place and disadvantage to another, are not excused or made lawful by the fact that some of such rates are not entirely voluntary, but the result of competition with other carriers. If an advantage is given to competing towns on the main line, the advantage must not be unreasonable. The difference in the rates at Mazeppa, compared with the rates at Red Wing and Lake City, should neither exceed 2½ cents on 100 pounds, nor one third part of the rates made in the adjustment of charges from said competing town. Raymond v. Chicago, Milwaukee & St. P. R. Co., 1 I. C. R. 627.

(aa) Complainant charged that the discriminations made by the defendant against the locality of Mazeppa are unjust and sufficient to divert largely its grain business. Where from Wabesha, the distance over the main line northwest to Lake City is 12 miles, and to Red Wing 29 miles, and over the branch line the distance west from Wabasha to McCracken is 18 and to Mazeppa is 52 miles, and the distance north from Mazeppa to Red Wing by wagon road is 22 miles, and nearly the same to Lake City, and both are competitors with Mazeppa for the grain and other trade with the territory intervening; the distance from Chicago to Mazeppa being 392, to Red Wing 369, to Lake City 352 miles, and to Milwaukee the distance is less than to Chicago by 107 miles, and complainant alleged that the discriminations made by the defendant against Mazeppa were unjust and sufficient to divert largely its grain business; that the excess charged of 8c in the Mazeppa rates over Lake City and Red Wing rates was and, any difference or excess in such rates above 2c would be an undue preference in favor of Lake City and Red Wing, and an unreasonable prejudice against Mazeppa in respect of the grain and other trade in which complainant was and is interested, and the only evidence in support of complainants statement that the Mazeppa rate now 12½c was unreasonable, is afforded by comparison of this and other rates on the branch line with the Red Wing, Lake City and other rates on the River division of the main line, the Commission declined to declare 12½c an unreasonable charge for the service rendered, or that a rate nearly a third lower than it had ever been previous to the Act is unjust and unlawful of itself, or within the meaning of the first section. HELD, rates and charges not unreasonably high of themselves, can be so adjusted in their relations to each other as to give the undue preference and produce the unreasonable disadvantage which the third section of the Act makes unlawful, and if the railway company in establishing its charges on the different divisions and branches of its road, so adjusts them as to divert trade and business to one locality, which naturally under an equitable adjustment of charges would go to another. Such unreasonable preference for one place and disadvantage to another, are not excused or made lawful by the fact that some of such rates are not entirely voluntary, but the result of competition with other carriers. If an advantage is given to competing towns on the main line, the advantage must not be unreasonable. The difference in the rates at Mazeppa compared with the rates at Red Wing and Lake City should neither exceed 2½c per 100 pounds nor one third part of the rates made in the adjustment of charges from said competing towns. Raymond v. C. M. & St. P. R. R. 1 I. C. C. 627.

(b) An agreement by a railroad company with other companies within a specified territory for the purpose of maintaining a uniform rate upon all shipments of cotton from certain points in Alabama in vessels plying the Alabama rivers and received at Mobile, to be reshipped and transported to New Orleans, to charge a certain sum per bale in excess of its regular rate from Mobile is no justification of such discriminating charge and contravenes the Interstate Commerce Act. Bigbee & Warrior Rivers Packet Co. v. Mobile & Ohio R. Co., 4 I. C. R. 829.

(c) The fact that one city is much larger and has more important and extensive business interests than another, and has been treated by the carriers in making rates to surrounding points as a "trade center," is no justification for a continuation of discriminatory rates in favor of such city. The object of the Act to Regulate Commerce was to eradicate the existing system of rebates and unjust discriminations in favor of particular localities, special enterprises, and favored individuals. Board of Trade of Troy, Ala., v. Ala. Mid. Ry. Co., et al., 6 I. C. C. 2.

(d) The requirement of the agreement of a railway and steamship association that its members apply "full local rates upon all traffic subject to the association agreement coming from or going to" connecting lines which do not maintain association rates, while to traffic from other connecting lines conforming to such rates full local rates are not applied, is repugnant to that clause of the Act to Regulate Commerce, §3, which forbids carriers to "discriminate in their rates and charges between connecting lines." Freight Bureau v. Cincinnati, N. O. & T. P. R. Co., 6 I. C. C. 195.

(e) The rates from St. Louis, Nashville and Chattanooga to Hampton, complained of in this case, are combinations of the through rates for the haul through Hampton to Palatka and the local rates from Palatka back to Hampton. The result of this system of rate-making is to enable the merchants at Palatka to compete with merchants at Hampton at their own doors on equal terms, while the latter are debarred from such competition with the former, and as to territory between the two localities, Palatka merchants are given such an advantage in rates as to enable them to undersell Hampton merchants. This system of rate-making results in one of the principle evils which the Act to Regulate Commerce was designed to remedy. Board of Trade v. Nashville, C. & St. L. Ry. Co., 8 I. C. C. 503.

(f) Desire to build up particular station does not justify discrimination.—The interest of a railroad company in building up a station upon its line does not justify a discrimination against another station. I. C. C. v. E. Tenn., Vir. & Georgia R. R. Co., 8 I. C. C. App. XLIII.

(g) While a railway may protect its traffic by any proper means, the enforcement of this rule might be carried to such an extent as to absolutely prohibit every mill not located on its line from selling upon its line. Blackwell Milling & Elevator Company v. M. K. & T. Ry., 12 I. C. C. 24, 25.

(h) A railroad company can not arbitrarily determine that a particular mill shall compete in a certain market with other localities and that other mills on its line shall not so compete, particularly where the discrimination is not justified by operating conditions. Texas Cement Plaster Co. v. St. L. & S. F. R. R. Co., 12 I. C. C. 68, 71.

(i) Right of carrier to encourage industries does not include right to discriminate. Hope Cotton Oil Co. v. Texas & Pacific Ry. Co., 12 I. C. C. 265.

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(j) Within certain limits a railroad company is bound to protect its territory, and within those limits the Commission may consider rates and their effect upon movement of traffic. Receiver's and Shippers' Ass'n. of Cincinnati v. C. N. O. & T. P. Ry. Co., 18 I. C. C. 440, 458.

(k) Market competition is a euphemism for railroad policy. The desire of a number of shippers to reach a market is a force to which the carrier may not yield unless it can establish clearly that the adoption of such a policy will not unfairly discriminate against one community in favor of another, and will not produce those results which the law was intended to destroy. Railroad Commission of Nevada v. S. P. Co., 21 I. C. C. 329, 367.

(l) No undue preference results from the fact that a carrier maintains lower rates from points on its own line than other carriers maintain on the same traffic from nearby points on their lines.

Stonega Coke & Coal Co. v. L. & N. R. R. Co., 23 I. C. C. 17, 24.

(m) Where a carrier adjusts rates to accomodate certain traffic in which it participates and to discourage other traffic moving to territory which it does not directly serve, the carriers may compete among themselves in this field, but the right of the shipping public to reasonable and non-discriminatory rates can not be defeated by the private interest of a carrier to have traffic move in a certain direction. Wichita Board of Trade v. A. T. & S. F. Ry. Co., 25 I. C. C. 625, 631.

(n) The Commission has never recognized the right of a carrier to fix its rates to or from a given point on a higher level than they otherwise should be, in order to prevent one community from competing with another, or to keep the products of one community out of a territory, the wants of which may be fully supplied by another community, and the right to adjust rates on any such theory should not rest either in the carriers or in the Commission. Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 26 I. C. C. 53, 58.

(o) A carrier is not justified in attempting to restrict traffic to movement between points on its own line. Lumber Rates from Texas, Louisiana and Arkansas, 28 I. C. C. 471, 474.

(p) Carrier may not by rate adjustments reserve territory it serves for plants located on its own lines. Oklahoma Portland Cement Co. v. A. L. & G. Ry. Co., 32 I. C. C. 221.

(q) Carriers may not establish restricted trade zones. Commercial Club of Joplin, Mo., v. M. P. Ry. Co., 32 I. C. C. 226, 232.

(r) It is the carrier's right to utilize to its own interest the entire road haul that it can perform, so long as it does not result in an unreasonable route. Louisville Board of Trade v. L. & N. R. R., 40 I. C. C. 679, 689.

(s) No carrier has the right so to adjust rates on its own lines as unduly to prejudice shippers on other lines, or to deprive such shippers of reasonable and just rates, merely through a desire to serve shippers on its own lines. Williamette Lumbermen's Asso. v. S. P. Co., 51 I. C. C. 250, 261.

(t) Upon consideration of the relative transportation characteristics and ton-mile and car-mile earnings, rates on mill-work from Iowa points to Texas common-point territory and El Paso group found unreasonable and unduly prejudicial in favor of competitors on the Pacific Coast as the disparity in rates between these points of origin clearly has the effect of restricting the market for complainant's products within Texas. Reasonable maximum rates prescribed and reparation awarded. Farley & Loetscher Mfg. Co. v. Director General, as Agent, 62 I. C. C. 721.

(u) It is not within the power of the Commission to determine where certain cities or persons should transact their business and such power is not vested in carriers. As a matter of sound policy a carrier is not justified in attempting to restrict its traffic to movement between points on its own line. Lumber from the Pacific coast, 63 I. C. C. 125, 128.

(v) Fact that a carrier would be deprived of its long hauls is no answer to a charge of undue prejudice under section 3 of the act. York Mfrs. Asso. v. P. R. R. Co., 73 I. C. C. 40, 50.

(w) The fact that a carrier would be deprived of its long haul is not an answer to a charge of undue prejudice under section 3. York Mfrs. Asso. v. P. R. R. Co., 73 I. C. C. 40, 50.

ALL OTHER CITATIONS

Wagner, Zagelmeyer & Co. v. Detroit & Macinac Co., 13 I. C. C. 160, 165; Reliance Textile & Dye Works v. S. Ry. Co., 13 I. C. C. 48, 54; Memphis Freight Bureau v. Ft. S. & W. R. R. Co., 13 I. C. C. 1, 4; Corn Belt Meat Produces' Ass'n. v. C. B. & Q. Ry. Co., 14 I. C. C. 376, 386; Greater Des Moines Committee v. C. Gt. W. Ry. Co., 14 I. C. C. 294, 297; Standard Lime & Stone Co. v. Cumberland Valley R. R. Co., 15 I. C. C. 620, 625; Cedar Hill Coal & Coke Co. v. A. T. & S. F. Ry. Co., 15 I. C. C. 73, 77; Delray Salt Co. v. C. St. P. M. & O. Ry. Co., 16 I. C. C. 507, 511; Duncan & Co. v. N. C. & St. L. Ry. Co., 16 I. C. C. 590, 595; Wilson Produce Co. v. Pa. R. R. Co., 16 I. C. C. 116, 122; Wichita Board of Trade v. A. T. & S. F. Ry. Co., 25 I. C. C. 625, 632; Meridan Fertilizer Factory v. H. & P. Ry. Co., 26 I. C. C. 351; Commercial Club of Duluth v. B. & O. R. R. Co., 27 I. C. C. 639, 652; Arkansas Pass Channel and Dock Co. v. G. H. & S. A. Ry. Co., 27 I. C. C. 403, 415; Port Arthur Board of Trade v. A. & S. Ry. Co., 27 I. C. C. 388, 402; Mem-

phis Freight Bureau v. I. C. R. R. Co., 27 I. C. C. 1; Worn v. B. & L. R. R., 32 I. C. C. 58; Goldcamp Mill Co. v. N. & W. Ry. Co., 39 I. C. C. 433, 444; Lutcher & Moore Lum. Co. v. T. & N. O. R. R., 42 I. C. C. 88; Western Pacific v. S. P. Ry., 55 I. C. C. 71, 81, 82.

§10½. Failure to Agree on Divisions.

See Division §4.

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(a) The Commission holds that the inability of carriers to agree upon divisions is no justification for maintaining unduly prejudicial rates, a remedy being provided by section 15 of the commerce Act. Under the present unified management of the railroads there is still less basis for this plea. Ohio Valley Coal Operators Asso. v. I. C. R. R., 53 I. C. C. 148, 152.

(b) It has appeared in many cases before the Commission and is a matter of common knowledge that carriers frequently take advantage of their strategical position and demand divisions which fairly compensate them for surrendering a part of the line haul which they could perform. Carriers that are disadvantageously situated are frequently willing to accord liberal divisions in order to be permitted to share in traffic to or from a point reached only by a competitor. It can not, however, be said that the carrier having the strategical advantage may lawfully accept from one of its connections a division which permits that competitor to share on fair and compensatory terms in the competitive traffic and at the same time demand from another connection for the same service in movement of the same competitive traffic a division so high as to make it impossible for it to share therein on a compensatory basis. In other words, if the carrier having the strategical advantage were to admit one competitor to share in the traffic and exclude another by refusing to enter into any arrangement with it, or effect the same exclusion by exacting divisional arrangements which would prohibit participation by that connection in the traffic, the discrimination would be unlawful. Western Pacific v. S. P. Ry., 55 I. C. C. 71, 81.

ALL OTHER CITATIONS

Proportional Rates on Grain Products to Texas, 27 I. C. C. 282, 285; Koehler Produce Co. v. P R. R. Co., 27 I. C. C. 635; Clay County Coal Asso. v. C. & M. R. R. Co., 81 I. C. C. 414, 419, 420.

§11. Low Rate to Favored Point.

See Equalization of Rates; Origin of Traffic; State Rates and Regulation.

IMPORTANT CASES SINCE 1908

(a) Carriers may not by means of their intrastate rates discriminate against traffic moving in interstate commerce. Colonial Salt Co. v. C. B. & Q. R. R. Co., 31 I. C. C. 558, 570; H. E. & W. T. Ry. Co. v. U. S. 234 U. S. 342.

(b) The imposition of higher rates on interstate than on state traffic between the same points, in the same direction, over the same rails, subjects the interstate traffic to unjust discrimination in violation of the Act. Whether such interstate traffic is large or small in extent is immaterial, as in either event it is entitled to the full protection of the law. Class Rates between Stations in Louisiana, 33 I. C. C. 302, 304.

(c) Section 3 covers every discrimination between intrastate and interstate commerce. Intrastate rates within Illinois, 59 I. C. C. 350.

ALL OTHER CITATIONS

Board of Trade of Bristol, Tenn., v. V. & S. W. Ry. Co., 15 I. C. C. 453, 455; Board of Trade of Winston-Salem v. N. & W. Ry. Co., 16 I. C. C. 12, 18; Saunders & Co. v. Southern Express Co., 18 I. C. C. 415, 422, 424; Andy's Ridge Coal Co. v. Southern Ry. Co., 18 I. C. C. 405, 407; In Re Advances by Carriers Operating Between the Mississippi and Missouri Rivers, 21 I. C. C. 546, 549; In Re Advances on Meats and Packing-house Products, 23 I. C. C. 656, 664; In Re Investigation of Unreasonable Rates on Meats, 23 I. C. C. 656, 664; Meridith v. St. L. S. W. Ry. Co., 23 I. C. C. 31, 41, 45, 47; Southern Shippers' Traffic Assn., v. A. T. & S. F. Ry. Co., 24 I. C. C. 570, 584; Rates on Hay from the Northwest, 25 I. C. C. 680, 684; Cement Rates from Pennsylvania to New Jersey, 26 I. C. C. 687, 688; Oklahoma Portland Cement Co. v. M. K. & T. Ry. Co., 27 I. C. C. 101, 104; Southwestern Missouri Millers' Club v. St. L. & S. F. R. R. Co., 29 I. C. C. 28; Rhinelander Paper Co. v. M. St. P. & Ste. M. Ry. Co., 31 I. C. C. 555; Louisiana Sugar Planters' Asso. v. I. C. R. R., 31 I. C. C. 311; Carroll, Brough & Robinson v. A. T.& S. F. Ry. Co., 31 I. C. C. 466; Class Rates between Stations in Louisiana, 33 I. C. C. 302, 304; Elba Mfg. Co. v. S. Ry. Co.,

Unrep. Op. A-830; California Pine B. & L. Co. v. S. P. Co., 47 I. C. C. 372.

§11¼. Two Line Haul.

See Evidence §59.

IMPORTANT CASES SINCE 1908

(a) Discrimination may sometimes be effected as well by a joint rate as by a one-line rate. Traffic Bureau of Knoxville, Tenn., v. C. N. O. & T. P. Ry., 37 I. C. C. 687, 691.

(b) Joint rates on steam sizes of anthracite coal from Wyoming field of Pennsylvania to Albany, N. Y., district found unreasonable and unduly prejudicial to extent they exceeded rates maintained for one-line movement between same points. It does not appear that two-line haul results in greater cost of service than one-line haul. Reasonable and nonprejudicial rates prescribed, and reparation awarded. Somers v. N. Y., O. & W. Ry. Co., 78 I. C. C. 243.

ALL OTHER CITATIONS

Parlin & Orendorff Co. v. I. C. R. R., 34 I. C. C. 90; Hollingshead & Biel Co. v. M. & N. A. R. R., 48 I. C. C. 449.

IV. REMOVAL OF DISCRIMINATION.

§11½. In General.

CASES 1887-1908

(a) Preference existing under relative rates to competing localities must be shown to result from wrongful action of the carrier, before it can be required to readjust the rates. Wilmington Tariff Asso. of North Carolina v. Cincinnati, Portsmouth & Va. R. Co., 9 I. C. C. 118.

IMPORTANT CASES SINCE 1908

(b) A practice that is bad only because discriminatory can always be remedied by withdrawing the benefit to the favored parties or by extending it to the injured parties. In Re Mileage Books, 28 I. C. C. 318, 324.

(c) If discrimination were removed by extending the rate-breaking system, the final result would be that grain rates would be made on an arbritary mileage basis, without reduction in the rate per ton mile proportionate to the length of the haul. Such a result may finally be reached in rate making, but the industries and commerce of the country are now established on the present basis, and great commercial hardship would inevitably attend the abandonment of the present system. Wichita Board of Trade v. A. & S. Ry. Co., 29 I. C. C. 376, 379.

(d) A carrier is obliged by law to remove unjust discrimination which may arise from meeting competition or other conditions at one point and refusing to meet same conditions at another point entitled to same consideratain. San Toy Coal Co. v. A. C. & Y. Ry. Co., 34 I. C. C. 93, 98.

(e) The duty of the Commission under the terms of section 13, paragraph 4 of the interstate commerce act, is to require the removal of undue or unreasonable advantage, preference, or prejudice as between persons or localities in interstate commerce on the one hand and interstate or foreign commerce on the other hand, and of undue, unreasonable or unjust discrimination against interstate or foreign commerce, if found to exist, the law of any state or the decision or order of any state authority to the contrary notwithstanding. Arkansas fares and rates, 59 I. C. C. 471, 475.

(f) Prior to the transportation act, 1920, the Commission's orders requiring the removal of unjust discrimination or undue prejudice afforded carries the choice of reducing the higher rate to the level of the lower, increasing the lower to the level of the higher, or placing both upon some other common level. The act now empowers the Commission to prescribe the exact rates to be charged in such cases. Arkansas Jobbers' & Mfrs.' Asso. v. Director General, 59 I. C. C. 662, 669.

(g) An order of the Interstate Commerce Commission requiring the carriers brought before it to cease discrimination against the complaining shipper, resulting from the fact that his competitors were granted the privilege of creosoting in transit by other lines with whom the carriers had joint through rates, could not be complied with by discontinuing the joint rates, since that would still leave the complainant's competitors with the privilege under the combined local rates. Central R. Co. of New Jersey v. United States, 42 Sup. Ct. 80.

(h) Under order of Interstate Commerce Commission directing carriers "according as they participate in the transportation * * * to cease and desist" from discrimination in charging lower through rate from certain points in blanket territory than from another

point, the carriers could remove the discrimination either by decreasing the high rate, or by raising the low rate, or by giving both points an intermediate rate. United States v. Illinois Cent. R. Co. 44 Sup. Ct. 189.

ALL OTHER CITATIONS

Gottron Bros. Co. v. G. & W. R. R. Co., 28 I. C. C. 38, 45; Mississippi River Case, 28 I. C. C. 47, 55; Colorado Mfrs'. Asso. v. A. T. & S. F. Ry. Co., 28 I. C. C. 82, 88; In Re Mileage Books, 28 I. C. C. 318, 324; Swift & Co. v. L. & N. R. R. 40 I. C. C. 56; Huerfano Coal Co. v. C. & S. E. R. R. Co., 41 I. C. C. 657, 659; Weis-Peterson Box Co. v. M. & O. R. R., 46 I. C. C. 693, 697; Chamber of Commerce of Johnson City, Tenn., v. S. Ry. Co., 50 I. C. C. 605; Private Wire Contracts, 50 I. C. C. 731, 761; Oatman Codensed Milk Co. v. Director General, 55 I. C. C. 228; Illinois Classification, 55 I. C. C. 290, 306; Memphis-Southwestern Investigation, 55 I. C. C. 515, 533, 575; Montgomery Chamber of Commerce v. Director General, 55 I. C. C. 688; Wheeler Lumber Bridge & Supply Co. v. Director General, as Agent, 59 I. C. C. 6; Petroleum Oil and Petroleum Oil Products, 59 I. C. C. 499; Holmes & Hallowell Co. v. G. N., 60 I. C. C. 687; Badger Lumber Co. v. A., T. & S. F. Ry. Co., 60 I. C. C. 278; Public Service Commission of Oregon v. Director General, 62 I. C. C. 633; Rates, Fares and Charges of the N. Y. C. R. R. Co., 64 I. C. C. 55; Natchez Chamber of Commerce v. L. & A. Ry. Co., 66 I. C. C. 386; Salt from Louisiana Mines to Chicago, 69 I. C. C. 312, 313; Silica Sand Producers' Traffic Association v. Director General, 73 I. C. C. 549; Farley & Loettscher Mfg. Co. v. Director General, 73 I. C. C. 704; Williamette Valley Lumbermen's Association v. S. P. Co., 73 I. C. C. 733.

§12. Reduction of Rates.

IMPORTANT CASES SINCE 1908

(a) Interveners insisted that to make order prayed for would make a discrimination against them. The matter of adjusting rates relatively to meet conditions that will arise after the reduction herein ordered is made rests primarily with the defendants. Baer Bros. Mercantile Co. v. M. P. Ry. Co., 17 I. C. C. 225, 229.

(b) Relief against discrimination due to a rate adjustment cannot be denied on the ground that other points similarly situated might thereby be induced to ask for like relief. Chamber of Commerce of Newport News v. S. Ry. Co., 23 I. C. C. 345, 356.

(c) The Commission would not hesitate to reduce rates because of the threat of a reduction from carriers serving competing localities if unreasonableness and discrimination were established. Bituminous Coal Operators v. Penn. R. R. Co., 23 I. C. C. 385, 391.

(d) The Commission has held in cases where joint or proportional rates were made by all the carriers leading to certain points of destination, that it was within its power to end discrimination as between points of origin by a reduction in the rate from a certain point that was discriminated against. This principle only has application where the traffic from both groups of origin is necessarily transported to destination by the same connecting carrier or carriers, and where it is possible for the delivering carriers to put an end to the discrimination by the exercise of their power to refuse to enter into the preferential, joint or proportional rates. Scott Paper Co. v. P. R. R. Co., 26 I. C. C. 601, 604.

(e) If it be affirmatively shown that a particular rate is unjust and unreasonable, the fact that other rates adjusted in relation thereto may be affected, is no reason for refraining from reducing the rate assailed; but where for a long period of time rates have been the same and no complaint has been made with reference thereto, the presumption obtains that they are reasonable. Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co., 29 I. C. C. 428, 437.

(f) A disparity between two rates can as logically be removed by a reduction of the higher rate as by an increase in the lower. Chamber of Commerce, Houston, Tex., v. I. & G. N. Ry. Co., 32 I. C. C. 247, 259.

(g) A lower rate accorded a competing city for a shorter haul, forced by competition with a rival carrier having the short haul, is not sufficient reason for a reduction in rates. Cement Rates to Stations on the M. C. R. R., 32 I. C. C. 540, 541.

(h) Ordinarily it is more logical to remove a preference by raising special rates to a general basis than by reducing the general rates to the level of the

special rates. Kentucky Distilleries & Warehouse Co. v. L. & N. R. R., 36 I. C. C., 293, 300.

ALL OTHER CITATIONS

National Petroleum Assn. v. C. M. & St. P. Ry. Co., 14 I. C. C. 287, 290; Kindel v. N. Y. N. H. & H. R. R. Co., 15 I. C. C. 555, 560; Union Made Garment Mfrs'. v. C. & N. W. Ry. Co., 16 I. C. C. 405, 409; Milburn Wagon Co. v. L. S. & M. S. Ry. Co., 22 I. C. C. 93, 101; In Re Advances on Cement, 24 I. C. C. 290; In Re Wool, Hides and Pelts, 25 I. C. C. 185, 191; Oklahoma Portland Cement Co. v. M. K. & T. Ry. Co., 27 I. C. C. 101, 104; Corp. Comm. of Okla. v. A. T. & S. F. Ry. Co., 31 I. C. C. 532, 542, 543; Choate Oil Corp. v. Director General, 62 I. C. C. 93; Sublimed Lead to Trunk Points, 68 I. C. C. 343, 345.

§13. Disturbance of Settled Adjustment.

See Evidence §66; Relative Rates.

CASES 1887-1908

(a) Where the petitioners ask that the discrimination against their Town of Opelika, which it appears unjustly exists in favor of the Cities of Montgomery and Columbus, be corrected, that is, that the rates at Opelika be reduced, but when the order which they seek would increase the existing discrimination under the "Ball Arbitraries" in favor of Opelika as against the local points on each side of it, the relief was refused, as to grant it in a form in which no injustice would be done to other points, and yet conforming to the law, would involve a readjustment so general that other interests and localities are entitled to be first heard and their respective claims considered. Harwell v. Columbus & Western R. R. Co., 1 I. C. R. 631.

(b) When rates are relatively unjust, so that undue preference is afforded to one locality or undue prejudice results to another, the law is violated and its penalties incurred, although the higher rate is not in itself excessive, and such rule is especially applicable where a given relation in rates, long continued and concededly equitable, is suddenly and almost completely reversed, merely because other carriers to the longer distance point have disregarded their legal duty. Board of Trade of Lynchburg, Va. v. Old Dominion S. S. Co., 6 I. C. C. 632, 645.

IMPORTANT CASES SINCE 1908

(c) While it is proper to consider the effect of a decision upon the general rate adjustment applying over a wide scope of territory, rates which discriminate against one locality on a particular road cannot be justified on the ground that they are part of a general scheme adopted by several roads entering the same territory and supplying coal from different and unassociated districts. Black Mountain Coal Land Co. v. S. Ry. Co., 15 I. C. C. 286, 294.

(d) Unreasonable rates or undue and unjust discrimination should be corrected even if long-standing adjustments must be disturbed, but where no rate is alleged to be unreasonable, and the discrimination alleged and complained of is between an intermediate or primary market which naturally wishes to handle grain and forward it for export or to the consuming territory, and direct shipment of the grain from points where it is grown to export points and consuming territory under lower transportation charges, undue or unjust discrimination cannot be held to arise. Kansas City Transportation Bureau v. A. T. & S. F. Ry. Co., 15 I. C. C. 491, 498.

(e) Because a rate is reasonable in and of itself, it does not follow that it is lawful; rates are often so related to each other that to change one without a corresponding change in the other works an unjust discrimination. Lumbermen's Exchange of St. Louis v. A. & S. R. R. Co., 24 I. C. C. 220, 224.

(f) Fear of disrupting commercial conditions is no defense to charge of unjust discrimination. Middlesboro Board of Trade v. L. & N. R. R. Co., 27 I. C. C. 14, 21.

(g) The fact that a relation of rates has been in effect for many years cannot justify its continuance if it unduly wrongs one of the related communities. The Commission not infrequently inquires into the origin and history of rates and of rate relations in order properly to interpret and to understand their significance; but when dealing with a rate or relation of rates now in existence, the Commission can neither justify nor condemn it on the basis of its origin or of the conditions surrounding the traffic in the past, but only on the basis of its present effect in the light of present conditions. Commercial Club of Duluth v. B. & O. R. R. Co., 27 I. C. C. 639, 652.

(h) An unreasonable or unjustly discriminatory rate may not be allowed to stand merely because other rates will be affected by a change therein. Wilson & Co. v. C. M. & St. P. Ry., 50 I. C. C. 126, 129.

(i) A proper rate relationship from competing points is often of greater importance to the shipping public than the measure of the rate itself. Horses and Mules from Kansas City, Mo., 69 I. C. C. 97, 101.

(j) The mere fact that correction of rates that are unduly prejudicial or otherwise unlawful will or may require reductions or corrections in the rates on other traffic affords no justification for continuing a prejudicial adjustment on a particular commodity. Certain Teed Products Corp. v. A. T. & S. F. Ry., 73 I. C. C. 82, 89.

ALL OTHER CITATIONS

Detroit Chemical Works v. N. C. Ry. Co., 13 I. C. C. 357, 362; Chickasaw Compress Co. v. G. C. & S. F. R. R. Co., 13 I. C C. 187, 190; Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 15 I. C. C. 504, 509; Williams Co. v. V. S. & P. Ry. Co., 16 I. C. C. 482, 485, 487; New Orleans Board of Trade Ltd. v. G. H. & S. A. Ry. Co., 23 I. C. C. 210; In Re Advances of Lumber, 24 I. C. C. 686, 691; Cassassa v. P. R. R. Co., 24 I. C. C. 629, 631; In Re Advances on Knitting Factory Products, 25 I. C. C. 634, 640; Superior Commercial Club v. G. N. Ry. Co., 25 I. C. C. 342, 348; Union Tanning Co. v. S. Ry. Co., 25 I. C. C. 112, 115; Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 26 I. C. C. 53, 59; Memphis Freight Bureau v. I. C. R. R. Co., 27 I. C. C. 507, 515; Washington D. C., Store-Door Delivery, 27 I. C. C. 347, 352; Chamber of Commerce of N. Y. v. N. Y. C. & H. R. R. R. Co., 27 I. C. C. 238, 240; Mayor and Council of Douglas, Ga., v. A. B. & A. R. R. Co., 28 I. C. C. 445, 452, 453; Chicago Switching Charges, 28 I. C. C. 677, 678; Wichita Board of Trade v. A. T. & S. F. Ry. Co., 29 I. C. C. 376; Chamber of Commerce of Houston v. H. E. & W. T. Ry. Co., 32 I. C. C. 203; Paducah Board of Trade v. I. C. R. R., 37 I. C. C. 719, 725; Johnstown, Pa., Switchings, 43 I. C. C. 654, 659; Wilson & Co. v. C. M. & St. P. Ry., 50 I. C. C. 126, 129; Public Utilities Commission of the State of Colorado v. A. T. & S. F. Ry., 52 I. C. C. 439; Watertown Sash & Door Co. v. Director General, 55 I. C. C. 186, 193; Intrastate Rates within the State of Texas, 62 I. C. C. 591; West Virginia Rail Co. v. B. & O. R. R. Co., 73 I. C. C. 149, 151; Atchison Board of Trade v. A. T. & S. F. Ry. Co., 80 I. C. C. 350.

V. PROCEDURE AND EVIDENCE

See Evidence; Procedure Before Commission.

§13½. In General.

CASES 1887-1908

(a) Where a complaint is made by a shipper that an unjust discrimination was perpetrated by a railroad company against him at a particular time named, in a case like the present, to rebut the inference arising from the circumstances, calling for explanation, among other evidence the carrier may show that during a long course of business neither it nor any of its agents have ever shown any unfriendly spirit whatever toward the shipper; and that on the contrary its agents, immediately before the matter complained of, made extra exertions in good faith to serve the shipper in obtaining cars for him from the connecting line to whom the shipper had to look for such cars. Riddle, Dean & Co. v. Baltimore & Ohio R. R. Co., 1 I. C. R. 778.

(b) In deciding a case against one or more carriers who are charged with making rates which are unjustly discriminating in a certain line of traffic, the decision made upon the facts of the particular case does not necessarily govern rates in other sections of the country, where the facts bearing upon them may be altogether different. Re Relative Tank & Barrel Rates on Oil (Com.), 2 I. C. R., 245.

(c) A case of undue or unreasonable preference or advantage or prejudice or disadvantage includes, as the terms themselves imply, consideration of all those circumstances and conditions which bear, not only upon the transportation by the carrier, but also often relate to the value and volume of the traffic, the favorable or unfavorable location of the places involved in the controversy, character of grades on different divisions, lateral lines, and other essential elements which enter more particularly into matters of relative services and relative rates. Trammell v. Clyde Steamship Co., 4 I. C. C. 121, 141.

(d) The intent of a carrier to dis-

criminate against certain shippers will not render it liable for damages, if the act committed is not in fact an illegal discrimination. Parsons v. Chicago & N. W. R. Co., 5 I. C. R. 95.

(e) An action against a carrier for violation of the interstate commerce act in making unlawful discriminations may be maintained in the name of the United States by the district attorney under §12 of such act as amended March 2, 1889, and Feb. 10, 1891, which provides that, upon the request of the commission, it shall be the duty of any district attorney to institute in the proper court, and to prosecute under the direction of the attorney general, all necessary proceedings for its enforcement and for the punishment of all violations thereof. United States v. Missouri Pacific R. Co., 5 I. C. R. 106.

(f) In passing upon the question of undue or unreasonable preference or disadvantage, it is not only legitimate but proper to take into consideration besides the mere difference in charges, various elements, such as the convenience of the public, the fair interests of the carrier, the relative quantities or volume of the traffic involved, the relative cost of the services and profit to the company, and the situation and circumstances of the respective customers, with reference to each other, as competitive or otherwise. Interstate Commerce Commission v. L. &. N. R. Co., 5 I. C. R. 656.

(g) Questions of unjust discrimination or undue preference must be treated broadly and practically. The carrier's business is one which involves so many considerations, and the necessity of taking into account so many conditions, that questions of this kind do not admit of any rigidly theoretical rules in their solution. Interstate Commerce Commission v. L. & N. R. Co., 5 I. C. R. 656.

(h) One or more of several connecting carriers need not be made parties to a proceeding before the Interstate Commerce Commission against another connecting carrier for unlawful discrimination in rates between places wholly on its own line as compared with the through rate over the connecting lines. Daniels v. Chicago, R. I. & P. R. Co., 6 I. C. C. 458.

(i) Question of undue preference is one of fact.—Whether there has been an undue or unreasonable prejudice or preference, or whether the circumstances and conditions of carriage have been substantially similar or otherwise, is a question of fact depending on the matters proved in each case. Inaterstate Commerce Commission v. Alabama Midland Ry. Co., 7 I. C. C. App. CIX..

(j) Complainant alleged that defendant had unjustly discriminated in rates and facilities for the transportation of sand against him and in favor of his competitors, but the evidence was not sufficient to show breach of legal duty on the part of the defendant, and the complaint was dismissed without prejudice. Castle v. Baltimore & O. R. Co., 8 I. C. C 333.

(k) Dismissal as to defendant carrier where it appears that such carrier has removed the discrimination complained of as to its lines. Chicago Live Stock Exchange v. Chicago G. W. Ry. Co., 10 I. C. C. 428.

IMPORTANT CASES SINCE 1903

(l) Comparison of actual rates paid with lower paper rates which competitors would theoretically have to pay for same distance fails to prove undue discrimination. Capital City Oil Co. v. Y. & M. V. R. R. Co., 39 I. C. C. 141, 146.

(m) Complainants by pressing claims for extension of its jobbing territory court similar action by competitors in adjacent states, but this should not deter a community suffering from unjust or discriminatory rates from making complaint thereof. Greater Des Moines Committee v. C. St. P. M. & O. Ry. Co., 42 I. C. C. 65, 73.

(n) It is obvious that to remove undue prejudice it is necessary to have definite standards of comparison and that even where class rates themselves are the same, these can exist only where the descriptions of the articles and the various rules and regulations are the same for both interstate and intrastate shipments. Railroad Comm. of La., 48 I. C. C. 312, 369.

(o) Where complaints challenge the propriety of practically the entire rate structure on a commodity in the territory outlined in the statement of the case, it is not only the usual practice but is indeed the duty of the Commission on the broad general principles embodied in the Act to examine the whole rate situation in order to ascertain whether the individual rates are fairly related to each other and whether the whole

rate fabric, besides being reasonable, is free from unlawful preferences and discriminations . The Southeastern Sugar Cases, 48 I. C. C. 739, 754.

(p) Whether undue or unreasonable preference or advantage exists in a particular case is a matter of fact. National Traffic League v. A. & R., 61 I. C. C. 120, 123.

(q) Where a shipper applies to the Interstate Commerce Commission in regard to discrimination, he must proceed in accordance with the Interstate Commerce Act. Petition of Southern Lumber & Mfg. Co., 210 S. W. 639.

(r) A finding of unlawful discrimination can not be predicated on mere assumption or assertion of its existence. Davison & Namack Foundry Co. v. P. R. R. Co., 81 I. C. C. 345, 346.

(s) In defense to complaint alleging undue prejudice defendant relied chiefly on disclosure of divisions, HELD: Issue is whether joint rates as such are free from undue prejudice and preference; and it constitutes no defense to show that divisions are reasonable or otherwise not violative of the act. Contention means that if particular rates were found unduly prejudicial and preferential, carriers without making any change in rates, but by readjustment of divisions, could rid rates of their unlawful character, thus leaving shippers where they were before. Clay County Asso. v. C. & M. R. R. Co., 81 I. C. C. 414, 419, 420.

ALL OTHER CITATIONS

P. & R. Ry. Co. v. U. S., 219 Fed. 989, 993; American Round Bale Co. v. A. T. & S. F. Ry. Co., 32 I. C. C. 458, 463; West Lumber Co. v. M. K. & T. Ry., 38 I. C. C. 746; Major Stave Co. v. M. D. & G. R. R. Co., 39 I. C. C. 573, 574; Mobridge Grocery Co. v. C. M. & St. P. Ry., 52 I. C. C. 307; Seaboard Air Line Ry. Co. et al. v. United States et el, 41 Sup. Ct. 24; Natchez Chamber of Commerce v. L. & A. R. R., 58 I. C. C. 610, 618, 642; Chicago, Lake Shore & S. B. Ry. Co. v. Director General, 58 I. C. C. 135, 141; Minnesota Fares and Charges, 62 I. C. C. 198; Natchez Chamber of Commerce v. L. & A. Ry. Co., 62 I. C. C. 464; Mayer & Co. v. C., M. & St. P. Ry. Co., 69 I. C. C. 519, 522; Reduced Rates form New York Piers, 81 I. C. C. 312, 324; Pittsburgh Coal Producers Asso. v. P., C. C. & St. L. R. R. Co., 83 I. C. C. 145.

§14. Burden of Proof.

See Burden of Proof; Evidence I.

CASES 1887-1908

(a) The burden is on the carrier to justify the fact of discrimination when that is admitted and the service is stated to have been substantially the same, and rendered under substantially the same circumstances and conditions. Samuels v. Louisville & N. R. Co., 4 I. C. R. 420.

(b) Undue discrimination in rates between localities may be shown without proving actual shipments from the favored place during the time, and after such shipments the published rates of the carrier made the discrimination, and shipments were actually made at the published rates from the favored place both before and after the shipments from the other. Seawell v. Kansas City, Ft S. & M. R. Co. (Mo.), 5 I. C. R. 262.

(c) The burden of proving undue preference or undue prejudice rests upon the complaining party. Interstate Commerce Commission v. L. & N. R. Co., 5 I. C. R. 656.

(d) Every shipper is legally entitled to fair opportunity and treatment in the use of these public utilities, and any discrimination which in substantial degree deprives shippers of such use must be considered unjust, unless forced by justifying conditions. In such a case the burden of proof is upon the complainant to the extent of showing discrimination, and then upon the carrier to show that the discrimination was justified. Richmond Elevator Co. v. Pere Marquette R. Co., 10 I. C. C. 629.

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(e) The filing by carriers of an application for relief from the operation of section 4 does not preclude a determination by the Commission of a complaint under section 3. Mayor and Council of Boston v. A. C. L. R. R. Co., 24 I. C. C. 50.

(f) One of the ways of showing unreasonableness under the first section of the Act, is by proving that a rate is unduly high, as compared with rates to other places similarly situated, and therefore unjustly prejudicial also, under the third section; and one of the ways of showing undue prejudice and disadvantage under the third section, is by showing unreasonableness and excessiveness in the rate under the section and

then comparing it with the rates to similarly located places. Board of Trade of Carrollton, Ga., v. C. of Ga. Ry. Co., 28 I. C. C. 154, 164.

(g) In cases involving the relationship of rates between points in one group, as compared with rates from nearby points in another group taking lower rates, the question whether, under the circumstances of such an adjustment, the discrimination or preference is undue, is one of fact to be determined from all the circumstances of the particular case. Hammerschmidt & Franzen Co. v. C. & N. W. Ry. Co., 30 I. C. C. 71, 81.

(h) Transportation conditions under which rates compared established must be shown to be substantially similar. Chamber of Commerce, Houston, Tex. v. I. & G. N. Ry. Co., 32 I. C. C. 247, 251.

(i) It is not sufficient to consider rates to an intermediate market, nor alone rates from such market, if the question of discrimination between such markets is to be determined. Board of Trade of Kansas City v. St. L. & S. F. R. R. Co., 32 I. C. C. 297.

(j) The fact that suit was commenced against a complainant, and not against its competitors, does not prove undue prejudice within the meaning of the act. American Coal & Coke Co. v. M. C. R. R., 36 I. C. C. 195, 197.

(k) The Commission must, to make a finding of discrimination, be shown the fact of discrimination, not merely the difference in ratings without the cause and reason for the difference. National Confectioners' Asso. v. A. & R. R. R., 49 I. C. C. 566, 576.

(l) Comparison of distance, even when supported by other evidence as to operating conditions, do not constitute conclusive evidence of undue prejudice. Commercial Club of Greeley v. C. & S. Ry., 53 I. C. C. 66, 74.

(m) Contention, without proof, that lack of industries and communities on defendant carrier's line due to rate adjustment assailed as prejudicial. HELD, finding of undue prejudice can not be based upon assumptions such as these. United States v. Director General, as Agent, 80 I. C. C. 143, 149.

(n) The mere showing that rates from one point in a territory are higher than rates, blanketed or not, from other points in that terrtitory, whether maintained by the same carrier or by different carriers does not establish undue prejudice or preference. State of Idaho v. O. S. L. R. R. Co., 83 I. C. C. 4, 8.

ALL OTHER CITATIONS

Greater DesMoines Committee v. C. G. W. Ry. Co., 18 I. C. C. 98, 104; Bituminous Coal Operators v. P. R. R. Co., 23 I. C. C. 385, 391, 392; Sioux City Terminal Elevator Co. v. C. M. & St. P. Ry. Co., 23 I. C. C. 98, 107, 109; Fedder v. Southern Exp. Co., 41 I. C. C. 529; Donner Steel Co., Inc., v. D. L. & W., 57 I. C. C. 745, 751.

§15. Showing of Damage.

See Reparation §10½.

CASES 1887-1908

(a) That no direct injury results does not justify discrimination; Kindel v. Atchison, T. & S. F. R. Co., 8 I. C. C. 608.

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(b) And in discrimination cases, the measure of damage contemplated by the Act is the pecuniary loss inflicted upon the shipper or consignee as a result of the rates paid. The damage might be the same as the difference between the two rates, less than this amount, or greater, but it must be definitely proven in order to warrant an order of reparation. The Commission can not assume the fact that there has been damage nor estimate the amount thereof. Such contentions must be established by evidence and proof of such evidentiary value as would warrant a judgment in a court of law. In such cases the claimant must not only show that the discrimination alleged or found to exist has operated to his injury but must also show that he has been damaged and the amount thereof. Coal Switching Reparation Cases in Chicago, 36 I. C. C. 226, 232.

(c) In order to hold a carrier or carriers responsible in damages for unjust discrimination it must be affirmatively established, among other things, that traffic actually moved at the lower rate from the point alleged to have been unlawfully favored over the line of the carrier or carriers responsible for the discrimination. Greenbaum & Co. v. S. Ry., 38 I. C. C. 715, 718.

(d) In a case predicated upon unjust discrimination of rates, the damage suffered, if any, is not always measurable by the exact difference in rates; it may be more or less. Mere diminution or loss of prospective trade profits does

not alone afford a basis for reparation under the Act. The fact of damage as well as the amount must be satisfactorily established. Brooks Coal Co. v. Wabash R. R. Co., 39 I. C. C. 426, 432.

(e) Where undue prejudice under section 3 of the Act has been established and reparation is prayed, not only the injury but the fact and amount of resulting damage must be proven. Such damage is not necessarily to be measured by the difference in the rates. Fogarty & Sons v. N. Y. N. H. & H. R. R., 49 I. C. C. 744, 748, 749.

(f) In discrimination cases it must not only be shown that the discrimination alleged to exist operated to the injury of the complainants, but also that they have been damaged and the amount thereof. Compton Coal Co. v. D. & R. G. R. R., 55 I. C. C. 718, 720.

(g) During a portion of the period of movement the government fixed the price of pig iron, f. o. b. furnace, at which price complainant and other furnaces were required to sell their commodity. It can not be said that any of the alleged favored competitors controlled the prices to complainant's detriment. It is true that some competitors may have reaped greater profits than complainant, but that does not establish damage to complainant as a consequence of undue prejudice. Wharton Steel Co. v. Directo General, 59 I. C. C. 11, 24.

(h) The fact of damage can not be presumed from the ascertained existence of unjust discrimination under section 2 or undue prejudice under section 3 of the act; nor is the amount of any damage that may have resulted therefrom necessarily measured by the difference in rates. In each case it must be proved that the complainant has suffered actual pecuniary damage as a direct and proximate result of the unlawful discrimination or prejudice, and the amount of the damage must be established with reasonable certainty by definite facts, without resort to conjecture, speculation or unsupported opinion. A. H. Kerr & Co. v. S. S. R., 62 I. C. C. 296, 299.

(i) That complainant was compelled to shrink its profits on account of lower rates enjoyed by competitors is no such proof of damage as is necessary in discrimination cases. Gulf Lumber Co. v. G. H. & S. A. Ry. Co., Unrep. Op. 2097.

(j) Reparation sought following payment of alleged discriminatory and unduly prejudicial rates, denied. Complainant's selling price is not fixed in relation to prices of competitors, nor controlled by them, and no loss of business is shown to result from rate situation. That complainant would receive additional profit in difference between rate charged and that enjoyed by competitors is not sufficient to support award of reparation even if defendants are guilty of preferring such competitors. Koenig Coal Co. v. B. & O. R. R. Co., 81 I. C. C. 683, 684.

(k) Fact that under an adjustment of rates a shipper may be unable to sell with reasonable profits at certain points does not warrant finding that adjustment is unduly prejudicial. Lester & Toner v. L. I. R. R. Co., 83 I. C. C. 251, 253.

ALL OTHER CITATIONS

Joynes v. Penn. R. R. Co., 17 I. C. C. 361, 367; Minneapolis Threshing Machine Co. v. C. St. P. M. & O. Ry. Co., 17 I. C. C. 189, 190; Inter-National Salt Co. v. Penn. R. R. Co., 20 I. C .C. 539; Meeker & Co. v. L. V. R. R. Co., 23 I. C. C. 480, 481; Penn. R. R. Co. v. International Coal Mining Co., 173 Fed. 1 9; Mitchel Coal & Coke Co. v. Penn. R. R. Co., 181 Fed. 403, 411, 412; Union Tanning Co. v. S. Ry. Co., 25 I. C. C. 112, 115; Baker Commercial Club v. O. W. R. R. & N. Co., 25 I. C. C. 281, 283; Hormel & Co. v. C. M. & St. P. Ry. Co., 30 I. C. C. 98, 102; Decker & Sons v. C. M. & St. P. Ry. Co., 30 I. C. C. 547, 549; Phoenix Printing Co. v. M. K. & T. Ry. Co., 31 I. C. C. 239, 293; Greenbaum Co. v. L. & N. R. R. Co., 31 I. C. C. 699, 711; Spiegle v. S. Ry. Co., 32 I. C. C. 687, 689; Darnell-Taenzer Lumber Co. v. Southern Pac. Co., 221 Fed. 890, 893; Wilkes & Co. v. A. G. S. R. R. Co., 39 I. C. C. 447, 448; Carrier Lumber & Mfg. Co. v. I. C. R. R. Co., 41 I. C. C. 382, 383; Ransom Co. v. N. Y. N. H. — H. R. R. Co., 42 I. C. C. 348, 349; Lake Charles Rice Milling Co. v. S. P. Ry., 46 I. C. C. 661, 663; Pittsburg Plate Glass Co. v. Director General, 58 I. C. C. 81, 84, 89; Park v. L, & N. R. R., 55 I. C. C. 703, 706; Compton Coal Co. v. D. & R. G. R. R., 55 I. C. C. 718, 720; Home Packing Co. v. Director General, 57 I. C. C. 691, 697; Donner Steel Co. v. D. L. & W. R. R. Co., 57 I. C. C. 745, 752; Montana Oil Co. v. A. T. & S. F. Ry. 58 I. C. C. 85; George R. Franzen v. Director General, 58 I. C. C. 213; Wharton Steel Co. v. Director General, 59 I. C. C. 11, 84; Birmingham Packing Co. v. Director General, 59 I. C. C. 81, 89; Central Iron &

Steel Co. v. Pa. R. R., 59 I. C. C. 385, 390; Independant Home Oil Co. v Director General, 59 I. C. C. 398, 403; E. A. Wexelbaum & Bro. v. Ocean Steamship Co., 59 I. C. C. 480, 482; Philip Carey Mfg. Co. v. Director General, 59 I. C. C. 640, 648; Oklahoma Producing & Refining Corp. v. Director General, 60 I. C. C. 255, 257; Cambria Steel Co. v. Director General, 60 I. C. C. 459, 464; Nat'l Spring & Wire Co. v. Director General, 60 I. C. C. 564, 568; Allegheny Steel Co. v. Director General, 60 I. C. C. 575, 578; Hines Lumber Co. v. Director General, 60 I. C. C. 590; Illiff-Bruff Chemical Co. v. Director General, 60 I. C. C. 720; Inman-Poulsen Lumber Co. v. S. P., 61 I. C. C. 185; Chaote Oil Corporation v. Director General, 62 I. C. C. 93, 95; Wertheim Coal & Coke Co. v. L. V., 62 I. C. C. 211, 216; Louisville Cement Co. v. Director General, 62 I. C. C. 362; Security Mills & Feed Co. v. Director General, 62 I. C. C. 405; W. H. Barber & Co. v. Director General, 61 I. C. C. 23, 28; Schlicher v. Director General, 62 I. C. C. 181, 185; Kerr & Co. v. S. S. Ry. Co., 62 I. C. C. 269, 302; Canton Chamber of Commerce v. P. Co., 62 I. C. C. 726; Peerless Coal Co. of Illinois v. A. T. & S. F., 63 I. C. C. 335; Albers Bros. Milling Co. v. Director General, as Agent, 66 I. C. C. 593; Clay County Coal Asso. v. C. & M. R. R. Co., 81 I. C. C. 414, 422.

§16. Action in Court.

See Action at Law; Courts §11.

CASES 1887-1908

(a) The allowance of a rebate by a common carrier to certain of his customers from the tariff rates charged other customers for precisely similar services is sufficient of itself to show that the rates charged the latter were unreasonable, and that there was unjust discrimination against them, illegal by the common law, which will give the latter a right to recover the amount paid by them in excess of the rates charged the former after deducting the rebates. Cook & Wheeler v. Chicago R. I. & P. R. Co., 3 I. C. R. 383.

(b) Payments of freight charges made by shippers of goods in ignorance that services similar to those received by them were being secretly rendered by the carrier to other shippers for much less compensation, and after the positive assertion of the carrier that no lower rates were received by it, are not voluntary within the rule that voluntary payments cannot be recovered back. Cook & Wheeler v. Chicago R. I. & P. R. Co., 3 I. C. R. 383.

(c) The bona fides of a complaint of discrimination by a carrier cannot be attacked in the circuit court by impeaching the good faith of those who in the first instance induced the Interstate Commission to take action under the provisions of the Interstate Commerce Law for the lodging by any person of complaints with the Commission, and that no complaint shall be dismissed because of the absence of direct damage to the complainant, but that the Commission may institute any inquiry on its own motion, and requiring the Commission, if the law has been violated, to notify the carrier to cease from further violation, and, in case of its refusal, to apply by petition to a circuit court in equity to enforce its order. Interstate Commerce Commission v. Detroit, G. H. & M. R. Co. (C. C. W. D., Mich.) 4 I. C. R. 722.

(d) No recovery for discriminating charges.—A recovery by a shipper from a carrier because of partiality and favoritism to other shippers cannot be had in the absence of a statute, provided the complaining shipper has not been charged more than an reasonable rate. Parsons v. Chicago & Northwestern Ry. Co., 7 I. C. C., App. VCI.

(e) A valid order of the Commission will be enforced although based on wrong sections of a statute.—An order of the Interstate Commerce Commission prohibiting discrimination between places will be enforced where it was proper under all the circumstances, although it was based upon the wrong provision of the Interstate Commerce Act. I. C. C. v. E. Tenn., Vir. & Georgia R. R Co., 8 I. C. C., App. XLIII.

IMPORTANT CASES SINCE 1908

(f) It might not be amiss here to note that the question whether the discrimination by a carrier found to exist can be held in law to be attributable to the parties to the order, and whether they can be required to cancel existing joint rates unless it is removed, can be reviewed by a federal court regardless of any finding by the Commission. Central R. Co., of New Jersey v. United States, 42 Sup. Ct. 80.

ALL OTHER CITATIONS

M. K. & T. Ry. Co. v. The New Era Milling Co., 79 Kan. 435, 448, 100 P. 273; Lilly Co. v. N. P. Ry. Co., (Wash. 1911), 117 P. 401, 402, 403; L. & N. R. R.

Co. v. Ohio Valley Tie Co. (Ky. 1914), 170 S. W. 633, 641, 642; Langhill v. Pennsylvania R. Co., 98 Atl. (Pa. 1916), 873; Mfrs. Ry. Co. v. United States 38 Sup. Ct. 383.

§17. Reparation.

See Supra §15; Refrigeration IV, Reparation.

CASES 1887-1908

(a) The intent of a carrier to discriminate against certain shippers will not render it liable for damages if the act committed is not in fact an illegal discrimination. Parsons v. Chicago & N. W. R. Co. (C. C. App. 8th C.), 5 I. C. R. 95.

(b) The measure of damages for undue discrimination against shippers is the amount of the preference given. Seawell v. Kansas City, Ft. Scott & Memphis R. Co.,, 5 I. C. R. 262.

(c) Complainants allowed to apply for further hearing, where the evidence relating to damages was found to be unsatisfactory and inconclusive. Gallogly v. Cincinnati, H. & D. R. Co., 11 I. C. C. 1.

(d) Reparation allowed complainant where defendants' rates unjustly discriminated against complainant. City Gas Co. v. Baltimore & O. R. Co., 11 I. C. C. 371.

IMPORTANT CASES SINCE 1908

(e) A shipper at common law could recover for discrimination in rates; the carrier being bound to carry at an equal rate for all customers for substantially similar service and under substantially similar conditions. Jeremy Fuel & Grain Co. v. Denver & R. G. R. Co., (Utah 1922), 207 Pac. 155.

ALL OTHER CITATIONS

Pennsylvania R. R. Co. v. International Coal Mining Co., 33 Sup. Ct. 893, 896; 230 U. S. 184; Holland Blow Stave Co. v. A. C. L. R. R. Co., 24 I. C. C. 81, 88; Curry & Whyte Co. v. D. & I. R. Co., 30 I. C. C. 1, 14; Hormel & Co. v. C. M. & St. P. Ry. Co., 30 I. C. C. 98, 102; L. & N. R. R. Co. v. Ohio Valley Tie Co. (Ky. 1914), 170 S. W. 633, 642, 640; Brooks Coal Co. v. Wabash R. R. Co., 39 I. C. C. 426, 432; Divisions of Joint Rates for Transportation of Stone, 41 I. C. C. 330; Hormel & Co. v. C. G. W. R. R., 49 I. C. C. 639; Fogerty & Sons v. N. Y. N. H. & H. R. R., 49 I. C. C. 744 748; Springfield Milling Co. v. C. & N. W. Ry., 51 I. C. C. 216; Western Pacific v. S. P. Ry., 55 I. C. C. 71, 83; Inman-Poulsen Lumber Co. v. S. P. Co., 55 I, C. C. 357, 362; Hormel & Co. v. C. G. W. R. R., 56 I. C. C. 419, 425; Inman-Poulsen Lumber Co. v. S. P., 61 I. C. C. 185, 186; Vicksburg S. & P. Ry. Co. et al. v. Anderson-Tully Co., 41 Sup. Ct. 524; Schlicher v. Director General, 62 I. C. C. 181, 183; Wertheim Coal & Coke Co. v. L. V. R. R. Co., 62 I. C. C. 211, 216; Kerr & Co. v. S. S. Ry. Co., 62 I. C. C. 296, 299, 302; Canton Chamber of Commerce v P. Co.,, 62 I. C. C. 726; Lake Charles Rice Milling Co. v. A. & N. Ry. Co., 63 I. C. C. 18, 40.

§18. Complaint.

See Procedure Before Commission. II.

CASES 1887-1908

(a) A complaint of discrimination in rates otherwise insufficient is not made good by a single allegation of the nonfiling of the rate sheet, evidently inserted only to develop the intent of the defendant. Parsons v. Chicago & N. W. R. Co. (C. C. App. 8th C.), 5 I. C. R. 95.

IMPORTANT CASES SINCE 1908

(b) Where an increase in rates may operate to create or increase a discrimination it is not always necessary to inquire in passing upon the propriety of the increase whether the discrimination be undue; but where the relation has not been changed and where the discrimination, if one previously existed, has not been intensified, that question does not properly arise upon the justification of the increase. The party claiming to rest under such discrimination should file his complaint in due form, thereby bringing to the attention of interested carriers and other parties the exact question for consideration. Grain Rates in Central Freight Association Territory, 28 I. C. C. 549, 557.

(c) With the contention that an issue of discrimination in the sense of preference and prejudice under section 3 of the Act cannot be considered in a proceeding relating to a rate increased since 1910, the Commission is unable to agree. Wickwire Steel Co. v. N. Y. C. & H. R. R. Co., 30 I. C. C. 415, 419.

(d) When the question of freight rates enters into the competition of cities and towns in any respect whatsoever, whether that competition is one for trade, factories or people, complaints, al-

leging unjust discrimination will be entertained by Commission. Transcontinental Commodity Rates, 32 I. C. C. 449, 454.

(e) Where there is a general allegation that the rates in question are unjustly discriminatory, but no attempt to point out the character of the alleged discrimination, nor any prayer for the removal of any discrimination, no question of unjust discrimination under section 2, or of undue preference or prejudice under section 3, is properly raised. Graham & Gila County Traffic Assn. v. A. E. R. R. Co., 40 I. C. C. 573, 574.

(f) Certain carriers contended that no issue of undue prejudice under section 3 is raised by the pleadings. The complainants allege violations of section 3, but fail to designate the individuals, organizations, communities or traffic accorded undue or unreasonable preference or advantage, to the undue prejudice of complaints. The carriers were not put upon notice of the particular violations of law they were called upon to defend. Under these circumstances, and as the Commission construes the record before it, no issue of undue prejudice under section 3 has been properly raised, and the Commission is confined to the questions of the reasonableness of the rates attacked and the alleged violations of section 4. Guildfold Lumber Mfg. Co. v. S. Ry., 53 I. C. C. 669, 670.

(g) Complaint attacking rates on lumber from points in southern territory east of the Mississippi River to Gulf ports, when for export, which became effective due to the cancellation of all export rates by the director general under General Order No. 28, and seeking restoration of the export rates in effect prior to the general order, plus increases since authorized. HELD, evidence submitted by complainant too general in character to warrant a finding that rates attacked are unreasonable, discriminatory, or unduly prejudicial. Southern Pine Asso. v. Director General, as Agent, 73 I. C. C. 731.

(h) Where complaint places in issue alleged undue prejudice against interstate commerce in favor of intrastate commerce, reasonableness of interstate rates must necessarily be determined before determination of issue of undue preference and prejudice can be made, notwithstanding complaint may contain no specific allegation with regard to reasonableness of interstate rates. Atlas Portland Cement Co. v. C., B. & Q. R. R. 81 I. C. C. 1, 3.

(i) Complaint alleged undue preference of certain named points "and other destinations taking relatively lower rates than" points alleged to be prejudiced. Under latter allegation complainant introduced evidence tending to show undue preference of points not specifically named in complaint, without objection by defendants, who introduced counter evidence. Upon oral argument defendants objected to finding of undue preference of such points as beyond issue. HELD: Defendants do not claim to have been put at any disadvantage by failure to specifically name these points in complaint, and objection therefore not sustained. Graham & Gila Counties Traffic Asso. v. A. E. R. R. Co., 81 I. C. C. 134, 135.

(j) At hearing, formal motion by complainant to strike defendant's answer from files on ground that it does not comply with Rule IV (e) of commission's Rules of Practice, which provides that answers denying discrimination, preferences or prejudice, or unreasonableness, should state fully grounds relied upon in making such denial, HELD: Answer filed does not purport to admit existence of discrimination, preference, or prejudice and therefore does not deny that it is unjust, undue, or unreasonable under the act. Answer is a complete specific denial of existence of any discrimination, preference, or prejudice. Motion denied. Koenig Co. v. B. & O. R. R. Co., 81 I. C. C. 683; Ohio Refining Co. v. L. & N. R. R. Co., 81 I. C. C. 688.

ALL OTHER CITATIONS

Mayor and Council of Boston, Ga. v. A. C. L. R. R. Co., 24 I. C. C. 50; Wheeler Lumber Bridge & Supply Co. v. Director General, 59 I. C. C. 6, 10.

DISINFECTING CHARGES

See Facilities and Privileges §5½.

IMPORTANT CASES SINCE 1908

(a) A carrier is entitled to make a reasonable charge for disinfecting cars. Charges collected for cleaning and disinfecting cars carrying livestock for the prevention of foot and mouth disease, not found unreasonable. Hammond, Standish & Co. v. M. C. R. R. Co., 42 I. C. C. 102.

(b) Where a special charge for clean-

ing and disinfecting cars in compliance with government quarantine regulations is in issue, the fact that a similar service had for a time been performed without charge is not of particular value as tending to prove that the cost of the service required is already provided for in the transportation rate. Hammond, Standish & Co. v. M. C. R. R., 42 I. C. C. 102, 104.

(c) Cars can not be disinfected properly unless they are thoroughly cleaned; that is to say, disinfecting a car includes cleaning it in a manner satisfactory to a government inspector. A car cleaned for shipments of live stock is simply one from which the refuse has been removed from the floor space. Natl. Live Stock Exchange v. A. & S. Ry., 50 I. C. C. 578, 582.

DISPUTED CHARGES

See Demurrage §8.

DISTANCE

See Distance Rates; Evidence §20; Long and Short Hauls §4¾; Reasonableness of Rates §10.

DISTANCE RATES

I. ESTABLISHMENT
§1. In general.
§2. Effect.
II. REASONABLENESS.
§3. In general.

CROSS REFERENCES

See Blanket Rates; Differentials; Distance; Evidence §20, §58; Mileage Scale; Percentage System; Reasonableness of Rates §10.

I. ESTABLISHMENT.

§1. In General.

CASES 1887-1908

(a) A prayer in a petition against a railroad company that the company be required to make its rates from one terminus to the town from which the petition proceeds and to other towns in the same section, and also from such terminus to the petitioning town and from thence to such other towns, on a uniform and equal mileage basis, cannot be granted, the Commission having no power to require the adoption of such a basis. LaCrosse etc. v. Chicago etc. R. Co. 2 I. C. R. 9.

(aa) A departure from the rule of equal mileage rates as applied to the several branches of a road is not conclusive that such rates are unlawful; but the burden is on the company making such departure to show its rates to be reasonable when disputed. Northwestern Iowa Grain & Livestock Asso. v. C. & N. W. R., 2 I. C. C. 431, 434.

(b) While it must be conceded that there is an apparent justice in the claim that rates should be apportioned to distance, it is not an absolute and unconditional right from which a departure may not be justified by other considerations. But, if the effect of disregarding distance is to impose burdens for the benefit of others of those who have the natural advantage of location, it is unjust and can not be sanctioned. Imperial Coal Co. v. P. & L. E. R. Co., 2 I. C. C. 436, 443.

(c) It was not the intention of the Act to establish mileage rates; that they are not compulsory, nor always politic; that one effect of such rates would be to put an end to competition as a factor in making rates, and that it would work a revolution in the business of the country, which though it might be beneficial in some instances would be destructive in others. Imperial Coal Co. v. P. & L. E. R. R., 2 I. C. C. 436, 443.

IMPORTANT CASES SINCE 1908

(d) The impossibility of applying a mileage scale to all points in a blanket may be due mainly to the fact that many lines enter it. Wisconsin & Arkansas Lumber Co. v. St. L. I. M. & S. Ry. Co., 33 I. C. C. 33, 45

(e) Line-haul rates vary as to shipments transported by different lines for the same shipper and by the same line for different shippers, although all may pay the same rate; but for this service it is impracticable to grade rates with such nicety as to make them absolutely dependent upon every slight variation in the measure of service rendered. Iron Ore Rate Cases, 41 I. C. C. 181, 200.

(f) In checking out rates under a distance tariff via the routes of different carriers where the short line makes the rate, if intermediate points via the longer lines can not exceed the terminal rate, the result will be a scale of rates via these lines which is substantially below the distance tariff. In other words, the distance tariff would simply be a maximum basis upon which to check out the rates. Western Cement Rates, 48 I. C. C. 201, 224.

(g) In making rates between territories of different rate levels the rate for the entire distance should be calculated under each scale and an average taken. Western Cement Rates, 48 I. C. C. 201, 238.

(h) All distance scales and group rates must of necessity disregard slight inequalities in cost of service and other conditions. Whether or not a distance scale may properly be prescribed is peculiarly a matter to be determined from a consideration of all the circumstances and conditions. Shreveport-Texas Cattle, Lignite, Wood, and Tanbark, 48 I. C. C. 283, 286.

(i) Where distance scales of rates are rigidly applied, all points should be given the benefit of their short-line distance, and it is impracticable where rates are constructed on a distance basis to follow the actual movement of traffic thru alternative channels. Memphis-Southwestern Investigation, 55 I. C. C. 515, 545.

(j) The Commission has said that if it were to start with a clean slate some so-called scientific basis of rate making, based on strict mileages, might be adopted, but as it is the process of rate making and dealing with rate situations must necessarily be one of evolution, not revolution. Kansas Rates, Fares and Charges, 64 I. C. C. 679, 681.

(k) Carriers authorized to cancel schedules proposing increased rates and new rules and regulations applicable to the transportation of live stock to, from and between points in the Southeast, purporting to be in compliance with directions quoted in East. Tennessee Packing Co., 63 I. C. C. 322, and to establish in lieu thereof a distance scale of rates agreed upon by carriers and shippers at the hearing. Live Stock to, from and between Points in the Southeast, 74 I. C. C. 419.

(l) A distance rate is a legal rate only when distance can be determined from a tariff publication with the same definiteness as the quantum of the rate itself. Central Iron & Coal Co. v. Director General, as Agent, 77 I. C. C. 300.

(m) Coal does not ordinarily move at distance rates where there is any substantial regular movement, lower commodity rates being usually provided. Cramp & Sons Co. v. Director General, as Agents, 83 I. C. C. 55, 57.

ALL OTHER CITATIONS

Corporation Commission of Oklahoma v. A. O. & W. R. R. Co., 27 I. C. C. 210; Wharton Steel Co. v. D. L. & W. R. R. Co., 25 I. C. C. 303, 309; In re Advances on Livestock, 25 I. C. C. 63, 65; Superior Commercial Club v. G. N. Ry. Co., 25 I. C. C. 342, 348; Columbia Chamber of Commerce v. S. Ry. Co., 28 I. C. C. 339, 344; Arizona Corporation Commission v. A. T. & S. F. Ry. Co., 28 I. C. C. 428, 430 Wichita Board of Trade v. A. & S. Ry. Co., 29 I. C. C. 376, 379, 380; Royster Guano Co. v. A. C. L. R. R. Co., 31 I. C. C. 458; Lumber to Nashville, Tenn., 31 I. C. C. 186, 188; Tap Line Case 31 I. C. C. 490, 493; Rates on Sugar, 31 I. C. C. 495, 501; Sugar Rates from New Orleans, 32 I. C. C. 606; Atha Tool Co., Unrep Op. A-919; Chamber of Commerce of Freeport, Ill., v. C. M. & St. P. Ry. Co., 33 I. C. C. 673, 680, 681; Bituminous Coal to Mississippi Valley Territory, 39 I. C. C. 378, 384, 385; The Missouri River-Nebraska Cases, 40 I. C. C. 201, 257; Lumber Rates from Helena, Ark., and Other Points, 41 I. C. C. 565, 573. Lehigh Portland Cement Co. v. B. & O. S. W. R. R. Co., 42 I. C. C. 406, 414; Greater Des Moines Committee v. C. St. P. M. & O. Ry. Co., 42 I. C. C. 65, 68, 69; Golden & Co. v. Adams Express Co., 46 I. C. C. 541, 546; C. F. A. Territory Milk and Cream Rates, 46 I. C. C. 601, 618; Minneapolis Traffic Asso. v. C. M. & St. P. Ry., 46 I. C. C. 685, 692; Proposed Increases in New England, 49 I. C. C. 421, 457; W. B. A. Commuters Club v. W. B. & A. E., 61 I. C. C. 302, 303; Hudson Mule Co. v. L. & N. R. R. Co., 63 I. C. C. 6, 13; Natchez Chamber of Commerce v. L. & A. Ry. Co., 63 I. C. C. 288, 298, 299; Akron, C. & Y. Ry. Co. v. United States, 43 Sup Ct. 270; Akron, C. & Y. Ry. Co. v. United States, 282 Fed. 306; Live Stock to, from, and between Points in the Southeast, 74 I. C. C. 419; Brick between Stations on the C. & O. Ry., 77 I. C. C. 416; Arizona Cattle Growers Asso. v. A. T. & S. F. Ry., 77 I. C. C. 617.

§2. Effect.

See Differentials.

IMPORTANT CASES SINCE 1908

(a) Objections made in principle to a distance scale are its lack of flexibility, that it does not take account of commercial conditions, that it makes no allowance for fourth section departures, that

it disregards such factors in rate making as commercial and water competition, giving effect only to the element of distance. Western Cement Rates, 48 I. C. C. 201, 217.

(b) Where only distance rates are in effect between two points and the distance between them is not shown in distance table referred to in connection with the rate, there is no rate legally applicable. Elton Lumber Co .v. N. O. T. & M. R. R., 50 I. C. C. 85, 86.

(c) It is believed, however, that where distance scales of rates are rigidly applied all points should be given the benefit of their short line distance, and that it is impracticable where rates are constructed on a distance basis to follow the actual movement of traffic through alternate channels. Memphis Southwestern Investigation, 55 I. C. C. 515, 545.

(d) The Iowa distance rates, regardless of their measure, can not be lawfully used as a basis for interstate rates. Hormel & Co. v. C. G. W. R. R., 56 I. C. C. 419, 424.

(e) Carriers urged that by express tariff provision the Iowa distance rate was not to be used either by itself or in combination in preference to a specific class or commodity rate; that this restrictive clause had the effect of eliminating the distance rate in cases where another basis exists for making through rates on interstate traffic: and that, therefore, no departure from the fourth section existed on the shipments in question. The tariff naming the distance rate was on file with the Commission and would have been applicable in the absence of the through rates charged. This was a departure from the fourth section protected by Fourth Section Application No. 3786. Departure denied, Heider Mfg. Co. v. B. & O., 58 I. C. C. 185.

(f) In a case it appeared that in the distance tariffs of the defendants, over which the shipments appear to have moved, the port terminals are not specified as stations, nor are they intermediate to any stations on those lines. The rates charged therefore were without tariff authority, and as it appears that there were no other rates applicable, it become necessary to determine what would have been reasonable rates. Condon Baking Co. v. Director General, 60 I. C. C. 149, 150.

(g) Shortest distance applies via a branch line, a portion of which is of narrow gauge construction. Contention that the physical situation is immaterial and that shipper is lawfully entitled to use the shortest distance in the application of distance rates in view of the tariff being unrestricted. HELD, such unrestricted distance rates would clearly be applicable via the branch line, but the charging of such rates on shipments moving via the longer route is not a violation of section 6, but rather involves unreasonableness under section 1. Since the branch line does not constitute a reasonable route the moving of shipments via the longer route does not constitute misrouting. Calivada Fertilizer Co. v. S. P. Co., 73 I. C. C. 496, 501, 502.

(h) A distance rate is a legal rate only when distance can be determined from a tariff publication with the same definiteness as the quantum of the rate itself. Central Iron & Coal Co. v. Director General, as Agent, 77 I. C. C. 300.

(i) The substitution of rates based on mileage for a group adjustment must necessarily result in many instances in different rates to points formerly grouped together and accorded the same rates. Memphis-Southwestern Investigation-Commodity Rates, 77 I. C. C. 473, 497.

(j) In computing distances under distance rates prescribed in instant case the shortest possible routes embracing as a maximum lines or parts of lines of not more than three carriers via existing connections for interchange of traffic should be used, and lines under common ownership and control be considered as a single line. Ft. Worth Cotton Mill v. A. T. & S. F. Ry. Co., 80 I. C. C. 18, 25.

(k) In applying distance rates lines under common ownership or control should be considered as a single line. Oklahoma Corp. Comm. v. A. R. R. 80 I. C. C. 607, 618.

(l) In applying rates under prescribed distance scale, carriers operating under a common ownership, control, or management to be treated as a single line. Arizona Packing Co. v. A. E. R. R. Co., 81 I. C. C., 115, 126, 127.

ALL OTHER CITATIONS

Omaha Grain Exchange v. C. B. & Q. R. R. Co., 26 I. C. C. 553, 556; Sheridan Chamber of Commerce v. C. B. & Q. R.

R. Co., 26 I. C. C. 638, 649; Sunderland Bros. Co. v. C. B. & Q. R. R., 51 I. C. C. 21; Commercial Club of Duluth v. B. F. & L. F. Ry., 53 I. C. C. 85, 90; T. M. Partridge Lumber Co. v. Director General, 55 I. C. C. 29; Memphis-Southwestern Investigation, 55 I. C. C. 515, 534; Caron & Campbell v. Director General, 57 I. C. C. 474, 476; McLean Lumber Co. v. A. G. S. R. R. Co., 58 I. C. C. 421; Rumble & Wensel Co. v. Director General, 64 I. C. C. 199; Constructive Mileage over Poughkeepsie Bridge, 66 I. C. C. 230; Central Iron & Coal Co. v. Director General, as Agent, 77 I. C. C. 300; McLean Lumber Co. v. A. G. S. R. R. Co., Unrep. Op. A-771; Cookston Gas Co. v. C. N. Ry. Co., 81 I. C. C. 128; Apache Cotton Oil & Mfg. Co. v. Director General, as Agent, 81 I. C. C. 569, 575; Shafer Lumber Co. v. Director General, as Agent, 83 I. C. C. 427.

II. REASONABLENEESS.

§3. In General.

See Reasonableness of Rates.

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(a) Complainant attacked rates on merchandise from Chicago, Ill., to La Crosse, Wis., as compared with rates from Chicago to points beyond La Crosse in that the rates from Chicago to La Crosse plus the rates out and rates from LaCrosse to those towns are higher than from Chicago as unreasonable and discriminatory against La Crosse. HELD, the fact that rates of a railroad company are not established on a mileage basis does not necessarily make out their illegality or injustice. A prayer in a petition against a railroad company that the company be required to make its rates from one terminus to the town from which the petition proceeds and to other towns in the same section, and also from such terminus to the petitioning town and from thence to such other towns, on a uniform and equal mileage basis, cannot be granted, the Commission having no power to require the adoption of such a basis. Complaint dismissed. LaCrosse Manufacturers & Jobbers Union v. C. M. & St. P. Ry. 2 I. C. C. 9.

(aa) Through rates are not required to be made on a mileage basis, nor local rates to correspond with the divisions of a joint through rate over the same line, mileage is usually an element of omportance, and due regard to distance proportions should be observed in connection with the other considerations that are material in fixing transportation charges. McMorran & Co. v. G. T. R. R. of Canada, 2 I. C. C. 604, 606.

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(ab) The fact that a mileage scale is an exception to the general basis does not condemn its propriety. Rates and Rules on shipments of Packing House Products, 36 I. C. C. 62, 70.

(b) The two factors in the construction of a distance scale are the terminal charge and the road-haul charge. The terminal charge at best is speculative, and no method has yet been found of exactly computing it. To determine the rate for a given distance, there is added to the assumed terminal charge a certain amount to represent the road haul. Upon the rate of increase in the road-haul charge for successive distances depends the level of the rates. It it be maintained that the policy of carriers should be to afford the widest possible latitude to competition, which is consistent with any return short of actual loss, the proponents of a distance scale will favor a low rate of increase for unit progressions, and this will result in relatively low rates for long distances. Thus, a distance scale directly reflects the purpose of its maker. No one contends that a carrier should be compelled to haul a commodity for less than cost, but an acceptable demonstration of what is the actual cost to a carrier of transporting a given commodity has yet to be determined, and the cost will vary upon different lines. Therefore, as a general rule the reasonableness of rates is still determined according to the usual well-known methods, important among which are rate comparisons, distance, and considerations of traffic density and population. Western Cement Rates, 48 I. C. C. 201, 233, 234.

(c) Shortest distance applies via a branch line, a portion of which is of narrow-gauge construction. Contention that the physcial situation is immaterial and that shipper is lawfully entitled to use the shortest distance in the application of distance rates in view of the tariff being unrestricted. HELD, such unrestricted distance rates would clearly be applicable via the branch line, but the charging of such rates on shipments moving via the longer route is not a violation of section 6, but rather involves unreasonableness under section 1. Since the

branch line does not constitute a reasonable route the moving of shipments via the longer route did not constitute misrouting. Calivade Fertilizer Co. v. S. P. Co., 73 I. C. C. 496, 562.

(d) Rates on brick and related articles taking the same rates from Sioux City and Sargent's Bluffs, Iowa, to points in Nebraska, South Dakota east of Missouri River, and in southern Minnesota found unreasonable and unduly prejudicial as compared with corresponding interstate rates from competing brick-producing points in Iowa, Kansas and Minnesota to the same destination territories. Reasonable maximum distance rates and nonprejudicial relationships of rates prescribed. Ballou Brick Co. v. A. T. & S. F. Ry. Co., 77 I. C. C. 4.

(e) Rates on brick and related articles taking same rates from Mason City, Iowa, to points in Nebraska, in South Dakota east of the Missouri River, and in southern Minnesota found unreasonable and unduly prejudicial as compared with the corresponding rates from competing brick-producing points in Kansas to destinations in Nebraska and from competing brick-producing points in Iowa and southern Minnesota to South Dakota destinations. Reasonable maximum distance rates and nonprejudicial relationships of rates prescribed. Mason City Brick & Tile Co. v. Director General, as Agent, 77 I. C. C. 22.

(f) Upon reconsideration, original report 73 I. C. C. 511, rates on bituminous coal from mines located on branch lines in the Clinton district of Indiana to Brazil, Ind., during Federal control, computed in strict accordance with the actual distance from the mines, found unreasonable to extent they exceeded rates found reasonable in 66 I. C. C. 338, and 68 I. C. C. 435, for distances not in excess of 30 miles. By applying the more equitable method of applying graded rates found reasonable to the actual distances from the mines the distances involved are less than 30 miles. Reparation awarded. Chicago Sewer Pipe Co. v. Director General, as Agent, 77 I. C. C. 171.

(g) Proposed distance rates on brick and related articles, c. l. and l. c. l., resulting in advances and reductions, between points on the C. & O. Ry., west of Gauley, W. Va., found justified in part. Between main-line points on the Cincinnati and Huntington divisions of the C. & O., Gauley, W. Va., to Bellevue, Ky., inclusive, and to and from Ironton, Ohio, proposed rates found justified only to basis of c. f. a. territory scale prescribed in National Paving Brick Mfrs. Asso., 68 I. C. C. 213. Brick between Stations on C. & O. Ry., 77 I. C. C. 416.

(h) Order of State commission in connection with intrastate distance rates provided for treating Southern Pacific and Arizona Eastern railroads as one line for rate-making purposes, but carrier in publishing scales refused to comply with this requirement. HELD: Fact that director general did not see fit to treat these carriers as a single line for rate-making purposes does not prove unreasonableness, as director general was not subject to orders of State regulatory bodies. Northern Pac. Ry. Co., 250 U. S., 135. Southern Arizona Traffic Asso. v. Director General, as Agent, 81 I. C. C. 609.

ALL OTHER CITATIONS

Dixie Dairymen's Assn. v. Y. & M. V. R. R. Co., 27 I. C. C. 618; Iowa Grain Rates, 28 I. C. C. 354; Boston Chamber of Commerce v. A. T. & S. F. Ry. Co., 28 I. C. C. 230, 232; Page Milling Co. v. N. & W. Ry. Co., 30 I. C. C. 605, 608; Curry & Whyte Co. v. D. & I. R. R. Co., 32 I. C. C. 162; Iowa State Board of R. R. Com. m'rs v. A. E. R. R., 34 I. C. C. 379; Des Moines Commodity Rates, 36 I. C. C. 538; Oklahoma Cottonseed Crusher's Assn. v. M. K. & T. Ry. Co., 39 I. C. C. 497; Slane Glass Co. v. V. & S. W. Ry. Co., 39 I. C. C. 586, 587; Williams Stave Co. v. M. L. & T. R. R. & S. S. Co., 40 I. C. C. 165; Oklahoma Cottonseed Crushers Assn. v. A. T. & S. F. Ry., 42 I. C. C. 571; Rice from Texas and Louisiana, No. 2, 43 I. C. C. 29, 32; City of Memphis v. C. R. I. & P. Ry. Co., 43 I. C. C. 121, 126; Milk and Cream Investigation, 43 I. C. C. 375, 377; Paducah Board of Trade v. N. C. & St. L. Ry., 45 I. C. C. 359, 360; Minneapolis Traffic Asso. v. C. M. & St. P. Ry., 46 I. C. C. 685, 692; Territory Milk and Cream Rates, 46 I. C. C. 601, 617; Muskogee Produce Co. v. St. L. & S. F. R. R., 47 I. C. C. 239; Cement to Montana (No. 2), 49 I. C. C. 597; Magnolia Cotton Oil Co. v. A. T. & S. F. Ry., 49 I. C. C. 739; State of Maryland v. B. C. & A. Ry., 49 I. C. C. 681, 684, 690; Royster Guano Co. v. A. C. L. R. R., 50 I. C. C. 34; Royster Guano Co. v.

A. C. L. R. R., 50 I. C. C. 34; Pierpont Mfg. Co. v. S. Ry., 50 I. C. C. 81; Mills & Co. v. St. L. & S. F. Ry., 50 I. C. C. 260; Rieck Co. v. B. & O. R. R., 50 I. C. C. 298; Mesilla Valley Produce Exchange v. A. T. & S. F. Ry., 50 I. C. C. 483, 485, 486; Sunderland Bros. Co. v. C. B. & Q. R. R., 51 I. C. C. 21; Commercial Club of Duluth v. B. F. & L. F. Ry., 53 I. C. C. 85; Illinois Coal Traffic Bureau v. Director General, 57 I. C. C. 426; Memphis-Southwestern Investigation, 55 I. C. C. 515, 532, 533, 541, 545, 551, 553, 555, 573, 579; Sulzberger & Sons Co. v. C. R. I. & P. Ry., 5 I. C. C. 691; Hormel & Co. v. C. G. W. R. R., 56 I. C. C. 419, 424; Consolidated Classification Case, 54 I. C. C. 53; Arkansas Jobbers & Mfrs. Asso. v. Director General, 57 I. C. C. 231, 237; Caron & Cambell v. Director General, as Agent, 57 I. C. C. 474; Corporation Commission of N. C. v. Director General, 57 I. C. C. 523, 535, 536; Oklahoma Producing & Refining Corp. v. Director General, as Agent, 58 I. C. C. 193; Natchez Chamber of Commerce v. A. H. T. Ry. Co., 58 I. C. C. 310; McLean Lumber Co. v. A. G. S. R. R. Co., 58 I. C. C. 421; Monroe Chamber of Commerce v. A. & S. Ry. Co., 58 I. C. C. 421; Western Petroleum Refiners Asso. v. Director General, 59 I. C. C. 38, 41; Lehigh Portland Cement Co. v. Director General, 59 I. C. C. 51, 56; Iowa-Missouri grain rates, 59 I. C. C. 168; St. Bernard Cypress Co. v. Director General, 59 I. C. C. 232; Seaboard By Product Coke Co. v. Director General, 58 I. C. C. 177; Leo-Greenwald Vinegar Co. v. Director General, as Agent, 59 I. C. C. 635, 638; Ozark Refining Co. v. Director General, as Agent, 59 I. C. C. 720; Kurth Malting Co. v. Director General, 60 I. C. C. 114; Saw Logs between Michigan and Wisconsin points, 60 I. C. C. 350; Empire Cotton Oil Co. v. Director General, 60 I. C. C. 505; Grand Rapids Plaster Co. v. Director General, 62 I. C. C. 237; Natchez Chamber of Commerce v. L. & A., 62 I. C. C. 464; Indianapolis Chamber of Commerce v. C. C. C. & St. L. Ry. Co., 60 I. C. C. 67, 76; Electric Coal Co. v. Director Gen'l, 60 I. C. C. 683, 685, Birdsboro Stone Co. v. P. R. R., 61 I. C. C. 46, 657; Fuelwood, pulp-wood and wood bolts between North Pacific coast points, 61 I. C. C. 159; Wood rates between North Pacific Coast Poast, 61 I. C. C. 159; Articles from Galveston and Houston to Louisiana, 61 I. C. C. 270; North Vernon Lumber Co. v. I. C. R. R. Co., 61 I. C. C. 355; Shreveport Producing and Refining Corp. v. Director General, as Agent, 62 I. C. C. 123; Swift & Co. v. Director General, as Agent 62 I. C. C. 166; Wilson & Co. v. Director General, as Agent, 62 I. C. C. 171; Seaboard By-Product Coke Co. v. Director General, as Agent, 62 I. C. C. 317, 326, 330; Capital Ice & Storage Co. v. St. L. S. F. Ry. Co., 62 I. C. C. 677; Hudson Mule Co. v. L. & N. R. R. Co., 63 I. C. C. 6, 13; Lake Charles Rice Milling Co. v. A. & N. Ry. Co., 63 I. C. C. 18, 40, 41; Orange Rice Mill Co. v. Director General, as Agent, 63 I. C. C. 133; Natchez Chamber of Commerce v. L. & A. Ry. Co., 63 I. C. C. 288, 298, 299; East Tennessee Packing Co. v. Director General, as Agent, 63 I. C. C. 322; Rumble & Wensel Co. v. Director General, as Agent, 64 I. C. C. 199; United Iron Works v. Director General, as Agent, 64 I. C. C. 601; Norris v. T. & P. Ry. Co., 64 I. C. C. 665; Kansas Rates, Fares and Charges, 64 I. C. C. 679, 681; Meridian Rate Case, 66 I. C. C. 179; Massachusetts Oil Refining Co. v. B. & A. R. R., 66 I. C. C. 535; Alter v. Director General, as Agent, 66 I. C. C. 619; Cocke Live Stock Co. v. B., S. L. & W. Ry. Co., 68 I. C. C. 130; Farris Hardwood Lumber Co. v. Director General, as Agent, 68 I. C. C. 181; Holmes & Hallowell Co. v. G. N. Ry. Co., 69 I. C. C. 11; Rosenberg Bros. & Co. v. Director General, as Agent, 69 I. C. C. 103; Tice v. Director General, as Agent, 69 I. C. C. 140; Green Rock Coal Co. v. Director General, as Agent, 69 I. C. C. 175; Oklahoma Corporation Commission v. A. & S. Ry. Co., 69 I. C. C. 207; Lake Charles Rice Milling Co. v. L. W. R. R. Co., 69 I. C. C. 509, 511, 512; Western Cement Rates, 59 I. C. C. 644; Empire Cotton Oil Co. v. M., A. & S. R. R. Co., 69 I. C. C. 729; Hildebrand Co. v. Director General, as Agent, 69 I. C. C. 740; Fuelwood, Pulpwood and Wood Bolts between North Pacific Coast Points, 69 I. C. C. 7; Lehigh Valley Coal Co. v. Director General, 69 I. C. C. 535; South Dakota Railroad Commissioners v. Director General, 73 I. C. C. 347; Isgregg & Connerly v. Director General, 74 I. C. 285; Fertilizer from Birmingham, Ala., and group to Montezuma, 74 I. C. C. 657; Fruit Growers Express v. Director General, 74 I. C. C. 701; Klamuth County Chamber of Commerce v. S. P. Co., 74 I. C. C. 207, 219, 220; Live Stock to, from and between points in the Southeast, 74 I. C. C. 419; Empire

Cotton Oil Co. v. A. C. L. R. R. Co., 74 I. C. C. 479; Southern Manganese Corp. v. Director General, as Agent, 74 I. C. C. 533; Wilson & Co. v. Director General, as Agent, 74 I. C. C. 555; Morris & Co. v. Director General as Agent, 74 I. C. C. 630; Fruit Growers Express v. Director General, as Agent, 74 I. C. C. 701; Coppes Bros. & Zook v. Director General, as Agent, 74 I. C. C. 754; Maricopa County Highway Commission v. A. E. R. R. Co., 78 I. C. C. 33; Cradock Manufacturing Co. v. Norfolk Southern R. R., 78 I. C. C. 366; Gulf Refining Co. v. Director General, 78 I. C. C. 347; Lake Charles Rice Milling Co. v. L. W. R. R. Co., 78 I. C. C. 709; Fort Worth Cotton Oil Meal v. A. T. & S. F. Ry., 80 I. C. C. 18; Interstate Cotton Oil Refining Co. v. St. L. S. W. R. Co., 81 I. C. C. 67; Wilson & Company v. Director General, 81 I. C. C. 79; C. L. S. & S. B. Ry. Co. v. I. C. R. R. Co., 74 I. C. C. 609, 610; Ballou Brick Co. v. A. T. & S. F. Ry. Co., 77 I. C. C. 4; Memphis-Southwestern Investigation-Commodity Rates, 77 I. C. C. 473; Iola Cement Mills Traffic Asso. Director General, as Agent, 77 I. C. C. 745; Fort Worth Cotton Oil Mill v. A. T. & S. F. Ry. Co., 80 I. C. C. 18, 25; Hanford Produce Co. v. Director General, as Agent 80 I. C. C. 29; Forbes Timber Co. v. Director General, as Agent, 80 I. C. C. 36; Fort Worth Freight Bureau v. Director General, as Agent, 80 I. C. C. 237, 243, 244; Oklahoma Clay Products Asso. v. A. T. & S. F. Ry. Co., 80 I. C. C. 278; Arthur v. Director General, as Agent, 80 I. C. C. 707; Dave Levite v. Director General, 81 I. C. C. 219; Crookston Gas Co. v. G. N. Ry. Co., 81 I. C. C. 128; National Tube Co. v. Director General, as Agent, 81 I. C. C. 369; Apache Cotton Oil & Mfg. Co. v. Director General, as Agent, 81 I. C. C. 569, 575; E. A. Tovrea & Co. v. Director General, 81 I. C. C. 583; Inland Empire Paper Co. v. Spokane International Ry., 81 I. C. C. 603; Mileage Commodity Rates on Eggs, 83 I. C. C. 1; Apache Cotton Oil & Mfg. Co. v. Director General, 81 I. C. C. 569. Tidal-Western Oil Corp. v. W. F. & N. W. Ry., 83 I. C. C. 51; Cramp & Sons Co. v. Director General, as Agent, 83 I. C. C. 55; Shafer Lumber Co. v. Director General, as Agent, 83 I. C. C. 427; Eastern Texas Electric Co.. v. Director General, as Agent, 83 I. C. C. 518; Palmer v. M. P. R. R., 87 I. C. C. 622; Blackshear Mfg. Co. v. A. C. L. R. R., 87 I. C. C. 654; Jonesboro Freight Bureau v. H. P., & W. T. Ry., 87 I. C. C. 699; American Sand & Gravel Co. v. C. & N. W. Ry., 88 I. C. C. 1; Atlas Portland Cement Co. v. C. B. & Q. R. R., 88 I. C. C. 27; Mason City Brick & Tile Co. v. Director General, 88 I. C. C. 37; Prairie Pipe Line Co. v. Director General, 88 I. C. C. 167; Pulpwood Company v. Director General, 88 I. C. C. 196; Amalgamated Sugar Co. v. Director General, 88 I. C. C. 233; Scheidenhemn Co. v. C. B. & Q. R. R., 88 I. C. C. 319; Scheidenhelm Co. v. C. M. & St. P. Ry., 88 I. C. C. 321; Thompson Wells Lumber Co. v. Director General, 88 I. C. C. 395; Moline Ice Co. v. Director General, 88 I. C. C. 444; Parkers Burg Rig & Reel Co. v. T. & P. Ry., 88 I. C. C. 459; Swift & Company v. T. & P. Ry., 88 I. C. C. 610; State of Arizona v. A. E. R. R., 88 I. C. C. 679; Kansas City Chamber of Commerce v. A. & W. Ry., 89 I. C. C. 22; Southern Cotton Oil Co. v. Director General, 89 I. C. C. 154.

DIVISIONS

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I. CONTROL AND REGULATIONS

See Control and Regulation.

§1. Jurisdiction of Commission.

See Interstate Commerce Commission I; Tap Lines §2.

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(a) The statute provides that the Commission shall in the first instance establish the through route and joint rate, and shall only fix the divisions of that rate in case the carriers themselves have failed to agree after the same has been established. Cattle Raisers Asso. of Texas v. G. H. & S. A. Ry., 12 I. C. C. 20, 23.

(aa) Divisions of through rates, Congress gave Commission full power over. McRae Terminal Ry. v. Southern Ry. Co. 12 I. C. C. 270.

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(ab) The Commission cannot prescribe divisions of a joint rate until it has been fixed in amount and carriers have failed to agree. Kansas City Missouri River Nav. Co. v. C. & O. Ry. Co., 34 I. C. C. 67, 72.

(b) In dealing with the question of divisions it is the duty of the Commission to take into consideration all circumstances, conditions and equities affecting either group of the contending carriers in so far as necessary to enable it to arrive at a fair and reasonable adjustment. Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co., 35 I. C. C. 460, 465.

(c) The Commission may fix divisions when carrier is shipper or is owned by shipper so that divisions might be the means of indirectly refusing through charges or effecting discriminations, and may require their publication. Rates on Railroad Fuel and Other Coal, 36 I. C. C. 1, 11, 13.

(d) The Commission has the right, where one of the carriers is a shipper, to inquire into the reasonableness of divisions received by it and fix proper ones. Rates on Railroad Fuel and Other Coal, 36 I. C. C. 1, 13.

(e) The Commission can not act upon the theory that a controversy among carriers regarding divisions does not affect protestants or shippers. Switching Absorptions, 47 I. C. C. 583, 586.

(f) The phrase "or otherwise" is frequently used not only in statutes but in contracts, deeds, and other legal documents. Its function is to broaden the context and to embrace general matters of kindred import not included in the specific language preceding it. It may rarely, if ever, be ignored as having no meaning or influence in connection with the text in which it appears. As used in section 15, the phrase "or otherwise" seems very clearly to qualify the words immediately preceding, namely, "in obedience to such order of the Commission;" and the meaning that seems most easily and naturally to flow from the words is that they were intended by the Congress to have the effect of extending the provisions of the clause not only to joint rates and fares established by the carriers "in obedience to such order of the Commission," but to joint rates established by them "otherwise," that is to say, volutarily. Rearranging in direct sequence the real thought embodied in the language, the provision would seem to relate to disagreements among carriers respecting the apportionment or division of their joint rates, fares, or charges established "in obedience to such order of the Commission, or otherwise;" and "otherwise" would appear necessarily to refer to and embrace joint rates, fares or charges established otherwise than "in obedience to such order of the Commission," that is to say, by agreement among themselves or voluntarily. Morgantown & Kingwood Divisions, 49 I. C. C. 540, 545.

(g) The Commission may, upon complaint by one carrier against another, lawfully determine the division of compensation that each is entitled to receive out of their voluntarily established joint rates in effect over a through route operated by the two carriers. Conclusions announced in original report herein, 40 I. C. C. 509, reversed. Morgantown & Kingwood Divisions, 49 I. C. C. 540, 546.

(h) Congress, recognizing that carriers occasionally fall into controversy as well with respect to the division of their voluntary rates as with respect to the apportionment of their compelled rates, intended that the Commission's jurisdiction should extend over the division of both classes of rates.. The Commission has ample authority to hear and determine such controversies. Morgantown & Kingwood Division, 49 I. C. C. 540, 546.

(i) Not only is a remedy provided in the Act against an unreasonable demand in the apportionment of a joint rate established under the Commission's order, but in voluntarily opening through routes and making joint rates applicable over them "those entitled thereto," namely, a participating line like this complainant, may insist that "reasonable compensation" shall be paid to it out of the joint rates. Not only the Commission's

order must be obeyed but the statute also. Morgantown & Kingwood Divisions, 49 I. C. C. 549.

(j) Although the complaint contained no request for fixation of divisions, where parties agreed at hearing and offered testimony on the question, and were offered opportunity to make the record as complete as possible, the Commission held full hearing was had as required by the act. Lodwick-White Coal Co. v. Director General, 58 I. C. C. 530, 536.

(k) Under the Interstate Commerce Act prior to its amendment by the Transportation Act, 1920, the Commission could require the adjustment of divisions prior to filing of complaint, but under Paragraph (6), which was added to section 15 by the Transportation Act, it can require adjustment of divisions from the time the complaint was filed. P. & W. V. Ry. Co. v. P. & L. E. R. R. Co., 61 I. C. C. 272, 275, 276.

(l) A petition was filed March 24, 1920, subsequent to taking effect of amendments to act made by the Transportation Act, 1920, as to prescribing of divisions between carriers. Under the provisions of paragraph 6, section 15 of the amended act, the Commission can require adjustment of divisions only for the period subsequent to the filing of the petition. Diamond Alkali Co. v. F. P. & E., 62 I. C. C. 161, 165.

(m) With respect to divisions acruing to carriers out of joint rates with Canadian connections, the Commission's jurisdiction inheres only in so far as the transportation takes place within the United States. New England Divisions, 62 I. C. C. 513, 516.

(n) Under provisions of paragraph 6 section 15 of the Act the Commission is authorized in appropriate cases, after a full hearing, to prescribe by order the just, reasonable and equitable divisions of joint rates, fares or charges to be received by the several carriers. New England divisions, 62 I. C. C. 513, 560.

(o) The remedial provisions of paragraph 6 section 15 of the act offer to the carrier a source of relief to which it may resort in the event of a failure to observe the substantive provision of section 1 paragraph 4, or in the event of a failure to agree upon divisions and indicate the facts and circumstances which the Commission intended should be considered in determining what is just, reasonable and equitable. New England divisions, 62 I. C. C. 513, 562.

(p) The public interest does not demand nor does the statute either expressly or by reasonable implication provide that the Commission may prescribe increased divisions to be received by certain carriers merely because other carriers participating in the joint rates, fares or charges, considered as a whole, have not failed in so great a degree to earn a fair return upon the value of their property devoted to the public service, although this is one factor which may be taken into consideration. New England Divisions, 62 I. C. C. 513, 562.

(q) The Commission is authorized to prescribe only just, reasonable, and equitable divisions "to be received by the several carriers," Full hearing and competent and relevant evidence are a prerequisite and any attempt to prescribe a blanket increase in the face of admissions and uncontradicted evidence that certain divisions are just, reasonable, and equitable would override the plain mandate of law. Divisions, 62 I. C. C. 513, 516, 560, 561, 565.

(r) The Commission is without jurisdiction to require adjustments of divisions for the period prior to the filing of complaint. Pittsburgh & West Va. Ry. Co. v. P. & L. E. R. R. Co., 61 I. C. C. 272; East Jersey R. R. & Term. Co. v. C. R. R. Co. of N. J., 63 I. C. C. 80, 85.

(s) The Commission is bound under the statute to determine whether divisions properly in issue justly, reasonably and equitably compensate each carrier, relatively and per se, for the services it performs in the joint haul under joint rates, fares and charges. Its determination must be predicated upon a consideration of all the various pertinent factors including the ability or disability of the several carriers to adequately, economically, and efficiently meet their common carrier obligations. In the final analysis the just measure of divisions is the reasonable and equitable share of the revenue earned under the rates to be divided which each carrier should receive. New England divisions, 66 I. C. C. 196, 197.

(t) Strategic advantage was not a factor to which the Commission could give weight in fixing divisions, and it was to avoid the unduly prejudicial effect of such strategic advantages upon the weaker carriers and the resulting impairment of transportation facilities upon which a substantial portion of the country depends that the Commission's pow-

er over divisions was clarified and strengthened. New England Divisions, 66 I. C. C. 196, 198.

(u) In a case involving divisions, the Commission may, when the public interest so requires, grant immediate relief subject to later readjustments, as it has done in cases involving general increases or reductions in rates. New England Divisions 66 I. C. C. 196, 204.

(v) And of course that portion of the act which confers upon the Commission jurisdiction to establish just divisions of joint rates refers only to divisions between the carriers subject to this act. Keokuk & Hamilton Bridge Co. v. Wabash Ry., 66 I. C. C. 545, 548.

(w) That a carrier deducts an amount greater than is paid by it for the use of a bridge before dividing with its connections a joint rate does not of itself confer upon the Commission jurisdiction to prescribe the amount to be paid for that use. Keokuk & Hamilton Bridge Co. v. Wabash Ry., 66 I. C. C. 545, 548.

(x) Under the amended act, the Commission may prescribe just, reasonable and equitable divisions for the future. Wichita Northwestern Ry. Co. v. C. R. I. & P. Ry., 69 I. C. C. 68.

(y) It is an intent clearly disclosed that the Commission shall keep continually in view the public interest, the public need for a transportation system strong in all its parts, and the consequent necessity that carriers shall receive compensation fairly apportioned to the amount and character of the service which they perform and adequate to enable them to perform it efficiently. Freeman & Boettcher v. A. T. & S. F. Ry., 73 I. C. C. 178, 187.

(z) Under the provisions of paragraph (6) of section 15 of the Act, the scope of the Commission's powers and duties in prescribing divisions of joint rates between carriers has been amplified. Kansas City, Mexico & Orient Division, 73 I. C. C. 319, 322.

(aa) Antecedent to the question of prescribing divisions must be determined the question of whether or not a complainant is a party to joint rates. New York Dock Ry. v. B. & L. R. R. Co., 73 I. C. C. 656, 660.

(bb) The New York Dock Ry. filed with the Commission concurrences in tariffs naming rates applicable to or from its terminals, which, in effect, give assent to the publication of rate schedules in which it is shown as a participating carrier. In instances where such railway is not named in the tariffs it is not a party to joint rates published therein, in view of the specific requirement of the law as set forth in paragraph (4), section 6, of the act. Accordingly divisions thereof to be received by such railway can not be prescribed. New York Ry. v. B. & O. R. R. Co., 73 I. C. C. 656, 662.

(cc) Paragraph (3) of section 3 of the act, among other things, requires carriers to "afford all reasonable, proper and equal facilities for interchange of traffic between their respective lines." Miller Paper Co. v. P. R. R. Co., 80 I. C. C. 316.

(dd) Paragraph (4) of section 3 of the act, in substance, authorizes the commission when found "to be in public interest and practicable," to require joint use of terminals at reasonable compensation to carrier owning such terminals. Authority of Commission under this paragraph is dependent upon showing of public interest. Miller Paper Co. v. P. R. R. Co., 80 I. C. C. 317.

(dda) Paragraph (6) of section 15 of the act deals with authority of the commission to prescribe just, reasonable, and equitable divisions of joint rates, fares, and charges. It must be conceded that on company fuel there are no joint rates to be divided and that therefore this section has no application to this species of traffic. New Mexico Central Ry. Co. v. A. T. & S. F. Ry. Co., 81 I. C. C. 718, 721.

(ddb) The commission has power to require retroactive adjustment of divisions only where joint rates in question were established "pursuant to a finding or order of the commission." Wichita Northwestern Ry. Co., 81 I. C. C., 513. U. S. War Department v. A. & S. Ry. Co., 83 I. C. C., 742, 752.

(ddc) While section 208 b. clearly contemplates the continuance of the divisional agreements that were in effect upon the termination of federal control until changed as therein specified, the Commission found prior to the passage of the transportation act, 1920, that it has no authority to enforce agreements respecting divisions and that act did not change its jurisdiction in this respect or authorize it to enforce the requirements of 208 b. Hampton & Branchville R. R. & L. Co., 88 I. C. C. 77, 84.

(ee) The validity of an order of the Interstate Commerce Commission fixing

rates or division of joint rates is not affected by the fact that it is provisional and subject to change after further consideration. Akron, C. & Y. Ry. Co., v. United States, 282 Fed. 306.

(ff) An order of the Interstate Commerce Commission prescribing division of joint rates between all railroads operating to the west of the Hudson river and connecting New England lines, as groups, without determining the divisions as between individual carriers, held within the comprehensive discretionary powers given the Commission by Transportation Act 1920, §418. Akron, C. & Y. Ry. Co. v. United States, 282 Fed. 306.

(gg) An order of the Interstate Commerce Commission, fixing or prescribing the division of joint rates, based on finding of fact, will not be set aside by the courts unless it is in violation of the Constitution, or does not conform to the statutory authority vested in the Commission, or it is not supported by evidence. Akron, C. & Y. Ry. Co. v. United States, 282 Fed. 306.

(hh) Transportation Act Feb. 28, 1920, discloses no intention to vest the Interstate Commerce Commission with power to relieve the necessities of weaker lines by imposing the burden on connecting lines, simply because they are able to bear it, and exhibits a contrary purpose in section 422, adding section 15a to the Interstate Commerce Act, requiring a portion of excess earnings to be paid into a fund to be loaned to weaker roads. Abilene & S. Ry. Co. v. United States, 288 Fed. 102.

(ii) The provision of Interstate Commerce Act §15 (6), as amended by Act Feb. 28, 1920, that, in prescribing and determining the divisions of joint rates, fares and charges, the Interstate Commerce Commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenues required, etc., must be construed as not limited to the paragraph relating to authority to prescribe divisions of joint rates, but to the entire section, so that some of the elements therein mentioned, which are immaterial on the division of the rates, are not to be considered on that issue, but on issues arising under other paragraphs. Abilene & S. Ry. Co. v. United States, 288 Fed. 102.

(jj) Under Interstate Commerce Act §1, par. 4 (Comp. St. §8563), it is the duty of participating carriers to establish by agreement a just division between them of the joint rates, and the law presumes that this obligation has been complied with and that the division by the carriers is just, and the Interstate Commerce Commission is without power under section 15 (6) of the act, as amended by Transportation Act, Feb. 28, 1920, to prescribe new divisions, unless, after full hearing, it is of the opinion on the evidence adduced that the existing divisions are unjust, and unless in the record presented there is some evidence to sustain such conclusion, its order establishing new divisions is nonenforceable. Abilene & S. Ry. Co. v. United States, 288 Fed. 102.

(kk) Where the evidence was made to support an order of the Interstate Commerce Commission dividing joint rates between carriers, it is beyond the province of the Supreme Court to consider the weight of evidence or the wisdom of the order made. Akron, C. & Y. Ry Co. v. United States, 43 Sup. Ct. 270.

(ll) Under the Interstate Commerce Act, §15 (6), as amended by Transportation Act Feb. 28, 1920, §418, authorizing the Interstate Commerce Commission, after full hearing, to prescribe proper divisions of joint rates, where voluminous evidence was received, and carriers had ample time and opportunity to introduce all evidence desired, a provisional order increasing the share of New England roads in joint rates pending a comprehensive revision was not void, as not made after full hearing, as it is the character of the hearing, and not of the order entered, that determines whether a hearing was full. Akron, C. & Y. Ry. Co. v. United States, 43 Sup. Ct. 270.

(mm) Within the Interstate Commerce Act, §15 (6), as amended by Transportation Act Feb. 28, 1920, §418, authorizing the Interstate Commerce Commission, after full hearing, to prescribe proper divisions of joint rates, a "full hearing" is one in which opportunity is afforded to all parties to make, by evidence and argument, a showing fairly adequate to establish the propriety or impropriety from the standpoint of justice and law of the step asked to be taken. Akron, C. & Y. Ry. Co. v. United Stats, 43 Sup. Ct. 270.

(nn) An order made by the Interstate Commerce Commission, after affording time and opportunity to carriers to in-

troduce any and all evidence desired, increasing the share of New England roads in through rates, pending a comprehensive revision of divisions of through rates, was not obnoxious to the due process clause, because provisional. Akron, C. & Y. Ry. Co. v. United States, 43 Sup. Ct. 270.

(oo) Under Interstate Commerce Act, §15 (6), as amended by Transportation Act Feb. 28, 1920, §418, authorizing the Interstate Commerce Commission to prescribe proper divisions of joint rates, the duty imposed on the Commission does not extend beyond the need for action, and if the real controversy concerns the division of the joint rate between carriers east of the Hudson river and those west thereof, there is nothing in the law preventing the Commission from letting the carriers of each section apportion their respective shares among themselves; and, moreover, an order directing that the shares of New England roads should be increased 15 per cent, and that the balance of the joint rate should be divided among the lines west of the Hudson river in the same proportions as then existing, or otherwise as they might agree, sufficiently prescribed the subdivisions as well as the primary divisions, of the joint rates. Akron, C. & Y. Ry. Co. v. United States, 43 Sup. Ct. 270.

(pp) An order of the Interstate Commerce Commission, providing that the share of New England roads in joint rates on freight moving between New England and the rest of the United States should be increased 15 per cent, and that the balance of the joint rate should be divided among the other carriers in the existing proportions, or otherwise as they might agree, or as might be determined by the Commission on application, did not, as claimed, show failure on the part of the Commission to consider the several factors which Transportation Act Feb. 28, 1920, §418, amending Interstate Commerce Act §15 (6), requires the Commission to take into consideration in making divisions of joint rates. Akron, C. & Y. Ry. Co. v. United States, 43 Sup. Ct. 270.

(qq) An order of the Interstate Commerce Commission, fixing rates or apportioning joint rates, between carriers, if unsupported by evidence, is invalid. Akron, C. & Y. Ry. Co. v. United States, 43 Sup. Ct. 270.

(rr) An order of the Interstate Commerce Commission, granting to New England railroads a larger share of the through rates on freight moving between New England and the rest of the United States, in order to meet in part the greater need of New England lines for increased revenues, was not void, as made to accomplish an unauthorized purpose, since, while Transportation Act Feb. 28, 1920, §418, amending Interstate Commerce Act, §15 (6), is in part designed to remove doubts as to the Commission's power to act on its own initiative, that act also seeks to insure adequate transportation service, and to that end to secure a fair return on capital devoted to such service, without permitting an unreasonably large return to prosperous roads. Akron, C. & Y. Ry. Co. v. United States, 43 Sup. Ct. 270.

(ss) The Transportation Act Feb. 28, 1920, §418, amending Interstate Commerce Act, §15 (6), construed as authorizing apportionment by the Interstate Commerce Commission of a joint rate on the basis of the greater needs of particular carriers, is not unconstitutional, as depriving carriers of their just share of the joint rate, as it is for the Commission to determine what is just, reasonable and equitable, and it may be just to give a prosperous carrier a smaller proportion of an increased rate than of the original rate. Akron, C. & Y. Ry. Co. v. United States, 43 Sup. Ct. 270.

(tt) Where the Interstate Commerce Commission, at all times having the special needs of New England roads before it, granted an increase in rates to all roads in the Eastern group, and thereafter made an order increasing the share of New England roads in joint rates on traffic between New England and other parts of the country, the order may properly be deemed a supplement to, or modification of, the order granting the increase, and the fact that two orders, instead of one, were made, has no legal significance. Akron, C. & Y. Ry. Co. v. United States, 43 Sup. Ct. 270.

(uu) Under the Transportation Act Feb. 28, 1920, §418, amending Interstate Commerce Act, §15 (6), and authorizing the Interstate Commerce Commission to prescribe proper divisions of joint rates the Commission is authorized to base finding in respect to each division of each rate of every carrier in a particular group upon evidence typical in character and ample in quantity, as it must be assumed that Congress knew of the practice of the Commission to adjudicate

comprehensively on substantially all rates in a large territory, and knew that to require specific evidence and separate discussion respecting each division of each rate would be tantamount to a denial of relief. Akron, C. & Y. Ry. Co. v. United States, 43 Sup. Ct. 270.

ALL OTHER CITATIONS

Chamber of Commerce of Milwaukee v. C. R. I. & P. Ry. Co., 15 I. C. C. 460, 467; Farmer's Co-operative and Educational Union v. G. N. Ry. Co., 17 I. C. C. 406, 412; Germain Co. v. N. O. & N. E. R. R. Co., 17 I. C. C. 22, 25; Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co., 21 I. C. C. 304, 312, 313; Beekman Lumber Co. v. M. C. R. R. Co., 21 I. C. C. 276, 278; In Re Divisions of Joint Rates on Coal, 22 I. C. C. 51, 53; In Re Wharfage Charges at Galveston, 23 I. C. C. 535, 546; Reno Grocery Co. v. S. P. Co., 23 I. C. C. 400; Wichita Board of Trade v. A. T. & S. F. Ry. Co., 25 I. C. C. 625, 631; Commercial Club of Duluth v. B. & O. R. R. Co., 27 I. C. C. 639, 656; Board of R. R. Commissioners of Montana v. D. & R. G. R. R. Co., 27 I. C. C. 522, 524; Louisville Board of Trade v. I. C. & S. T. Co., 27 I. C. C. 499, 506; Topeka Traffic Ass'n. v. A. & V. Ry. Co., 27 I. C. C. 428, 436; Aransas Pass Channel & Dock Co. v. G. H. & S. A. Ry. Co., 27 I. C. C. 403, 416; In re Cancellation of Joint Rates on the C. Z. & G. R. R., 27 I. C. C. 353, 364, 365; In re Coal Rates to Milwaukee and other Wisconsin Points, 27 I. C. C. 223, 229; Oklahoma Grain Rates, 28 I. C. C. 462, 466; L. & P. Ry. Co. v. United States, 209 Fed. 244, 254; Rates on Lumber and Other Forest Products, 30 I. C. C. 371, 373; International Agricultural Corporation v. L. & N. R. R. Co., 29 I. C. C. 391, 392; Wichita Business Asso. v. K. C. M. & O. Ry. Co., 29 I. C. C. 669, 670; Industrial Railway Case, 29 I. C. C. 212; Peoples Fuel & Supply Co. v. G. T. W. Ry. Co., 30 I. C. C. 657, 661; Rates on Lumber and Other Products, 31 I. C. C. 673, 674; Manufacturers Ry. Co. v. St. L. I. M. & S. Ry. Co., 32 I. C. C. 100, 104; Industrial Raliway Case, 32 I. C. C. 129, 131, 132; Kansas City Missouri River Nav. Co. v. C. & O. Ry. Co., 34 I. C. C. 67, 72; Divisions of Joint Rates on Railway Fuel Coal, 37 I. C. C. 265, 267; Wenona Coal Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 2101; Standard Oil Co. v. L. S. & M. S. Ry. Co., Unrep. Op. 2231; Chicago, West Pullman & Southern R. R. Co. Case, 37 I. C. C. 408, 415; Port Huron & Duluth S. S. Co. v. P. R. R. Co., 40 I. C. C. 335, 337; Morgantown & Kingwood Divisions, 40 I. C. C. 509, 511; Boston-New York Proportional Rates No. 2, 43 I. C. C. 203, 210; Laona & Northern R. R. Co. v. C. & N. W. Ry. Co., 49 I. C. C. 75, 77; P. H. & D. S. Co. v. Penn. R. R., 50 I. C. C. 157, 164; Western Pac. R. R. Co. v. S. P. Ry., 55 I. C. C. 71, 73; Wright Tie Co. v. B. S. W. R. R. Co., 57 I. C. C. 286, 288; St. Louis, Troy & Eastern R. R. Co., 57 I. C. C. 371, 374; Diamond Alkali Co. v. F. P. & E., 62 I. C. C. 161, 165; New England Divisions, 62 I. C. C. 513, 516, 560, 561, 562, 565; P. & W. V. Ry. Co. v. P. & L. E. R. R. Co., 61 I. C. C. 272, 274, 282, 283; New England Divisions, 66 I. C. C. 196, 199; Division of Joint Rates and Fares of M. & N. A. R. R. Co., 68 I. C. C. 47, 50, 53, 61; Western Maryland Ry. Co. v. P. R. R. Co., 69 I. C. C. 703, 707; Wichita Northwestern Ry. Co. v. C., R. I. & P. Ry. Co., 81 I. C. C. 513, 518.

II. PUBLICATION AND TARIFFS.

See Tariffs.

§2. Obligation to File.

IMPORTANT CASES SINCE 1908

(a) While in ordinary commercial business the through rate to be paid for transportation is the important factor, where the originating carrier owns the mines from which fuel coal is shipped, the essential factor is the division of the through rate paid up to the junction. For this reason all the facts and circumstances which make it desirable that the exact rate of transportation on commercial shipments shall be published make it desirable that the divisions of the rates under which railway fuel coal is transported be published. Rates on Railroad Fuel and Other Coal, 36 I. C. C. 1, 4.

(b) A tariff provision which makes the application of rates over particular routes dependent upon divisions, without stating the routes with respect to which divisional arrangements are in effect, is indefinite and unlawful, and imposes uncertain and unreasonable conditions upon the shipper. McGowin Lumber & Export Co. v. Director General, 59 I. C. C. 238, 240.

(c) The existence or nonexistence of divisions is not a tariff matter. Acme Mills v. Director General, 81 I. C. C. 492, 494.

ALL OTHER CITATIONS

Beekman Lumber Co. v. M. C. R. R. Co., 21 I. C. C. 276, 279; In Re Restricted Rates, 20 I. C. C. 426, 429, 432; In Re Restricted Rates, 20 I. C. C. 426, 432; Rates on Railroad Fuel and Other Coal, 36 I. C. C. 1, 13, 14; Divisions of Joint Rates Applicable to Fuel Coal, 38 I. C. C. 169; Divisions of Joint Rates on Railway Fuel Coal, 37 I. C. C. 265, 267; West Pullman & Southern R. R. Co. Case, 37 I. C. C. 408, 420; Markley & Co. v. A. C. L. R. R. Co., 42 I. C. 187, 188; Western Pac. R. R. Co. v. S. P. Co., 55 I. C. C. 71, 73.

III. AGREEMENT FOR DIVISIONS

§2½. In General.

CASES 1887-1908

(a) The decision of the Interstate Commerce Commission on a complaint to fix a maximum freight charge does not affect the question of the division of such rates between connecting carriers. Boston Fruit & P. Exch. v. New York & N. E. R. Co. (Com.) 3. I. C. R. 604.

(aa) The shipper can base no right of recovery upon the violation of a contract between connecting railways, as to the apportionment of an agreed rate of freight. If the carrier lays an additional charge on the shipper without sharing it with its connecting line, it would be no injury to him unless the same was unreasonable. Arkansas & L. R. Co. v. Smith, 4 I. C. R. 415.

IMPORTANT CASES SINCE 1908

(b) The division of a joint rate between carriers is a matter of agreement between the participating carriers in the first place. The law prescribes no basis upon which the Commission's findings shall rest when, in the event of the contingencies provided for in the Act, the duty of fixing the divisions falls upon it. People's Fuel & Supply Co. v. G. F. W. Ry. Co., 30 I. C. C. 657, 661.

(c) Owing to different transportation conditions north and south of the Ohio River the southern carriers are entitled to higher ton mile earnings than are the northern carriers. Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co., 35 I. C. C. 460, 465.

(d) Divisions to fuel coal billing points must be determined by the same considerations which control fixing of divisions on commercial coal to points similarly situated. Rates on Railroad Fuel and Other Coal, 36 I. C. C. 1, 13.

(e) The allowance of smaller divisions on fuel coal at a certain junction by one carrier than is allowed by another, does not prove that the arrangement is inequitable where the connecting carriers serve different producing fields and are active competitors. Galloway Coal Co. v. A. G. S. R. R. Co., 40 I. C. C. 311, 325.

(f) The Commission is not impressed with the argument that the absence of divisional arrangements between the carriers is justification for closing any available and useful route. Lumber from the Southeast, 50 I. C. C. 191, 197.

(g) The fact that no divisions of joint rates have been established by the carriers participating therein does not render the rates inapplicable. George C. Holt, et al., as Receivers of Aetna Explosives Co. v. C. & E. I. R. R., 52 I. C. C. 393, 396.

(h) Where carriers earn specific amounts out of through rates or fares, such amounts authorized to be increased in the same percentages as the through rates or fares, and where the division of carriers participating in through rates or fares are in fixed amounts per unit and are absorbed by other carriers, such absorptions should be increased in the same percentages as the through rates or fares. Increased Rates, 1920, 58 I. C. C. 220, 254.

(i) Divisions are affected with a public interest and are not a mere matter of bargain and trade between carriers, Division of joint rates and fares of M. & N. A. R. R., 68 I. C. C. 47, 51, 61.

(j) Where hauls differ by not more than 5 miles or thereabouts, each requiring two terminal services, the Commission is not disposed to insist upon a very material difference in divisions, especially where such a difference would induce an uneconomical handling of traffic via the more distant junction point. Divisions received by Brimstone Railroad & Canal Co., 68 I. C. C. 375, 384.

(k) Practice of carriers in requiring shippers to adjust charges under divisions of joint rate as between the inbound and outbound carriers to and from the transit point when a mistake in showing the division is made by the transit bureau found unjust and unreasonable. Such adjustments should be made between the carriers themselves. Cin-

cinnati Grain & Hay Exchange Co. v. B. & O. R. R. Co., 73 I. C. C. 104, 108.

(l) The burden of proof is upon the defendant, in a proceeding for determination of reasonable divisions of joint rates, to show that the divisions originally determined by agreement should not have been changed proportionately thereafter—as the joint rates were increased or decreased. Ohio & Kentucky Ry. Co. v. L. & N. R. R. Co., 77 I. C. C. 636, 643.

ALL OTHER CITATIONS

Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co., 35 I. C. C. 460; Rates on Railroad Fuel and Other Coal, 36 I. C. C. 1, 14; Chestnut Ridge Ry. Case, 37 I. C. C. 558, 560; West Lum. Co. v. St. L. & S. F. R. R., 38 I. C. C. 401, 404; Lake Line Application Under Panama Canal Act, 37 I. C. C. 77, 79; Black & White River Transportation Co. v. M. P. Ry. Co., 37 I. C. C. 244, 246, 249; Rates via Rail-and-Lake Routes, 37 I. C. C. 302, 307, 308; Peninsular & Occidental S. S. Co., 37 I. C. C. 432, 440; Morgantown & Kingwood Divisions, 40 I. C. C. 509, 511; Switching Absorptions, 47 I. C. C. 583, 586; Morgantown & Kingwood Divisions, 49 I. C. C. 549, 550; Advances on Coal Within Chicago Switching District, 53 I. C. C. 442, 452; Allowances to Kanawha, Glen Jean & Eastern, 58 I. C. C. 405, 410; Lodwick-White Coal Co. v. Director General, 58 I. C. C. 530, 536; Swift & Co. v. Ft. W. & D. C. Ry. Co., 61 I. C. C. 77, 79; New England Divisions, 66 I. C. C. 196, 198;

§3. Computation.

See Advanced Rates §18 (10).

CASES 1887-1908

(a) The percentage, amounting to 23 cents per 100 pounds, received by the defendants and their connecting lines east of Milwaukee as their proportion of this through rate on shipments from Minneapolis and points west of Milwaukee and between Milwaukee and Minneapolis, while the defendants charge 25½ cents per 100 pounds on the same class of freight originating at Milwaukee and transported over their lines and connecting lines to eastern points, was not an unjust discrimination against Milwaukee; nor did it injure the business of Milwaukee; or was it a violation of the Act to Regulate Commerce, approved February 4, 1887. Milwaukee Chamber of Commerce v. Flint & Pere Marquette R. Co., 2 I. C. R. 393.

(aa) Divisions of joint rates are usually less than the corresponding locals, and almost without exception not greater, and while a case may arise in which such a division could with propriety be made greater than the local or straight rate, no such case is presented here where the total through rate on competitive traffic exceeds the sum of charges to and from an intermediate point. Hilton Lumber Co. v. Wilmington & W. R. R. Co. et. al. 9 I. C. C. 17.

(ab) The Commission prescribed a rate of 50c, joint commodity, on beef cattle from Fort Worth, Tex., to Birmingham, Ala., 12 I. C. C. 29. Carriers involved were unable to agree upon the division thereof, and made application to the Commission to fix the divisions. HELD, considering the terminal charges of the receiving and the delivering lines and the ferry charge of the intermediate line the rate should be divided on a mileage basis, but this conclusion should not be taken as implying that all joint rates established by the Commission should necesssarily be divided upon a mileage basis. Birmingham Packing Co. v. T. & P. Ry. Co., 12 I. C. C. 500.

(b) Defendants having been unable to agree upon the divisions of a joint rate on beef cattle from Fort Worth, Tex., to Birmingham, Ala., put in effect by them in accordance with an order of this Commission, made application to fix the divisions; HELD, upon the peculiar facts of this case, that considering the terminal charges of the receiving and the delivering lines and the ferry charge of the intermediate line the rate should be divided upon a mileage basis, but this conclusion should not be taken as implying that all joint rates established by the Commission should necessarily be divided upon a mileage basis. Birmingham Packing Co. & Tex. & Pac. Ry. Co., et al., 12 I. C. C. 501.

IMPORTANT CASES SINCE 1908

(c) In fixing a division between carriers of joint rates ordered to be established, section 15 of the Act implies that it is the duty of the Commission to take into consideration all the circumstances and equities fairly affecting their several interests, and precludes the idea that the divisions must be adjusted on a mileage or any other fixed basis. Star Grain & Lumber Co. v. A. T. & S. F. Ry. Co., 14 I. C. C. 364.

(d) As a general rule where operat-

ing conditions are substantially similar the straight mileage prorate is accepted as a fair basis for dividing joint rates but where the hauls are short or unusual terminal difficulties are encountered arbitrary proportions are not infrequently deducted before prorating and allowed to the line or lines affected by such disadvantages. Under such conditions it is not unusual also to provide for a minimum division to one or more of the lines forming the through route. Louisville Bd. of Trade v. I. C. & S. Traction Co., 34 I. C. C. 640, 642.

(e) In proceedings to divide the rate on coal traffic between three lines the Commission will consider: (1) Allowance to the initial carrier for assembling at mines; (2) the fact that the majority of the equipment is furnished by the intermediate carrier; and (3) the fact that the coal shipped displaces at the destinations coal which would otherwise originate on the lines of delivering carriers. Hayden Bros. Coal Corp. v. D. & S. L. R. R., 45 I. C. C. 236, 240.

(f) Section 1 gives the shipper a right to a reasonable rate and with equal directness, in the provision just quoted, it gives the small line the right to receive "reasonable compensation" out of any joint rate applicable over a through route which it may operate conjointly with a trunk-line connection. The Act in this particular enforces justice as between carriers as to the reasonableness of divisions no less than it requires justice between carriers and the shippers in respect of the reasonableness of rates. Morgantown & Kingwood Divisions, 49 I. C. C. 540, 547.

(g) The divisions accorded a short line can not be predicated solely on the amount necessary to insure its successful operation. McGowan-Foshee Lumber Co. v. F. A. & G. R. R., 51 I. C. C. 317, 319.

(h) Divisions in the form of absorptions can not be predicated solely upon the amount of revenue necessary to insure successful operation, and it is improper to attempt forcible adjustment of divisions between carriers by increasing the through rates which shippers must pay. Absorption of Switching Charges at Fort Worth, Tex., 61 I. C. C. 73, 75, 76.

(i) The function of the Commission in a divisional case has been considered to be an equitable, just and reasonable apportionment of earnings derived from the carriage of a particular commodity as between the carriers participating in the transportation, and the fact for example, that a coal carrying road has derived its principal revenue therefrom has not operated to decrease the divisions it received for the carriage of merchandise traffic. New England Divisions, 62 I. C. C. 513, 539.

(j) Short-haul l. c. l. traffic is generally conceded to be unremunerative, but it cannot be said that because complainants originate a larger percentage of l. c. l. traffic than defendants, that fact should be given weight in determining that the divisions of complainants "as a whole" are unjust. New England Divisions, 62 I. C. C. 513, 540.

(k) While the Commission is urged to adjust the divisions in New England "as a whole," some of the roads in that territory have been excluded from the list of complainants and included in the list of defendants. To so deal with the situation would not be treating the New England roads as a group. It would be taking from one road and giving to a less prosperous road thus doing by indirection what the Congress deliberately and specifically refused to authorize the Commission to do. New England Divisions, 62 I. C. C. 513, 565.

(l) Fact that the divisions of express rates acruing to the rail carrier are inequitable affords no justification for increasing those rates. Express Rates on Bangor & Aroostook R. R., 63 I. C. C. 452, 454.

(m) The thought that dominates the law, as it is now framed, that a paramount consideration in determining the equitable share of the joint revenue which any carrier shall receive must be the relative amount and cost of the service which it renders, and that mileage is not a gauge of relative cost where terminal service is performed or the transportation is carried on under other unfavorable conditions. New England Divisions, 66 I. C. C. 196, 198.

(n) The power of the Commission over divisions is founded upon the public interest; that the carriers are mutually dependent parts of the transportation system; that the public interest requires that all essential parts be maintained, so far as possible, in effective working condition; that the relative amount and

cost under economical and efficient management of the service rendered is a prime factor in determining the fair and equitable share of joint revenue which each carrier shall receive; and that included in such cost is a due proportion of the burden of maintaining the financial integrity and credit of the carrier. New England Divisions, 66 I. C. C. 196, 198.

(o) A common method of dividing rates on traffic crossing the Mississippi and Ohio Rivers is to allow the carriers east and north of the rivers their local or proportional rates, or the established percentages of through rates, to or from the crossings, plus an allowance for bridge service where they perform that service. W. J. Jackson v. St. L. S. F. Ry., 66 I. C. C. 359, 362.

(p) Divisions of rates are frequently made on a mileage prorate with a minimum division to the short line when the movement to and from the point of interchange is in the same general territory under approximately similar rate adjustments, and when no unusual services are performed. Jackson v. St. L. S. F. Ry., 66 I. C. C. 359, 363.

(q) Although divisions of rates can not be based wholly on the financial conditions of the respective carriers, it is one of the elements that may properly be considered by the commission. Jackson v. St. L. & S. F. Ry., 66 I. C. C. 359, 369.

(r) Among the facts and circumstances which would ordinarily entitle one carrier to a greater or less proportion than another carrier of a joint rate, fare or charge, one of the most important is the average length of haul. The effect of relative lengths of haul on relative costs of transportation has long been recognized. Division of Joint Rates and Fares of M. & N. A. R. R., 68 I. C. C. 47, 58, 60, 61.

(s) In view of the extremely high operating costs upon the line of the Denver & Salt Lake R. R., the difficult services perfomed by it, the comparisons of yields per ton-mile under its divisions with the weighted average yields under the divisions of the principal defendants, show that its divisions on coal from mines on its line to destinations on lines of participating carriers are unjust, unreasonable, inequitable, and unduly prej-udicial to the Denver & Salt Lake and unduly preferential of participating carriers. Increased divisions prescribed, and adjustments required to date of filing of complaint. Freeman & Boettcher v. A. T. & S. F. Ry. Co., 73 I. C. C. 178.

(t) Divisions received by a carrier which crosses no mountain ranges and encounters no severe grades or snow troubles are not fair measures for divisions to be accorded a carrier that does. Freeman & Boettcher v. A. T. & S. F. Ry. Co., 73 I. C. C. 178.

(u) In fixing just, reasonable and equitable divisions, consideration given to fact that road is operated efficiently and economically. Freeman & Boettcher v. A., T. & S. F. Ry. Co., 73 I. C. C. 178, 184.

(v) In the determination of just, reasonable, and equitable divisions, consideration must be given not only to the necessities of a short line but also to the condition and requirements of connecting lines, having due regard to their revenues, expenses, taxes, and return, and considering their operating burdens and the efficiency of their management, as well as all the factors enumerated in section 15 of the act. Nevada-California-Oregon Divisions, 73 I. C. C. 330, 336.

(w) Divisions which one carrier accords to another do not demonstrate the unreasonableness of rates. Atlas Portland Cement Co. v. N. & B. R. R. Co., 73 I. C. C. 687.

(x) Divisions of joint rates on shipments for railroads must be fixed by the same considerations which would determine the divisions upon through commercial shipments in which the railroads have no other interest than that of a carrier. Chicago Lake Shore & South Bend Ry. v. I. C. R. R., 74 I. C. C. 609, 610.

(y) A line participating in a joint rate does not prove that it is entitled to a division equal to its local rate by showing that the service which it performs in connection with the joint haul is no less expensive than its local service. That may be a reason why a joint rate lower than the combination of locals should not have been established but it does not demonstrate that the carrier should have an amount equal to its local as its fair share of the joint rate which has been established. Nor does it prove that the joint rate should not have been established. U. S. War Dept. v. A. & S. Ry., 77 I. C .C. 356.

(z) Relative cost of service is not the only factor to be considered in determin-

ing just divisions. By paragraph 6 of section 15 of the act, the Commission is directed to give due consideration to the efficiency with which the carriers concerned are operated; the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property; the importance to the public of the transportation service of such carriers; whether any particular carrier is an originating, intermediate or delivering line; any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare or charge. Wichita Northwestern Ry. v. C. R. I. & P. Ry., 81 I. C. C. 513, 518.

(aa) In determining whether lines composing Southern Railway system shall be regarded as a unit for fixing reasonable divisions, question is not whether such lines are legally separate entities nor whether they are operated as though ownership and management were concentrated in a single corporation. The commission has in numerous cases found that lines under common control and management, though owned by separate corporations, shall be deemed single units for rate-making purposes. Lines of the system, whatever their strict legal relations, benefit in operation from their common control and interlocked managements, and are advertised to the public as a single unified system. U. S. War Department v. A. & S. Ry. Co., 83 I. C. C., 742, 744, 745.

(bb) The principle is well established that where the cost of service performed by a common carrier industrial line varies substantially as between its different trunk line connections, the divisions of joint rates made by trunk lines to the industrial line must be based, so far as practicable, upon the cost of the service in each case, plus fair return. Otherwise, if the divisions accorded for the greater service were reasonable, the same divisions accorded for a lesser service would amount substantially to a rebate to the proprietary company. Divisions Received by Brimstone R. R. and Canal Co., 88 I. C. C. 62, 73.

(cc) Participating carriers in a joint service are entitled to be compensated in proportion to the amount of service and the cost of the services which each render, and the fact that one of them is prosperous and the other not does not affect the just right of each to a fairly proportionate share out of the joint earnings, regardless of whether the amount distributed to each be fully compensatory, or be less to each than the value of the services so rendered. Abilene & S. Ry. Co. v. United States, 288 Fed. 102.

(dd) The necessities of a carrier and the fact that it is being operated at a deficit are not sufficient ground on which to order an increase in the division of joint rates in favor of the failing carrier. Abilene & S. Ry. Co. v. United States, 288 Fed. 102.

ALL OTHER CITATIONS

LaSalle and Bureau County R. R. Co. v. C. & N. W. R. R. Co., 13 I. C. C. 610, 612; Star Grain & Lumber Co. v. A. T. & S. F. Ry. Co., 14 I. C. C. 364; Stacy & Sons v. O. S. L. R. R. Co., 20 I. C. C. 136, 139; Norman Lumber Co. v. L. & N. R. R. Co., 22 I. C. C. 239, 247; Topeka Traffic Assn. v. A. & V. Ry. Co., 27 I. C. C. 428, 436; Interior Iowa Cities Case, 28 I. C. C. 64, 68; Minn.-Missouri Building Stone Rates, 28 I. C. C. 269, 273; Rates on Lumber and Other Forest Products, 31 I. C. C. 673, 676; Manufacturers Ry. Co. v. St. L. I. M. & S. Ry. Co., 32 I. C. C. 100, 105; Kansas City Missouri River Nav. Co. v. C. & O. Ry. Co., 34 I. C. C. 67, 74; Second Industrial Railways Case, 34 I. C. C. 596, 604; Coal Rates from Oak Hills, 35 I. C. C. 456; Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R., 35 I. C. C. 460; Public Service Comm. of Wash. v. A. & V. Ry. Co., 42 I. C. C. 54, 60; Henderson Commercial Club v. I. C. R. R. Co., 42 I. C. C. 196, 198; Low Moor Iron Co. of Virginia v. C. & O. Ry. Co., 42 I. C. C. 221, 227, 228, 230; Kosmos Portland Cement Co. v. I. C. R. R., 42 I. C. C. 377; Campbell's Creek R. R. v. A. A. R. R., 44 I. C. C. 574, 577; Hayden Bros. Coal Corp. v. D. & S. L. R. R., 45 I. C. C. 236, 237, 239, 244; Cape Girardeau Portland Cement Co. v. St. L. & S. F. R. R., 47 I. C. C. 204, 208; McGowan-Foshee Lumber Co. v. F. A. & G. R. R., 51 I. C. C. 317, 321, 322; L. & N. R. R. Coal & Coke Rates, 50 I. C. C. 54, 59; Class Rates from Chestnut Ridge Ry. Stations, 50 I. C. C. 152, 153; Port Huron & Duluth S. S. Co. v. P. R. R. Co., 50 I. C. C. 157, 164; Laona & Northern R. R. Co. v. M. St. P. & S. Ste. M. Ry., 52 I. C. C. 7; Lumber Transit Privileges at Buffalo, N. Y., 52 I. C. C. 31; Martin Brokerage Co. v.

S. P. Ry., 51 I. C. C. 91, 93; Advances on Coal within Chicago Switching District, 53 I. C. C. 442, 454; Wasteful Service by Tap Lines, 53 I. C. C. 656, 662; Louisiana & Pine Bluff Divisions, 53 I. C. C. 475; Western Pacific R. R. Co. v. S. P. Co., 55 I. C. C. 71, 81; New Orleans Natalbany & Natchez Ry. Co. v. I. C. C. R. R., 55 I. C. C. 113, 116; Pittsburg & West Virginia Ry. v. P. L. E. 61 I. C. C. 272, 283; East Jersey R. R. & T. v. C. R. R. of N. J., 63 I. C. C. 80; New England Divisions, 62 I. C. C. 513, 546, 561; Jackson v. St. L. S. F. Ry., 66 I. C. C. 359, 363; Divisions Received by Brimstone R. R. & Canal Co., 68 I. C. C. 375, 388; Federal Valley R. R. Co. v. T. & O. C. Ry. Co., 68 I. C. C. 499, 502; Western Maryland Ry. Co. v. P. R. R. Co., 69 I. C. C. 703; Freeman & Boettcher v. A. T. & S. F. Co., 73 I. C. C. 178, 183; Kansas City, Mex. & Orient Divisions, 73 I. C. C. 319; Division of Traffic G. & N. Ry. and Connection, 74 I. C. C. 444; Hampton & Branchville R. R. & L. Co. v. A. C. L. R. R., 88 I. C. C. 77; St. Louis San Francisco Ry. v. N. A. Ry., 88 I. C. C. 107.

§4. Inability to Agree.

See Advanced Rates §7 (6); Discrimination §10½; Through Routes and Joint Rate §5.

IMPORTANT CASES SINCE 1908

(a) Shippers may not be deprived of just through rates merely because carriers can not agree upon a division of joint rates. Willamette Valley Lumber men's Asso. v. S. P. Ry., 51 I. C. C. 250, 261.

(b) If satisfactory divisions can not be agreed upon between carriers that matter may be presented to the Commission in an appropriate proceeding Routing restrictions on lumber, 66 I. C C. 56, 57.

(c) The shipping public must not be made to suffer because of disagreements as to divisions. Routing of Fruits and Vegetables from Texas Points to Certain Defined Territories, 74 I. C. C. 575 579.

(d) Disagreement between carriers as to divisions does not justify cancellation of through routes and joint rates. The act provides the means by which such matters may be brought before the commission, and the shipping public must not be made to suffer because of such disagreements. Fruits and Vegetables from Texas Points, 74 I. C. C. 579.

(e) A dispute among carriers over divisions is no justification for increased rates. Concentration of Cotton at New Orleans, 83 I. C. C. 18, 20.

ALL OTHER CITATIONS

Germain Co. v. N. O. & N. E. R. R. Co., 17 I. C. C. 22, 24; Williamette Pulp & Paper Co. v. N. P. Ry. Co., 18 I. C. C. 388; Milburn Wagon Co. v. L. S. & M. S. Ry. Co., 22 I. C. C. 93, 100; Texas Cement Plaster Co. v. St. L. & S. F. R. R. Co., 26 I. C. C. 508, 509; Missouri River-Illinois Wheat and Flour Rates, 27 I. C. C. 286, 290; Rates on Coal to Milwaukee, 27 I. C. C. 223, 229; In Re Lumber Rates, 27 I. C. C. 6, 9; Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 93, 106; Rates on Lumber and Other Forest Products, 31 I. C. C. 673; People's Fuel & Supply Co. v. G. T. W. Ry. Co., 30 I. C. C. 657; Transit Regulations on Grain and Dried Beans, 32 I. C. C. 38, 40; Mfrs. Ry. Co. v. St. L. I. M. & S. Ry. Co., 32 I. C. C. 100, 104; Grain Rates from Milwaukee, 33 I. C. C 417, 425; Regulations on Grain and Dried Beans, 32 I. C. C. 38, 40; Routing of Bauxite Ore to Chicago Heights, Ill., Unrep. Op. A-842; Fillerton-Powell Hardwood Lumber Co. v. T. & P. Ry. Co., Unrep. Op. A-895; Rates on Lumber from Points in Louisiana to Points in Texas, Unrep. Op. A-947; Louisville Bd. of Trade v. I. C. & S. Traction Co., 34 I. C. C. 640; Grain Rates from Milwaukee, 33 I. C. C. 417, 425; Rates on Railroad Fuel and Other Coal, 36 I. C. C. 1; Coal to Kentucky Points, 37 I. C. C. 194, 197; Coal from Toluca, Ill., 37 I. C. C. 230, 231; Passenger Fares from Milwaukee, Wis., 38 I. C. C. 98, 100; Lake and Rail Rate Cancellations, 38 I. C. C. 201, 202; West Lumber Co. v. St. L. & S. F. R. R. Co., 38 I. C. C. 401, 404; Grain Transit Rules at Buffalo, N. Y., 39 I. C. C. 580, 582; Port Huron & Duluth S. S. Co. v. P. R. R. Co., 40 I. C. C. 335; Poteau Coal & Mercantile Co. v. A. & S. Ry., 40 I. C. C. 459, 463, 464; Morgantown & Kingwood Divisions, 40 I. C. C. 509; Class Rates from Chestnut Ridge Ry. Stations, 41 I. C. C. 61, 67; Advances on Coal Within Chicago Switching District, 41 I. C. C. 302; Low Moor Iron Co. of Virginia v. C. & O. Ry. Co., 42 I. C. C. 221; Kosmos Portland Cement Co. v. I. C. R. R. Co., 42 I. C. C. 377; C. C. R. R. v. A. A. R. R., 44 I. C. C. 574; Hay-

den Bros. Coal Corp. v. D. & S. L. R. R. Co., 45 I. C. C. 236; Morgantown & Kingwood Divisions, 49 I. C. C. 540, 545; Nebraska Colorado Grain, 50 I. C. C. 79, 80; Ohio Valley Coal Operators Asso. v. I. C. R. R. Co., 53 I. C. C. 148, 152; Lonwick Lumber Co. v. Director General, 53 I. C. C. 218, 220; Board of Trade of Nashville, Ga. v. G. & F., 58 I. C. C. 59, 64; Fish Oil from St. Marys, Ga., 60 I. C. C. 511, 514; Swift & Co. v. Ft. W. & D. C. Ry. Co., 61 I. C. C. 77, 79; New England Divisions, 62 I. C. C. 513, 562; Cancellation of Lumber Rates from Pacific Coast, 63 I. C. C. 126, 127; Morgantown & Wheeling Ry. Co. v. P. R. R., 63 I. C. C. 197; Commodity Rates from Danville to Bronson, Ill., 63 I. C. C. 277, 278; Rate Cancellation from Indiana to Ohio, 66 I. C. C. 449, 451.

§5. Reductions.

IMPORTANT CASES SINCE 1908

(a) The divisions received by tap lines out of the through rate should have a proper relation to the service which they perform. N. O. N. & A. Ry. v. Illinois Central R. R., 52 I. C. C. 113, 116.

ALL OTHER CITATIONS

In Re Advance in Class Rates, 22 I. C. C. 338, 340; B. S. & C. R. R., 52 I. C. C. 347; Owasco River Ry., 53 I. C. C. 104, 111; Advances on Coal within Chicago Switching District, 53 I. C. C. 442, 454; Louisiana & Pine Bluff Divisions, 53 I. C. C. 475; Wasteful Service by Tap Lines, 53 I. C. C. 656, 662.

§6. Right to Divisions.

See Tap Lines §9.

CASES 1887-1908

(a) Under the act a common carrier subject to its provisions can allow a division of the rates only to another common carrier, which, participating in the particular traffic to which the rate is applied, is also subject to the Act. The two lines may by contract or agreement establish a joint rate from the point of origin on the one road to the point of destination on the other and agree between themselves as to divisions of the rate. Central Yellow Pine Asso. v. V. S. & P. R. R., 10 I. C. C. 193, 210.

IMPORTANT CASES SINCE 1908

(b) If divisions earn a rate above out-of-pocket cost, thereby contributing something to the net earnings of that carrier, and if no violations of law are created, no valid objection can be made against such division. New Pittsburgh Coal Co. v. H. V. Ry. Co., 26 I. C. C. 121, 123.

(c) A carrier may deem it good business policy to secure a part of a through haul on a large volume of traffic and to accept a division of the through rate which is much lower than local rates. New Pittsburgh Coal Co. v. H. V. Ry. Co., 26 I. C. C. 121, 123.

(d) Rail lines handling traffic from the port to the interior point do not accept the arbitrary as their division of the through rate, but exact local rates for the service. Augusta & Savannah Steamboat Co. v. O. S. S. Co. of Savannah, 26 I. C. C. 380, 388.

(e) It is unjustly discriminatory for a carrier to demand higher division of joint rates when traffic is routed via one than when it is routed via another connecting carrier. Chattanooga Packet Co. v. I. C. R. R. Co., 33 I. C. C. 384, 391.

(f) For the purpose of fixing divisions separate corporate organizations of commonly controlled and operated carriers should be disregarded and they should be treated as one system. P. & W. V. Ry. Co. v. P. & L. E. R. R. Co., 61 I. C. C. 272, 284.

(g) The law in its present form requires that the Commission give due consideration among other things, to the revenue needs of the carriers participating in joint rates to enable them to pay operating expenses, taxes and a fair return on the value of their carrier property used in the transportation service as well as to all other facts or circumstances which, without regard to the mileage haul, entitle one carrier to a greater or less proportion of a joint rate than is received by others. Division of Joint Rates and Fares of M. & N. A. R. R., 66 I. C. C. 47, 50, 53.

(h) Unremunerative operation of rail lines can not fail to produce an injurious effect upon the base of the general rate structure and upon equitable divisions. Construction Application of Michigan Northern R. R., 72 I. C. C. 21, 23.

(i) The New York Dock Ry. filed with the commission concurrences in tariffs naming rates applicable to or from its terminals, which, in effect, give assent to the publication of rate schedules in which it is shown as a participating

carrier. In instances where such railway is not named in the tariffs it is not a party to joint rates published therein in view of the specific requirement of the law as set forth in paragraph (4), section 6, of the Act. Accordingly divisions thereof to be received by such railway can not be prescribed. New York Dock Ry. v. B. & L. R. R. Co., 73 I. C. C. 656, 662.

ALL OTHER CITATIONS

Board of trade of Winston-Salem v. N. & W. Ry. Co., 26 I. C. C. 146, 150; In re Advances on Barley, 24 I. C. C. 664, 667; Waverly Oil Works v. P. R. R. Co., 28 I. C. C. 621, 631; Rates on Railroad Fuel and Other Coal, 36 I. C. C. 1, 4; Henderson Commercial Club v. I. C. R. R. Co., 36 I. C. C. 20, 28; Chestnut Ridge Ry. Case, 37 I. C. C. 558, 560; M. & R. V. Ry. Case, 42 I. C. C. 607; D. & S. L. R. R. v. C. B. & Q. R. R. 51 I. C. C. 679; East Jersey R. R. & Term. Co. v. C. R. R. Co. of N. J., 63 I. C. C. 80; Morgantown & Wheeling Ry. Co. v. P. R. R. Co., 63 I. C. C. 197; Divisions received by Brimstone Railroad & Canal Co., 68 I. C. C. 375, 386.

§7. As Evidence.

See Comparative Rates; Evidence §13 (2), §13 (3); Through Routes and Joint Rates §14.

CASES 1887-1908

(a) The apportionment of rates to different parts of a through line do not determine the charge to the public, but may be significant on the question of reasonable rates for the whole distance. Brady & Co. v. Pennsylvania Co., 2 I. C. C. 78, 81.

(b) Divisions may sometimes very properly be scrutinized by the Commission in arriving at a just and reasonable rate, for the divisions agreed to between the carriers are not without significance in determining what are reasonable rates for the whole distance; but as an original proposition in the matter of fixing of a through rate, the Commission can only say what is a just and reasonable charge for the whole distance, naming an entire and single rate therefor, and leaving to the several carriers the detail of properly dividing up the entire rate according to what may seem just and equitable to all concerned, in view of all the circumstances. Boston Fruit & Produce Exchange v. N. Y. & N. E. R. Co., 3 I. C. C. 604, 605.

(c) While a complainant has no interest in the division the defendants make between themselves, and it does not determine what the charge to the public must be, yet the division is not without significance in determining what are reasonable rates for the whole distance on the lines in question. Railroad Commission of Florida v. S. F. & W. R. Co., 3 I. C. C. 688, 699.

(d) Divisions of a joint rate among the carriers are sometimes inquired into for the purpose of ascertaining, from the divisions, whether a rate unreasonable in itself may not be traced to the inequality of such divisions. Perry v. Fla. Central & Penninsular R. Co., 3 I. C. R. 740.

(e) The division among themselves which a number of connecting carriers make of a through rate should not affect the question of the reasonableness or unreasonableness of the rate as an entirety. Florida Fruit Exch. v. Savannah, F. & W. R. Co. (C. C. N. D. Fla.) 4 I. C. R. 400.

(f) While the share which a carrier receives out of a joint or through rate over a line of which its road is a part is not necessarily the measure of reasonable rates by such carrier for a similar length of haul over its own road, it is proper in any case under the statute to use the aggregate joint or through rate in force over such line as a basis of comparison in determining the legality of rates charged by such carrier over its own road. Daniels v. C. R. I. & P. R. Co., 6 I. C. C. 458, 477.

(g) It is lawful for a carrier, within reasonable limits, to accept less per ton per mile upon long hauls than upon short ones, and to widen the disparity between such rates per ton per mile as the difference in distance increases. Hence, the proportion received by some of the carriers out of a long distance through rate is not necessarily the measure of the through rate which such carriers are entitled to make over a materially shorter distance, though such proportion is an important consideration in determining the rightful relation of the two through rates. Colorado Fuel & Iron Co. v. S. P. Co., 6 I. C. C. 488, 513.

IMPORTANT CASES SINCE 1908

(h) While it is not improper to consider the divisions of rates in determining questions of reasonableness, it is not obvious that in many instances, if not

generally, these comparisons of total rates with divisions are of little value, as there are many considerations, concerning which the public is not interested, which carriers in making arrangements between themselves may take into account in fixing joint rates and divisions. For instance, one rate in a through line may be so situated with respect to the movement of a particular kind of traffic, by reason of its location with reference to the points of supply and demand, or otherwise, that it is in a position to command a much more liberal allowance from its connections than it would with respect to other kinds of traffic. On the other hand, another rate made under the necessity of accepting abnormally low division in order to participate in the traffic. It follows that there may be wide variations in per ton-mile earnings of carriers composing through lines. Should the Commission undertake to measure the local or individual rates of a carrier by its divisions of through rates, it would inevitably lead to the continuous process of hammering down of local rates, or the withdrawal of carriers from such through routes and rates as yield only a small profit. Board of Trade of Winston-Salem, N. C., v. N. & W. Ry. Co., 26 I. C. C. 146, 150.

(i) Proof that the division of a joint rate received by one road is unremunerative is not conclusive of the unreasonableness of the rate itself. An adjustment of divisions might be the remedy, rather than an advance in rates. In re Advances in Break-bulk Rates, 27 I. C. C. 78, 80.

(j) Division of through rates are often pertinent, but not conclusive. Break-bulk Rates on Grain, 27 I. C. C. 78, 80

(k) The shipping public has no interest in the question of divisions. Boston-New York Proportional Rates (No. 2), 43 I. C. C. 210.

(l) Where divisions received by carrier is contended to be more than that received by other participating carriers, held that divisions of through rates primarily are matters of agreement between participating carriers, and that, while they may be considered as evidence, they are not regarded as conclusive, and ordinarily afford but little basis upon which to determine the reasonableness of joint rates. Freight Bureau, Chamber of Commerce, Macon, Ga., v. M., D. & S. R. R. Co., 45 I. C. C. 83, 84.

(m) While divisions may be considered as evidence they are not conclusive and ordinarily do not afford a sound basis upon which to judge of the reasonableness of rates. American Creosoting Co. v. Director General 61 I. C. C. 145, 151.

(n) Divisions which one carrier accords to another do not demonstrate the unreasonableness of rates. Atlas Portland Cement Co. v. N. & B. R. R. Co., 73 I. C. C. 687.

(o) Divisional arrangements and arrangements relating to per diem reclaim on cars are matters between the carriers which must be considered apart from the measure of the rate. Dissatisfaction with such arrangements, whether or not well founded, does not justify cancellation of the rates. Crushed Stone from Thornton, 87 I. C. C. 759, 761.

ALL OTHER CITATIONS

Laona & N. R. R. Co. v. M. St. P. & S. Ste. M. Ry. Co., 24 I. C. C. 639, 644; L. & N. R. R. Co. v. M. St. P. & S. Ste. M. Ry. Co., 24 I. C. C. 639, 644; Southwestern Shippers Traffic Assn. v. A. T. & S. F. Ry. Co., 24 I. C. C. 570, 580; Flour S. S. Co. v. L. V. R. R. Co., 24 I. C. C. 179, 189; Business Men's League of Albert Lea v. B. & O. R. R. Co., 24 I. C. C. 125, 128; Wichita Board of Trade v. A. T. & S. F. Ry. Co., 25 I. C. C. 625, 631; West Virginia Rail Co. v. B. & O. R. R. Co., 26 I. C. C. 622, 625; Lindsay & Co. v. G. N. Ry. Co., 25 I. C. C. 424, 427; Lumber from Louisiana to North Atlantic Points, 26 I. C. C. 186, 191; Commercial Club of Duluth v. B. & O. R. R. Co., 27 I. C. C. 639, 656; Board of R. R. Com'rs. of Montana v. D. & R. G. R. R. Co., 27 I. C. C. 522, 524; Western Fruit Jobbers Assn. v. C. R. I. & P. Ry. Co., 27 I. C. C. 417, 422; Standard Mirror Co. v. P. R. R. Co., I. C. C. 200, 206; Interior Iowa Cities Case, 28 I. C. C. 64, 73; Alton Board of Trade v. C. & A. R. R. Co., 28 I. C. C. 589, 592; Molasses Rates from Mobile, 28 I. C. C. 666, 671; Empire Coke Co. v. B. & S. R. R. Co., 31 I. C. C. 573, 579, 578; Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 625; Union Bag & Paper Co. v. D. & H. Co., Unrep. Op. A-814; Illinois-Minnesota Coal Rates, Unrep. Op. A-962; Through Rates from Buffalo-Pittsburgh, 36 I. C. C. 325, 328; Rates on Railroad

Fuel and Other Coal, 36 I. C. C. 1, 3; Passenger Fares from Milwaukee, Wis., 38 I. C. C. 98, 100; Divisions of Joint Rates Applicable to Fuel Coal, 38 I. C. C. 169, 170; Lake and Rail Rate Cancellations, 38 I. C. C. 201, 202; Filing Divisions on Railway Fuel Coal, 38 I. C. C. 169, 170; Bennett & Sons v. C. & O. Ry. Co., 38 I. C. C. 310, 314; Pillsbury Flour Mills Co. v. G. N. Ry., 39 I. C. C. 353, 358; Dyes from New York, N. Y., 40 I. C. C. 546, 549; Low Moor Iron Co. of Virginia v. C. & O. Ry. Co., 42 I. C. C. 221, 229, 230; Coal and Coke from New Mexico Points, 43 I. C. C. 681, 685; The Alaska Investigation, 44 I. C. C. 680, 691; Martin Brokerage Co. v. S. P. Co., 51 I. C. C. 91, 93; Chaney Co. v. G. N. Ry., 50 I. C. C. 332, 337; Martin Brokerage Co. v. S. P. Ry., 51 I. C. C. 91, 93; Cannon Mfg. Co. v. Southern Ry., 59 I. C. C. 594, 596; P. & W. V. Ry. Co. v. P. E. R. R. Co., 61 I. C. C. 272, 283; Peerless Coal Co. v. A., T. & S. F. Ry. Co., 63 I. C. C. 335, 337; Clay County Coal Asso. v. C. & M. R. R. Co., 81 I. C. C. 414, 419, 420.

IV. LEGALITY.

§8. In General.

See Allowances IV; Legality; Tap Lines §7.

CASES 1887-1908

(a) Under the Act to regulate commerce a common carrier subject to its provisions can allow a division of rates only to another common carrier which, participating in the particular traffic to which the rate is applied, is also subject to the Act to regulate commerce. The two lines may by contract or agreement establish a joint rate from the point of origin on the one road to the point of destination on the other, and agree between themselves as to the division of the rate. Central Yellow Pine Asso. v. Vicksburg, S. & P. R. Co., 10 I. C. C. 193.

(b) Where excessive division of rates are granted by the carrier to another carrier owned and controlled by a shipper, for the purpose of obtaining the traffic of that shipper, they benefit the shipper and operate as a rebate or other device to cut the tariff charge, in violation of the Act to regulate commerce. Re Division of Joint Rates, etc., 10 I. C. C. 385.

(c) An unlawful preference to the United States Steel Corporation, which owns and controls the Illinois Steel Company, is practised under a division of rates whereby the Chicago, Lake Shore, & Eastern Railway Company—a terminal road owned by the United States Steel Corporation, and operated between the Illinois Steel Company's works—obtains a grossly excessive division for the service rendered. Re Division of Joint Rates, etc., 10 I. C. C. 385.

(d) While there may be great objections to allowing shippers to build and operate railroads over which their traffic moves, such action is not prohibited by the Act to Regulate Commerce; and the mere fact that the property of a common carrier is owned by the largest individual shipper over it, or that it was originally constructed for the purpose of doing the work of that shipper, furnishes no reason why it cannot make joint rates and agree upon joint divisions with other railroads. Re Division of Joint Rates, 10 I. C. C. 385.

(da) An unlawful preference in favor of the International-Harvester Company is practised by means of the division of the through rate, under which division the Illinois Northern Railway Company, owned by such Harvester Company, and the Chicago, West Pullman, & Southern Railroad Company, controlled by it, received a percentage of the rate, which amounts to about $12 per car, for services which were formerly performed by these terminal roads as a switching charge, and which amounted to a maximum of $3.50 per car, which was reasonable for these services. Re Division of Joint Rates, etc. 10 I. C. C. 385.

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(e) What the public is primarily interested in is the charge for the transportation service rendered, irrespective of the divisions of the rate, and if the rate itself is reasonable and just, the fact that it is unequally divided between the participating lines is not a basis for reduction. There may be many reasons why a particular carrier would be willing to accept a very small portion of a joint rate in order to secure business, and it is within its rights in bargaining with its connections for tonnage so long as it does not undertake to haul one class of freight at rates so low as to thereby burden other traffic. Florida Mercantile Agency v. Penn. R. R. Co., 21 I. C. C. 85, 87.

(f) Whenever an abnormal division

is allowed to a railroad which is tied up with an industry, there results an indirect and hidden rebate to a shipper because of his ownership of the railroad. In Re Divisions of Joint Rates on Coal, 22 I. C. C. 51, 55.

(g) Allowances and divisions to tap lines recognized by the Commission as common carriers must have a proper relation to the service performed and be such in amount as not to effect a rebate to the industry. The Tap-line Case, 23 I. C. C. 277, 295.

(h) A boat line incorporated as a common carrier obtained its facilities from a salt company by which it is owned and in whose interest it is operated; it published no rates except upon salt in cargo lots; rates were manipulated for the benefit of the salt company, and it used as terminal facilities the docks and warehouses of the salt company by whose agents and employes all shipments must be handled. It was held that the boat line was a mere device to defraud the law, and payments made to it by connecting rail carriers in the guise of divisions are rebates. Colonial Salt Co. v. M. I. & I. Line, 23 I. C. C. 358.

(i) Acceptance by a railroad company of a given division only on traffic transported via railroad-owned lake lines does not constitute the discrimination against connecting lines prohibited by section 3. Flour City S. S. Co. v. L. V. R. R. Co., 24 I. C. C. 179, 189.

(j) A carrier may deem it good business policy in the public, as well as in its private, interests to secure a part of a through haul on a large volume of traffic and to accept a division of the through rate as compensation therefor which is much lower than the local rate. If such division earns a rate sufficiently above the out-of-pocket cost incurred by the carrier in performing this service to contribute something to the net earnings of that carrier, and if no unjust discriminations or other situations in violation of law are created thereby, no valid objection from any point of view can be made against such division. To the extent to which this through traffic does actually contribute to the net revenues of the participating carrier, such carrier can reasonably accept a correspondingly lower rate on all of its other business which otherwise would have to be charged with rates sufficient to yield the increased revenue required on the assumption that the carrier does require and is legally entitled to that amount of revenue. New Pittsburgh Coal Co. v. H. V. Ry. Co., 26 I. C. C. 121, 123.

(k) Carriers frequently take advantage of their strategical position and demand divisions which fairly compensate them for surrendering part of their line but a carrier with such an advantage may not lawfully accept from one of its connections a division which permits that competitor to share on fair and compensatory terms and demand from another connection a division so high as to make it impossible for it to share therein on a compensatory basis. Western Pacific R. R. Co. v. S. P. Co., 55 I. C. C. 71, 81.

(l) And a division out of a joint rate is essentially different from the allowance contemplated by section 15 of the act. Cambria Steel Co. v. Director General, 64 I. C. C. 737, 742.

(m) One purpose of the act is to prevent rebates effected by means of exorbitant divisions which find their way to proprietary companies through common carriers owned by proprietary companies. Divisions received by Brimstone Railroad & Canal Co., 68 I. C. C. 375, 386.

(n) If the divisions of joint rates are such as to amount to rebates or discriminations in favor of the owners of the tap lines because of their disproportionate amount in view of the service rendered, it is within the province of the Commission to reduce the amount so that a tap line shall receive just compensation only for what it actually does. Divisions of the Brimstone Railroad & Canal Co., 68 I. C. C. 375, 386.

(o) If the divisions of joint rates are such as to amount to rebates or discriminations in favor of owners of the tap lines because of their disproportionate amount in view of the service rendered, it is within the province of the Commission to reduce the amount so that a tap line shall receive just compensation only for what it actually does. Prescott & Northwestern R. R. v. M. P. R. R., 68 I. C. C. 687, 490.

(p) Practice of carriers in requiring shippers to adjust charges under divisions of joint rates as between the inbound and outbound carriers to and from the transit point when a mistake in showing the divisions is made by the transit bureau found unjust and unreasonable. Such adjustments should be made be-

tween the carriers themselves. Cincinnati Grain & Hay Exchange Co. v. B. & O. R. R. Co., 73 I. C. C. 104, 108.

(q) Complainant, a corporation oprating a grain elevator, and performing a transportation service, not as an independent entity, but as agent of a railroad, under contract, which service such railroad holds itself out to perform by the publication of charges in its tariffs, alleges that allowances made to it were unreasonably low. HELD, since complainant has no interest in traffic handled through the elevator, it can not be considered a shipper or "owner of property transported." It stands in much the same position as an employee of the railroad and can not be considered a common carrier whose compensation is to be derived from divisions of joint rates. Keystone Elevator & Warehouse Co. v. Director General, as Agent, 73 I. C. C. 273.

(r) The Commission has frequently found that shippers may not be deprived of lawful rates because of differences between carriers. Slogo Coal Corp. v. M. P. R. R., 88 I. C. C. 111, 112.

ALL OTHER CITATIONS

In Re Divisions of Joint Rates on Coal, 22 I. C. C. 51, 55, 57; Fourche River Lumber Co. v. Bryant Lumber Co., 33 Sup. Ct. 887, 889; 230 U. S. 316; Missouri River-Illinois Wheat and Flour Rates, 27 I. C. C. 286, 290. Cancellation of Joint Rates in Connection with C. Z. & G. R. R. 27 I. C. C. 353, 365; Joint Rates with the Washington Western Ry., 27 I. C. C. 630, 634; Pardee Works v. C. R. R. Co. of N. J., 29 I. C. C. 500, 502; Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co., 28 I. C. C. 250, 255; Sandstone, Minn-Missouri River Building Stone Rates, 28 I. C. C. 269, 273; Rates on Railroad Fuel and Other Coal, 36 I. C. C. 1, 5, 9, 11; Poteau Coal & Mercantile Co. v. A. & S. Ry. Co., 40 I. C. C. 459, 463; Morgan v. F. V. R. R., 46 I. C. C. 327, 328; New Orleans, Natalbany & Natchez Ry. Co., v. I. C. R. R. 55 I. C. C. 113, 116; Gwinn Bros. & Co. v. C. & O. Ry., 56 I. C. C. 298, 300; Pittsburgh & West Virginia Ry. v. P. L. E., 61 I. C. C. 272, 282.

V. REASONABLENESS AND DISCRIMINATION.

§9. In General.

See Advanced Rates §18 (10); Supra §2½, §3, §4.

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(a) Where two companies or railroad systems stipulated for a division of traffic and agreed that when one party carried traffic belonging to the other, but one-half of the charges should be retained for the transportation service, HELD, That in the light of this arrangement in connection with the other facts of the case some reduction was warranted. A. S. Newland v. Northern Pacific R. R. Co., et al, 6 I. C. C. 131.

(b) The practice, if lawful, of giving to Kansas City, on shipments from the west through Pueblo, Colorado Springs, Denver and Cheyenne, and from the northwest through Cheyenne, rates not higher than on such shipments to Omaha, furnishes no warrant for giving Omaha rates from Texas points not higher than those to Kansas City,—the circumstances and conditions in the two cases being substantially dissimilar. Commercial Club of Omaha v. Chicago R. I & P. Ry. Co., 6 I. C. C. 647.

(c) Complainant attacked divisions allowed by defendants to the M. I. & I., a boat line, on salt from Michigan to Western Trunk Line points as unlawful. Manistee and Ludington are salt producing points in Michigan, and salt shipped from those points to places on the Missouri River is carried by a boat line on Lake Michigan to Chicago, and by railroads from Chicago to the Missouri River. The through rate is 53c per barrel of which the boat line receives 33 1-3%, amounting to from 16 to 18c per barrel. Established vessel lines on the lake formerly carried the salt to Chicago for from 8 to 11c per barrel, but additional services rendered by the boat line, including storage at points of shipment and unloading, coopering, docking, storage, insurance, handling and loading in cars at Chicago, represent a cost of about 8½c per barrel. The boat line and the salt are owned by distinct corporations, but the same persons own controlling interests in both corporations. Salt interests at Detroit complained that this division to the boat lines amounted to a rebate from the tariff to the salt shippers from Manistee and Ludington and enabled them to undersell Detroit salt in the western markets. It further appeared that coal used in producing Detroit salt costs on the average about 75c to each ton of salt, while Manistee and Ludington salt producers also operate lumber mills and

the refuse from lumber manufacture for fuel in the salt works. HELD, that it is no part of the duty of the Commission to equalize differences in the natural advantages of localities through the adjustment of tariff rates, and that upon the facts shown in this investigation it does not appear that the share of the through rate allowed to the boat line is so grossly disproportionate to the value of the entire through service as to amount to a rebate in favor of the salt interests of Manistee and Ludington, which also control the boat line. In the matter of transportation of salt from points in Michigan to Missouri River points and intermediate localities. 10 I. C. C. 148.

(d) It seldom happens that a railroad should be permitted to charge more on through business than its regular local rate, where that local rate is sufficiently high for the local service. Blackwell Milling & Elevator Company v. M. K. & T. Ry., 12 I. C. C. 24, 25.

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(e) Carriers frequently take advantage of their strategical position and demand divisions which fairly compensate them for surrendering a part of their line haul, but a carrier with such an advantage may not lawfully accept from one of its connections a division which permits that competitor to share on fair and compensatory terms and demand from another connection a division so high as to make it impossible for it to share therein on a compensatory basis. Western Pacific R. R. Co. v. S. P. Co., 55 I. C. C. 71, 81.

(f) One of the duties of common carriers is to participate in such joint rates as the public interest requires. This is an incident of their public undertaking, and equity does not necessarily demand that they be compensated by larger divisions in instances where it might be more advantageous to confine traffic to their own lines. P. & W. V. Ry. Co., v. P. & L. E. R. R. Co., 61 I. C. C. 272, 283.

(g) Per diem has never been a factor specifically taken into account in the determination of divisions. If so considered one of the essential purposes of per diem, i. e., greater use of freight equipment, might be nullified. As a road may have a debit balance one month and a credit balance in another, an exceedingly variable factor would be injected into the measure of compensation for the service performed under joint rates. New England Divisions, 62 I. C. C. 513, 538.

(h) Short-haul l. c. l. traffic is generally conceded to be unrenumerative, but it can not be said that because complainants originate a larger percentage of l. c. l. traffic than defendants, that fact should be given weight in determining that the divisions of complainants "as a whole" are unjust. New England Divisions, 62 I. C. C. 513, 540.

(i) Under the substantive provision of section 1 paragraph 4 of the act, there rests upon every common carrier subject to the act the duty, in the case of joint rates, fares or charges, to establish just, reasonable and equitable divisions thereof as between the carriers participating therein which shall not unduly prefer or prejudice any of such participating carriers. New England Divisions, 62 I. C. C. 513, 560.

(j) Under the provisions of section 15, no one of the elements which the Commission is required to consider is predominant; all are to be considered per se and relatively in the determination of just, reasonable, and equitable divisions "to be received by the several carriers." New England Divisions, 62 I. C. C. 513, 561.

(k) The public interest does not demand nor does the statute either expressly or by reasonable implication provide that the Commission may prescribe increased divisions to be received by certain carriers merely because other carriers participating in the joint rates, fares or charges, considered as a whole, have not failed in so great a degree to earn a fair return upon the value of their property devoted to the public service, although this is one factor which may be taken into consideration. New England Divisions, 62 I. C. C. 513, 562.

(l) The age of divisions affords no presumption that they are unreasonable; it may be that they were too liberal originally. New England Divisions, 62 I. C. C. 513, 563.

(m) While the Commission is urged to adjust the divisions in New England "as a whole" some of the roads in that territory have been excluded from the list of complainants and included in the list of defendants. To so deal with the situation would not be treating the New

England roads as a group. It would be taking from one road and giving to a less prosperous road, thus doing by indirection what Congress deliberately and specifically refused to authorize the Commission to do. New England Divisions, 62 I. C. C. 513, 565.

(n) A plan of divisional arrangements, which is the antithesis of equality, uniformity, system, or order, so fraught with incongruities from which anything might be proved by a judicious selection of items, is indefensible. New England Divisions, 62 I. C. C. 513, 565.

(o) It is impossible to avoid the conclusion that Congress intended the relative financial needs of carriers, so far as these needs are legitimate and incident to the transportation service, to be given consideration in fixing divisions; and it is just and right that this should be so. New England Divisions, 66 I. C. C. 196, 199.

(p) The group plan of increasing rates followed in Increased Rates, 1920, 58 I. C. C. 220, necessarily results in inequality of return to the various carriers. Certain of them gain a larger reward than they would receive if it were practicable to fix rates for individual companies, while others have less. Yet all are parts of the national transportation system and must be adequately maintained if they are not to be abandoned and due regard for the public interest demands that the Commission give these fortuitous inequalities consideration in the fixing of divisions. New England Divisions, 66 I. C. C. 196, 199.

(q) Although divisions of rates can not be based wholly on the financial conditions of carriers, it is one of the elements that may properly be considered by the Commission. Jackson v. St. L. S. F. Ry. Co., 66 I. C. C. 359, 369.

(r) One of the duties of a common carrier is to participate in such joint rates as the public interest requires. This is an incident of their public undertaking, and equity does not necessarily demand that they be compensated by larger divisions in the instances where it might be more advantageous to confine traffic to their own lines. Divisions of Joint Rates and Fares of M. & N. A. R. R., 68 I. C. C. 47, 51.

(s) Public interest requires that all essential parts be maintained, so far as possible, in effective working condition; that the relative amount and cost under economical and efficient management of the service rendered is a prime factor in determining the fair and equitable share of joint revenue which each carrier shall receive; and that included in such cost is a due proportion of the burden of maintaining the financial integrity and credit of the carrier. Division of Joint Rates and Fares of M. & N. A. R. R., 68 I. C. C. 47, 51.

(t) Density of traffic, grades, alignment, and other physical characteristics of the road are circumstances which ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another of the joint rate. Division of Joint Rates and Fares of M. & N. A. R. R., 68 I. C. C. 47, 57, 58, 60.

(u) The relative amount and cost under economical and efficient management of the service is a prime factor in determining the fair and equitable share of joint revenue which each carrier shall receive; and that included in such cost is a due proportion of the burden of maintaining the financial integrity and credit of the carrier. Federal Valley R. R. v. T. & O. C. Ry., 68 I. C. C. 499, 502.

(v) Practice of carriers in requiring shippers to adjust charges under divisions of joint rates as between the inbound and outbound carriers to and from the transit point when a mistake in showing the divisions is made by the transit bureau, found unjust and unreasonable. Such adjustments should be made between the carriers themselves. Cincinnati Grain & Hay Exchange Co. v. B. & O. R. R. Co., 73 I. C. C. 104, 108.

(w) The law in its present form requires that the Commission give due consideration among other things, to the revenue needs of carriers participating in joint rates to enable them to pay operating expenses, taxes, and a fair return on the value of their carrier property used in the transportation service as well as to all other facts or circumstances which, without regard to the mileage haul, entitle one carrier to a greater or less proportion of a joint rate than is received by others. Kansas City, Mexico & Orient Divisions, 73 I. C. C. 319, 324.

(x) Consideration must be given not only to the necessities of the short line but also to the condition and require-

ments of the connecting lines, having due regard to their revenues, expenses, taxes, and return, and considering their operating burdens and the efficiency of their management. Nevada, California, Oregon Divisions, 73 I. C. C. 330, 336.

(y) When a road seeks an increase in its division of a joint through rate there is cast upon it the burden of proving under all the circumstances that, as compared with the divisions received by its connections, it receives an unreasonably low proportion of the entire rate. U. S. War Department v. A. & S. Ry., 77 I. C. C. 317, 344.

(z) Divisions are affected with a public interest and are not a mere matter of bargain and trade between carriers. U. S. War Department v. A. & S. Ry., 77 I. C. C. 317, 354.

(aa) While the law does not permit the Commission to require rail carriers to establish through routes which result in the short-hauling of one carrier which has a reasonably direct route of its own, it is not a necessary conclusion, when such routes and joint rates are established, that local rates are fair divisions for the carrier which is short-hauled. U. S. War Department v. A. & S. Ry., 77 I. C. C. 317, 355.

(bb) A line participating in a joint rate does not prove that it is entitled to a division equal to its local rate by showing that the service which it performs in connection with the joint haul is no less expensive than its local service. That may be a reason why a joint rate lower than the combination of locals should not have been established, but it does not demonstrate that the carrier should have an amount equal to its local as its fair share of the joint rate which has been established. Nor does it prove that the joint rate should not have been established. U. S. War Dept. v. A. & S. Ry., 77 I. C. C. 356.

(cc) The exaction by rail lines of their local rates as divisions of through routes and joint rates with water carriers has for its purpose the protection of the long haul. It is a means of accomplishing indirectly what Congress, in the law respecting the establishment of through routes and joint rates, has sought to prevent. U. S. War Dept. v. A. & S. Ry., 77 I. C. C. 356.

(dd) Divisions of joint rates accorded Ohio & Kentucky Ry. Co. on bituminous coal from mines on its line to points in c. f. a. and western trunk-line territories, found unjust, unreasonable, and inequitable, in that they have not been increased proportionately with increases in joint rates since original agreement as to reasonable divisions. Reparations awarded and just, reasonable, and equitable divisions prescribed. Ohio & Kentucky Ry. Co. v. L. & N. R. R. Co., 77 I. C. C. 636.

(ee) A readjustment by the Interstate Commerce Commission of established divisions of joint freight rates on through traffic between the New England railroads and their connecting roads west of the Hudson held justified by changed conditions, brought about by increased rates and large increase in labor and fuel cost, which affected the New England lines comparatively more than their Western connections, because of their comparatively shorter hauls, their less density of freight traffic, their numerous terminals and branch lines, and their greater distance from coal supplies, with the increased cost of its transportation. Akron, C. & Y. Ry. Co. v. United States, 282 Fed. 306.

ALL OTHER CITATIONS

Star Grain & Lumber Co. v. A. T. & S. F. Ry. Co., 14 I. C. C. 364, 370, 371; In Re Investigation of Alleged Unreasonable Rates on Meats, 23 I. C. C. 656, 662; In re Investigation and Suspension of Advances for Soft Coal, 24 I. C. C. 43, 44; In Re Advances on Coal, 24 I. C. C. 43, 44; Mfrs. & Merchants Assn. v. A. & A. R. R. Co., 24 I. C. C. 331, 332; Southwestern Shippers Traffic Assn. v. A. T. & S. F. Ry. Co., 24 I. C. C. 570, 582; Pulp & Paper Mfrs. Traffic Assn. v. C. M. & St. P. Ry. Co., 27 I. C. C. 83, 96; Gulf Lumber Co. v. M. L. & T. R. R. & S. S. Co., Unrep. Op. A-574; Rates on Lumber and Other Forest Products, 32 I. C. C. 484, 485, 673, 675; Tap Line Case, 31 I. C. C. 490, 493; Buffalo, Attica & Arcade R. R. Co. v. B. & S. R. R. Corp. 31 I. C. C. C. 583, 585; Chestnut Ridge Ry. Case, 37 I. C. C. 558; Port Huron & Duluth S. S. Co. v. P. R. R., 40 I. C. C. 335; Galloway Coal Co. v. A. G. S. R. R. Co., 40 I. C. C. 311, 325; Coal Rates from Oak Hills, Colo., 40 I. C. C. 497; L. & N. R. R. Coal and Coke Rates, 50 I. C. C. 54; P. H. & D. S. S. Co. v. Pa. R. R., 50 I. C. C. 157; Western Pacific R. R. Co. v. S. P. Co., 55 I. C. C. 71, 73; New Orleans, Natalbany & Natchez Ry. Co. v. I. C. R. R.,

55 I. C. C. 113, 116; Allowances to Kanawha, Glen Jean & Eastern, 58 I. C. C. 405, 410; Oakdale & Gulf Ry. Co., 58 I. C. C. 450, 454; Lodwick-White Coal Co. v. Director General, 58 I. C. C. 530, 536; Lodwick-White Coal Co. v. Director General, 59 I. C. C. 260; Grain via Indianapolis from T. St. L. & W. R. R. 59 I. C. C. 733; P. & W. Co. v. P. & L. E. R. R. Co., 61 I. C. C. 272, 282, 284; Diamond Alkali Co. v. F. P. & E. R. R. Co., 62 I. C. C. 161; New England Divisions, 62 I. C. C. 513, 516, 539, 566; New England Divisions, 66 I. C. C. 196, 204; International Nickel Co. v. Director General, as Agent, 66 I. C. C. 627, 631; Marion & Eastern R. R. Co. v. C. & E. I. R. R., 68 I. C. C. 17; Divisions of Joint Rates and Fares of M. & N. A. R. R. Co., 68 I. C. C. 50, 53, 57, 58, 61; Divisions Received by Brimstone R. R. & Canal Co., 68 I. C. C. 375; Wichita Northwestern Ry. v. C. R. I. & P. Ry., 69 I. C. C. 68; Western Maryland Ry. Co. v. Pa. R. R. Co., 69 I. C. C. 703, 707; W. R. Freeman and C. Boettcher, as Receivers of D. & S. F. Ry., 73 I. C. C. 178; Freeman & Boettcher v. A., T. & S. F. Ry. Co., 73 I. C. C. 178, 184; Ohio & Kentucky Ry. Co. v. L. & N. R. R. Co., 77 I. C. C. 636; Wichita Northwestern Ry. v. C. R. I. & P. Ry. Co., 81 I. C. C. 513; U. S. War Department v. A. & S. Ry. Co., 83 I. C. C. 742, 752.

§10. Evidence and Procedure.

See Evidence; Procedure Before Commission.

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(a) Value of terminals and facilities should be considered by connecting lines in fixing divisions. Buffalo, Attica & Arcade R. R. Co. v. B. & S. R. R. Corp., 31 I. C. C. 583, 585.

(b) Divisions should be computed with respect to earnings of lines to and from points of interchange. Rates on Lumber and Other Forest Products, 31 I. C. C. 673, 675.

(c) Grades and curves are considered in determinig reasonable divisions. Low Moor Iron Co. of Virginia v. C. & O. Ry. Co., 42 I. C. C. 221, 225.

(d) Operating conditions appear more difficult south of the gateways, and comparisons of traffic densities and revenues of northern and southern carriers argue for divisions south of the gateways at least as great as suggested by the southern carriers. Low Moor Iron Co. of Virginia v. C. & O. Ry. Co., 42 I. C. C. 221, 225, 228.

(e) Divisions shown would yield very little revenue for the service performed, but are not necessarily too low merely because they are less than local rates from the Ohio River for like service. Lehigh Portland Cement Co. v. B. & O. S. W. R. R. Co., 42 I. C. C. 406, 409.

(f) Where a road seeks an increase in its divisions of a joint through rate there is cast upon it the burden of proving under all the circumstances that, as compared with the divisions received by its connections, it receives an unreasonably low proportion of the entire rate. L. & N. R. R. Coal & Coke Rates, 50 I. C. C. 54, 58.

(g) Where there is no movement under a local rate, it affords no criterion in determining proper divisions of a joint rate. Laona & Northern R. R. Co. v. M. St. P. & S. Ste. M. Ry., 52 I. C. C. 7, 8.

(h) Per diem has never been a factor specifically taken into account in the determination of divisions. If so considered one of the essential purposes of per diem, i. e., greater use of freight equipment, might be nullified. As a road may have a debit balance one month and a credit balance in another, an exceedingly variable factor would be injected into the measure of compensation for the service performed under joint rates. New England Divisions, 62 I. C. C. 513, 538.

(i) While manufacture and production of commodities in general in a particular section of the country has a most important bearing in a rate case, the Commission's function in a divisional case has been considered to be an equitable, just, and reasonable apportionment of earnings derived from the carriage of a particular commodity as between the carriers participating in the transportation. New England Divisions, 62 I. C. C. 513, 539.

(j) If a particular traffic must bear its proper and proportionate share of operating costs and only earn its due proportion of the total earnings of a particular carrier, it would be inequitable to increase the divisions of a carrier having a large percentage of i. c. l. traffic because another carrier with which it participated in the transportation received the major portion of its earnings from some particular commod-

ity moving in greater volume. New England Divisions, 62 I. C. C. 513, 540.

(k) Under the provisions of section 15 no one of the elements which the Commission is required to consider is predominant; all are to be considered per se and relatively in the determination of just, reasonable, and equitable divisions "to be received by several carriers." New England Divisions, 62 I. C. C. 513, 560, 561.

(l) Words "without regard to the mileage haul" in paragraph (6), section 15, of the act, do not forbid consideration of element of distance in a proceeding involving divisions. They serve rather to emphasize the fact that other specified elements may outweigh the element of distance, in which event the Commission may properly disregard the mileage haul. The clause is inclusive rather than exclusive, and the general words "among other things" constitute a clear exposition of the intent of Congress that the Commission should consider all the facts and circumstances. New England Divisions, 62 I. C. C. 513, 560, 561.

(m) The burden of proof is upon the defendant, in a proceeding for determination of reasonable divisions of joint rates, to show that the divisions originally determined by agreement should not have been changed proportionately thereafter as the joint rates were increased or decreased. Ohio & Kentucky Ry. Co. v. L. & N. R. R. Co., 77 I. C. C. 636, 643.

(n) An order of the Commission, requiring a reduction in the divisional share of a railroad company in joint through class rates on carload lots, held not invalid, as arbitrarily made, because, while the established tariff fixed its share at a stated sum per 100 pounds, the order fixed a maximum sum per car, where its service rendered was almost entirely over a branch line only 1½ miles long. Chestnut Ridge Ry. Co. v. United States, 248 Fed. 791.

(o) An order of the Interstate Commerce Commission, fixing the divisional share of joint through rates to which a railroad company was reasonably and lawfully entitled, by determining the cost of its service and adding thereto a percentage as profit, held invalid, as unsupported by the evidence, because of a mistake in the theory upon which it calculated an item of the cost of service. Chestnut Ridge Ry. Co. v. United States, 248 Fed. 791.

(p) Agreements between railroads for divisions of joint through rates in force for more than 30 years, are presumed fair under unchanged conditions. Akron, C. & Y. Ry. Co. v. United States, 282 Fed. 306.

(q) Annual reports by connecting carriers to the Interstate Commerce Commission, which showed that the connecting carriers all made a profit in their operation, while the carrier which objected to the division of the rates was operated at a loss, but which were based on total revenue, both freight and passenger, and joint and local, and showed that the objecting carrier received more per ton mile than any of the connecting carriers, and more per car mile and per train mile than some of the connecting carriers, HELD, not to show that the divisions were unjust. Abilene & S. Ry. Co. v. United States, 288 Fed. 102.

(r) Exhibits for the Interstate Commerce Commission at a hearing on the division of joint rates, which showed that the complaining carrier received, under the existing division, more per ton mile than the other carriers, without showing any extra service rendered by that carrier, or any ground for complaint, except that its revenues were insufficient to meet its operating expenses, did not alone show that the divisions of joint rates were unjust, so as to sustain an order of the Commission prescribing new divisions. Abilene & S. Ry. Co. v. United States, 288 Fed. 102.

(s) The Transportation Act Feb. 28, 1920, §418, amending Interstate Commerce Act §15 (6), construed as authorizing Interstate Commerce Commission in dividing joint rates, to act on evidence typical in character and ample in quantity, without requiring specific evidence, and making a separate adjudication respecting each division of each rate of each carrier, is not unconstitutional. Akron, C. & Y. Ry. Co. v. United States, 43 Sup. Ct. 270.

ALL OTHER CITATIONS

In re Marion Rye Valley Ry. Co., Virginia Southern R. R. Co., 42 I. C. C. 607, 612; P. & W. V. Ry. Co. v. P & L. E. R. R. Co., 61 I. C. C. 272, 283; New England Divisions, 62 I. C. C. 513, 562;

§11. Reparation.

IMPORTANT CASES SINCE 1908

(a) Damages awarded for discrimin-

ation in divisions of passenger fares between points in California and Salt Lake City, Utah, in violation of the second paragraph of section 3 of the act. Western Pacific R. R. Co. v. S. P. Co., 55 I. C. C. 71, 81.

(b) To prevent bankruptcy, complainant carrier, with consent of shippers, instituted special increased joint rates, which were continued in effect for one year. Defendant connecting lines refused to allow complainant to retain whole increase, and retained portion thereof. On finding that present divisions accorded complainant out of joint rates are unjust, unreasonable, and inequitable, HELD: While paragraph (6) section 15 of the act provides for retroactive adjustment of divisions within discretion of commission, retroactive adjustment out of above special increased rates can not lawfully be required since not established "pursuant to finding or order of commssion." Wichita Northwestern Ry. Co. v. C. R. I. & P. Ry. Co., 81 I. C. C., 513, 515, 520, 521.

DOCKAGE

IMPORTANT CASES SINCE 1908

(a) If a shipper is so situated that he cannot conveniently remove goods from a dock within a reasonable time, and therefore requires dock insurance, there is no hardship in compelling him to pay for such protection, according to the length of time for which it is needed. Wyman, Partridge & Co. v. B. & M. R. R. Co., 15 I. C. C. 577, 579.

(b) A departure from the uniform practice of refusing to permit ships to dock at piers, while continuing the practice as to other shippers under similar circumstances and conditions, gives a shipper an advantage or preference in violation of the act. Samuel v. D. L. & W. R. R., 36 I. C. C. 255, 256.

(c) A carrier can not absorb the switching charges of connecting lines from one dock and refuse to do so from another dock, similarly situated. National Dock and Storage Warehouse Company v. B. & M. Ry., 38 I. C. C. 643.

(d) Where special dock and terminal services are included in a flat rate it is impracticable accurately to test the reasonableness of such rates without tearing them apart to analyze the component parts. Iron Ore Rate Cases, 41 I. C. C. 181, 204.

(e) Discontinuance of absorption of the charges for dockage, and to provide for deliveries of freight in lots of three carloads or more at private docks upon payment of certain charges, found not justified except as to private docks. Duluth Dockage Absorption, 44 I. C. C. 300, 302.

(f) The right of shippers to operate docks of their own can not be denied, and if they can perform the service at a less cost per ton than the carriers charge, or if they elect to assess a lower charge for the service than the maximum allowed to the carriers, are matters with which the Commission is not concerned. Iron Ore Rate Cases, 44 I. C. C. 368, 376.

(g) Rates on iron ore applied from the rail of the vessel on ore handled over all docks. It was proposed to continue this arrangement with respect to the ore shipped from private docks; that is—the rates were to apply from the rail of the vessel, and out of the through charges the private docks were to be allowed 2c a long ton on direct ore and 10 on dock ore. Certain private dock companies contended that they should be allowed to make charges equal to those made by the railroads at railroad docks, i. e., 6c on direct ore and 26c on dock ore. But it appeared that each of these private docks was an integral part of a furnace plant. HELD (1) that no reason appeared why the carriers should make any allowance to the private docks, or why rates should be published from the rail of the vessel on ore handled over such docks; (2) that as to such shipments the carriers might publish rates from the docks as such and not from the rail to the vessel; and (3) that a reasonable rate on ore from private docks served by short line railroads would be 4c per long ton higher than the line haul rates. Iron Ore Rate Cases, 44 I. C. C. 368.

(h) Any service performed by the private docks in the way of loading, handling, or storing the ore prior to the time of shipment is a matter to be disposed of between the dock and the shipper of the ore. Iron Ore Rate Cases, 44 I. C. C. 368,376.

(i) To publish and maintain rates applicable from the rail of the vessel on shipments handled over private docks would apparently make those docks public transportation agencies and put them under the obligation to handle all cargoes offered, but no such arrangement is intended. Iron Ore Rate Cases, 44 I. C. C. 368, 376.

(j) Carriers were required to state in their tariffs the amounts charged against the lake cargo coal traffic for the line-haul service from the mines to the docks at the lake ports and for the service of transferring the coal from the cars to the vessels at the docks. Lake Cargo Coal Rates, 46 I. C. C. 159, 194.

(k) The Commission should not order a physical connection with a dock, the location of which is unknown. Baltimore & Carolina S. S. Co. v. A. C. L. R. R., 49 I. C. C. 176, 177.

(l) Docks and depots of carriers are not to be used except as incident to the business of transportation. Baltimore & Carolina S. S. Co. v. A. C. L. R. R., 49 I. C. C. 176, 182.

(m) Where rail carriers have docks and physical connections therewith it would clearly be a wasteful requirement to insist that the water carrier secure a dock and that the rail carriers then extend spurs to that dock. Baltimore & Carolina S. S. Co. v. A. C. L. R. R., 49 I. C. C. 176, 184.

(n) Where either the rail or water carrier has suitable dock facilities the ownership or control by the one or the other is immaterial, in so far as the exercise of power under paragraphs (b) and (c) of section 6 is concerned, except as bearing upon the reasonable compensation for the use of such facilities. B. & C. S. S. Co. v. A. C. L. R. R., 49 I. C. C. 176, 185.

(o) Water craft are operated under conditions which make it impossible to predict at all times the pecise date of docking and clearing, and rail carriers can not be held responsible therefor. American Smelting & Refining Co. v. Director General, as Agent, 62 I. C. C. 583, 588.

(p) Where, under a carrier's duly published schedule or tariff, it would have been a violation of law for it to voluntarily pay a shipper for the shipper's services in the wharfage and handling of goods, the shipper was not entitled to a judgment requiring the carrier to pay for such services. Southern Cotton Oil Co. v. Central of Ga. Ry. Co., 288 Fed. 335.

(q) A carrier can not pay a shipper for wharfage services unless charges therefor are specified in a duly published schedule tariff. Southern Cotton Oil Co. v. Central of Ga. Ry. Co., 228 Fed. 335.

ALL OTHER CITATIONS

Handling Charges at Louisiana Ports, 61 I. C. C. 379.

DOUBLE ADVANCES

See Advanced Rates §9½.

DOUBLE LOADING

See Classification §7½.

DRAYAGE CHARGES

See Allowances §8 (8); Cartage.

CASES 1887-1908

(a) The rspondent company had a tariff schedule in effect grouping the rates from eastern points at Ionia and Grand Rapids, Mich., Ionia being the shorter distance, and furnished free cartage at Grand Rapids and not at Ionia. HELD, that the free carriage at Grand Rapids was in effect a rebate and unlawful. Stone & Carten v. D. G. H. & M. R. Co., 3 I. C. C. 60.

(b) Where a common carrier subject to the act has established and published its schedule of rates and charges for a station on its line, free carriage furnished by the carrier for the collection and delivery of freight carried on its road to or from such station operates as a reduction or rebate from the schedule charge and is unlawful. If free cartage at a station has the effect to reduce a rate below the charge at another station nearer the point of shipment it is unlawful as a less charge for a longer distance over the same line and in the same direction, the less being included within the greater. Stone & Marten v. D. G. H. & M. R. Co., 3 I. C. C. 60, 64.

(c) It is not material to the question of the lawfulness of free cartage furnished at one town and not at another that the business was done in that way for many years before the act was enacted. If what was done and is now done works unjust discrimination or is in any particular obnoxious to the law, it is an abuse, and one that it must be assumed was intended to be corrected by the act. Stone & Marten v. D. G. H. & M. R. Co., 3 I. C. C. 60, 63.

(d) Rates for the transportation of flour originating at St. Louis or East St. Louis are the same, and such flour is forwarded by the defendant from its receiving station in East St. Louis. Shippers in St. Louis deliver flour to rail or wagon transfer companies at their stations in St. Louis and defendants bear the cost of transfer to said receiving station, the average being about 6c per barrel, or St. Louis shippers sometimes deliver to the wagon transfer company at their mill doors and then bear half

of the cartage expense by wagon, the defendants the other half. Petitioner teams flour from its mill about one-half a mile to said receiving station at East St. Louis at a cost of 6c per barrel, or loads it on cars furnished by the defendants on a side track contiguous to said mill at a cost of about 3c per barrel, being required to so load such cars that the lot for the nearest station is placed in the forward part of the train and lots for other stations are arranged consecutively, according to distance, and also being required to clean and repair such cars before using. HELD, that on flour destined to points outside the state which the initial carrier requests petitioner to haul to its station, or which petitioner is compelled to haul there by reason of proper cars not being furnished on said side track for loading, petitioner is entitled to a reduction of 6c per barrel from rates in force as long as defendants bear that amount of the cost of cartage for other shippers. HELD, FURTHER, defendants rule requiring petitioner to clean and repair cars furnished on said side track is unreasonable, but the requirement that petitioner shall load such cars according to stations is not unreasonable, and rates on flour loaded by petitioner in properly cleaned and repaired cars so furnished are properly the same as rates in force on shipments of flour originating in St. Louis. With reference to the transportation of flour defendants seem to treat St. Louis and East St. Louis as a single business community; therefore, they cannot complain if this case is determined upon that theory. Taking petitioners flour in cars from its mill is presumably equal in value to its expense of hauling by teams; therefore petitioner cannot complain that the carriers bear a portion of the cartage expense of the St. Louis millers equal to the benefit it receives from being able to deliver on the side track at its mill. Hezel Milling Co. v. St. L. A. & T. H. R. Co., 3 I. C. C. 701.

(e) For the carrier to pay the larger expense of the transportation of a remote shippers merchandise to the station, and not to pay the less expense of such transportation of the nearer shippers merchandise, would be the equivalent of a rebate to the former, the railroad service proper being the same to each and at the same rate; nor would it be treating all patrons with statuable equality to bear a part of the cartage expense for one shipper and not bear a part of it for another. Hezel Milling Co. v. St. L. A. & T. H. R. Co., 3 I. C. C. 701, 705.

(f) Drays may be common carriers. Re Right of Railroad and Transfer Companies to Exchange Transportation, 12 I. C. C. 39.

(g) Complainant attacked as unduly prejudicial practice of defendant in employing a particular trucking firm to transport through shipments via its line from railroad depots in and about New York City to its pier No. 25 in New York, and gives preference at such pier to the through traffic transferred by such trucking firm over traffic originating in New York and vicinity brought to the pier by other trucking firms. The pier is inadequate for the business of defendant, and congestion and delay result. The pier is not closed at night until all waiting trucks are unloaded, and it is soon to be considerably enlarged. No instance of injury resulting to shippers on their traffic and no discrimination amounting to exclusion from the pier was shown. HELD, such preference does not operate unduly or unreasonably against other truck owners. New York Team Owners Asso. v. Southern Pacific Co., 12 I. C. C. 204.

(h) Complainant attacked as unreasonable drayage charges assessed by defendant on two cars lumber from Avon, Wash., to Sawyer, N. D. There was no joint rate basis charged 40c Avon to Minot, N. D., and 4c beyond via the Soo Line. At Minot the lumber was taken from the cars by defendant and placed in cars belonging to the Soo Line for which transfer it charged the sum of $12.50 per car and paid by the shipper. Neither the published tariff of the G. N., or Soo Line provide for a drayage or transfer charge at Minot. HELD, reparation awarded to the extent of the cost of transfer at Minot. Schwager & Nettleton v. G. N. Ry., 12 I. C. C. 521.

(i) The Act does not bar a carrier from providing for costs of transfer in making delivery to a certain carrier, but if it so provides, it must publish and file a tariff showing where the transfer will be made, the kind of transfer service required and the charges to be exacted therefor. Schwager & Nettleton v. G. N. Ry., 12 I. C. C. 521, 524.

(j) A shipper is entitled to notice of a transfer charge other than one coming to him through the collection of the charge from his consignee, and as he is

not obliged to follow his shipment and make the transfer himself, he is entitled to the protection afforded by a published definite rate. Schwager & Nettleton v. G. N. Ry., 12 I. C. C. 521, 524.

(k) A carrier can not excuse the collection of an unpublished and unknown drayage and transfer charge by proof that it had a rule which forbade the sending of its own cars beyond its own line during a period of car shortage and congestion of business. This defense would be especially unavailable where no notice of the rule, either actually or by reference in a published tariff, had been brought to the shipper. Schwager & Nettleton v. G. N. Ry., 12 I. C. C. 521, 524.

(l) Reparation for drayage and transfer charge not published in tariff. Schwager & Nettleton v. Great Northern Ry. Co., 12 I. C. C. 521.

IMPORTANT CASES SINCE 1908

(la) Any teaming and drayage service must be entirely separate from joint rates herein prescribed or in division thereof. Stone's Express v. B. & M. R. R., 33 I. C. C. 638, 642.

(lb) Regulation that outside shippers shall employ a certain drayage company to remove their freight from the station is one whose lawfulness is gravely open to doubt and which should be promptly canceled, thereby permitting outside shippers their choice of agencies of wagon haul. St. Louis (Cupples Station) Terminal Regulations, 40 I. C. C. 425, 433.

(lc) Reparation awarded for drayage charges resulting from initial carrier's failure to promptly transmit to connecting carrier request for diversion. Central Foundry Co. v. S. Ry. Co., 42 I. C. C. 333.

(ld) Drayage costs do not determine the reasonableness of charges for trap-car service. Macey Co. v. P. M. R. R., 50 I. C. C. 555, 556.

(m) Due to strike, complainants obliged to cart express shipments from freight station to place of business. Contention that shipments overcharged to extent of cartage charges, not sustained. Carrier's tariffs did not authorize allowance or deduction from legally applicable rate for services performed; and since question whether or not complainants may recover for such services can not be determined from tariff, amounts paid for cartage are not overcharges. Tariff rate itself and rules and regulations connected therewith are standards to determine an overcharge. Lay Fish Co. v. Director General, as Agent, 80 I. C. C. 4.

(n) Due to harbor strike at New York City, cars could not be floated to destination in Brooklyn. To expedite movement to its plant, complainant accepted delivery at points where held and carted to destination. HELD: Defendants' obligation to perform further transportation, after complainant's accepting delivery short of billed destination, was terminated by complainant's waiver of the complete service. Defendant's failure to make allowance for cost of cartage was not unjust or unreasonable. Geisel Mfg. Co., 59 I. C. C. 193. Tidewater Paper Mills Co. v. B. T. R. R. Co., 80 I. C. C. 493.

ALL OTHER CITATIONS

Sterling & Son Co. v. M. C. R. R. Co., 21 I. C. C. 451, 454; Crosby & Meyers v. Goodrich Transit Co., 17 I. C. C. 175, 177; Maxey v. B. & O. S. W. R. R. Co., 26 I. C. C. 506, 507; Wilson Bros. v. D. L. & W. R. R. Co., 25 I. C. C. 11, 12; Cassassa v. P. R. R. Co., 24 I. C. C. 629; Miller v. I. C. R. R. Co., Unrep. Op. A-82; National League of Commission Merchants v. P. R. R. Co., Unrep. Op. A-313; Arbuckle Bros. v. Old Dominion S. S. Co., Unrep. Op. A-550; Logan Concrete Engineering Co. v. G. S. & F. Ry. Co., Unrep. Op. A-624; Phila. Team Owners' Pro. Assn. v. Ry. Co., 32 I. C. C. 387, 393; Commercial Coal Mining Co. v. P. R. R. Co., Unrep. Op. A-721; National League of Commission Merchants of the United States v. P. R. R. Co., Unrep. Op. 2004; Bedna Young Lumber Co. v. I. C. R. R., 38 I. C. C. 357; Robinson Clay Products Co. v. A. C. & Y. Ry. Co., 40 I. C. C. 177; Taunton Dye Works & Bleachery Co. v. N. Y., N. H. & H. R. R. Co., 42 I. C. C. 367; International Salt Co. of New York v. S. A. L. Ry., 46 I. C. C. 478, 479; National League of Commission Merchants of the U. S. v. P. R. R., 49 I. C. C. 85; A. Geisel Mfg. Co. v. B. & O. R. R. Co., 59 I. C. C. 193; Salt from Utah to San Francisco, 61 I. C. C. 58, 59; Nonabsorption of Switching Charges on Fish, 81 I. C. C. 113; National League of Commission Merchants v. P. R. R. Co., 83 I. C. C. 723, 728, 729, 730.

DRAWING ROOMS

See Passenger Fares and Facilities §5¼.

DRESSING-IN-TRANSIT

See Facilities and Privileges §6½, §15.

IMPORTANT CASES SINCE 1908

(a) Complainant claimed that the carriers unlawfully failed to stop at Charleston, W. Va., for dressing, a carload of lumber shipped from Quick, W. Va., to Buffalo, N. Y. The bill of lading of the initial carrier bore the instructions, "With stop-over at M. L. M. Co., Charleston, W. Va., to be worked." Complainant sought to recover the difference between the expense of milling at Buffalo and the amount it would have cost to stop and dress the lumber at Charleston; and also contended that it was further damaged because the through charges were collected on the weight of the rough lumber. If milled at Charleston the weight would have been reduced about 5,000 lbs., and a tariff rule provided that from junction point to destination freight charges would be assessed on basis of the reduced weight. HELD (1) that the failure to stop the car at Charleston as directed in the bill of lading had damaged complainant to the extent of the difference between the expense incurred at Buffalo and that which would have accrued had the shipment been stopped as directed; but (2) that no allowance could be made for the reduced weight. Reparation awarded. Atlantic Lumber Co. v. T. & O. C. R. R., 45 I. C. C. 368.

ALL OTHER CITATIONS

Burritt Co. v. C. P. Ry., 45 I. C. C. 195.

DUMPED

See Facilities and Privileges §6.

IMPORTANT CASES SINCE 1908

(a) Carrier states term "dumped" in railroad parlance means to store at owner's risk and expense. Sharon Steel Hoop Co. v. P. R. R. Co., 42 I. C. C. 495, 496.

DUNNAGE

See Allowances §8 (2½)

DUPLICATE SHIPMENT

See Classification §12½.

Important Cases Since 1908

(a) One article of bulked shipment was lost in transit through the fault of the carrier. On a second article of the same kind sent to take the place of the lost article, the full minimum charge was collected. HELD, that complainant was entitled to damages to the extent of the additional charge thus accruing through no fault of the shipper. Larkin Co. v. E. & W. T. Co., 24 I. C. C. 645.

DURESS

IMPORTANT CASES SINCE 1908

(a) The old rule that there could be duress only where there was a threat of loss of life, limb, or liberty has been so changed, that "duress" may sometimes be implied when a payment is made or an act performed to prevent great property loss or heavy penalties, when there seems no adequate remedy except to submit to an unjust or illegal demand and then seek redress in the courts. Minneapolis, St. P. & S. S. M. Ry. Co. v. Railroad Commission (Wisc, 1924), 197 N. W. 352.

EATING HOUSES

IMPORTANT CASES SINCE 1908

(a) Conceding that a carrier has no right to enter the field of general business and transport the articles and commodities used and sold therein at less than the regular published rates available to the general public, it has the right to provide eating houses for its passengers and employees at points on its line, and may transport the articles and commodities for the use of such eating houses at less than the full published rate. Montgomery v. Chicago B. & Q. R. Co., 228 Fed. 616, 618.

ALL OTHER CITATIONS

Montgomery v. Chicago B. & Q. R. Co., 228 Fed. 616, 619, 620, 621.

ELECTRIC LINES

I. CONTROL AND REGULATION
II. THRU RATES WITH STEAM ROADS
III. RIGHT TO FUEL RATES AND DIVISIONS
IV. TRANSFERS AND RATES
V. FACILITIES
VI. OPERATION
VII. REGULATIONS
VIII. SWITCHING CONNECTIONS

CROSS REFERENCES

See Accident Reports.

I. CONTROL AND REGULATION

See Control and Regulation; Interstate Commerce Commission I.

CASES 1887-1908

(a) An electric railway lying partly in the District of Columbia and partly in the state of Maryland is subject to the provisions of the Interstate Commerce Act, although constructed on public highways and essentially a street surface road

for the convenience of urban and suburban passengers. Willson v. Rock Creek R. Co., 7 I. C. C. 83.

(b) The defendant, operating a line of electric railway lying partly in the District of Columbia and partly in the State of Maryland, is subject to the provisions of the Act to Regulate Commerce, although it appears to be constructed upon or along public highways, and is essentially a street surface road for the conveyance of urban and suburban passengers. Yeomans and Prouty, Commissioners, dissenting. Willson v. Rock Creek R. C., 7 I. C. C. 83, 88.

IMPORTANT CASES SINCE 1908

(c) Electric railways, other than street passenger railways, participating in the interstate movement of persons or property are held within the jurisdiction of the Commission and subject to the requirements of the Commission relative to the filing of reports of finances and operations and accidents. Jurisdiction over Urban Electric Lines, 33 I. C. C. 536.

(d) If the maintenance of fares fixed by a franchise contract between an electric line and a municipality results in unjust discrimination against interstate commerce, it is within the power of the Commission to remove it by prescribing other and different intrastate fares. Ohio Rates, Fares and Charges, 64 I. C. C. 493, 498.

(e) It may be argued that this Commission has no jurisdiction over a city street car line and may not impose rates and conditions for local service other than those stipulated in a franchise, it is not seriously to be contended that the federal government in its efforts to maintain facilities of interstate communication and to prevent discrimination is to be prevented by municipalities which, in franchise involving the use of their local streets, assume to regulate the rates to be charged to and between other cities; and particularly when such franchises impose rates which, under present conditions, obviously are unjust and which menace maintenance of interstate transportation facilities and service. Ohio & Pennsylvania Rates, Fares and Charges, 64 I. C. C. 517, 524.

(f) Complainant attacked the reasonableness of through charges, but showing of unreasonableness was largely as to the factor maintained by an electric line. HELD, since the electric line was not under Federal control, the Director General not named as a party defendant, and no violation of the Federal control act alleged, shipments which moved during the Federal control period can not be considered. Buckeye Pipe Line Co. v. B. & O. R. R. Co., 73 I. C. C. 19, 22.

(g) Contention that even if the intrastate haul of an electric line is held to be part of an interstate movement, the Commission has no jurisdiction to require the establishment of joint rates as such electric line is a "street electric passenger railway" not engaged in the general business of transporting freight in addition to its passenger and express business, not sustained. In addition to the street passenger service the electric line conducts an interurban service, transports freight both in c. l. and l. c. l. quantities and maintains freight stations. Hood Coal Co. v. M. V. T. Co., 73 I. C. C. 54, 57.

(h) The question of whether an electric line is engaged in the general business of transporting freight is to be determined by the nature and extent of its freight business rather than by a technical construction of the act under which the lessor of its lines was organized. Michigan Railroad Co. v. P. M. R. R., 74 I. C. C. 489, 498.

(i) Under the Interstate Commerce Act, §1, as amended by Transportation Act of 1920, making the act applicable to carriers engaged in the interstate transportation of passengers or property wholly by railroad, which was the same in that respect as the language of the original act, when construed with amended section 13 of that Act, particularly in view of paragraphs 3 and 4 thereof, and sections 15a and 20a, which are added by sections 422 and 439 respectively of the Transportation Act of 1920, and with title 4, §402, par. 22, title 2, §209, and title 3, §300, of that act, an electric street or interurban railway is not subject to the Inter state Commerce Commission unless it is being operated as part of a general steam railroad system, is engaged in the general business of transporting freight in addition to its passenger and express business, or does not have, as its principal source of operating revenue, urban, suburban or interurban passenger traffic, or sale of power, heat, and light, or both. Village of Hubbard, Ohio, v, United States, 278 Fed. 754.

ALL OTHER CITATIONS

O. & C. B. St. Ry. Co. v. I C C., 191

Fed. 40, 43; Citizens of Somerset v. Washington Ry. & Electric. Co.,, 22 I. C. C. 187, 189; Beall v. W. A. & M. V. Ry. Co., 20 I. C. C. 406, 409; West End Improvement Club v. O. & C. B. Ry. & B. Co., 17 I. C. C. 239, 244,247, Order of Commission sustained, Omaha & C. B. St. Ry. Co. v. I. C. C. 191 Fed. 40, reversing 179 Fed. 243, where the Commission's order was temporarily enjoined; O. & C. B. S. R. R. Co. v. I. C. C., 33 Sup. Ct. 890; 230 U. S. 324; Louisville Board of Trade v. I. C. & S. T. Co., 27 I. C. C. 499, 504; New England Investigation, 27 I. C. C. 560, 608, 609; St. L. S. & P. R. R. v. P. & P. U. Ry. Co., 26 I. C. C. 226, 228; Kansas City, Mo., and Kansas City, Kan., v. K. C. V. & T. Co., 24 I. C. C. 22, 26; Bitzer v. W. Va. Ry. Co., 24 I. C. C. 255, 259; Ford v. W. Va. Ry. Co., 24 I. C. C. 632; Jurisdiction over Urban Electric Lines, 33 I. C. C. 536, 539; C. O. & P. Ry. v. C. & N. W. Ry., 33 I. C. C. 573, 575; Jurisdiction over Urban Electric Lines, 33 I. C. C. 536, 539; Chicago, Ottawa & Peoria Ry. Co. v. C. & N. W. Ry. Co., 33 I. C. C. 573, 575; James v. W. & O. D. Ry., 44 I. C. C. 570, 573; City of East Liverpool v. S. E. L. & B. V. T. Ry., 51 I. C. C. 563, 565; Beall v. W. T. Co., 60 I. C. C. 600, 606, 607; Electric Coal Co. v. Director General, as Agent, 60 I. C. C. 683, 685; Intrastate Fares of the C. N. S. & M. R. R., 62 I. C. C. 188, 193; Beall v. W. T. Co., 63 I .C. C. 220, 221, 222; City of Wellsville, Ohio, v, United States, 278 Fed. 769.

II. THRU RATES WITH STEAM ROADS

See Through Routes and Joint Rates.

IMPORTANT CASES SINCE 1908

(a) The Commission's authority to require establishment by steam railroads of through routes and joint rates with interurban electric railroads engaged in interstate commerce has long been settled. Chicago, Ottawa & Peoria Ry. Co. v. C. & N. W. Ry. Co., 33 I. C. C. 573, 575.

(b) Connecting electric lines should be accorded the same service upon like terms under like conditions as connecting steam roads. A. E. & C. R. R. v. I. H. Belt R. R., 51 I. C. C. 331, 334.

(c) The right of an interurban electric railway to the establishment of through routes and joint rates, under section 15 of the act, depends upon whether it is engaged in the general business of transporting freight in addition to its passenger and express business; its ability to maintain in connection with other carriers such through routes and joint rates; whether they are necessary or desirable in the public interest; and whether by such establishment any of the other carriers would be short-hauled. Michigan R. R. Co. v. P. M. R. R. Co., 74 I. C. C. 496, 497.

(d) The question of whether an electric line is engaged in the general business of transporting freight, so as to entitle it to through routes and joint rates, is to be determined by the nature and extent of its freight business rather than by a technical construction of the law under which the lessor of its lines was organized. Michigan R. R. Co. v. P. M. R. R. Co., 74 I. C. C. 496, 498.

ALL OTHER CITATIONS

Cedar Rapids and Iowa City Ry. & Light Co. v. C. & N. W. Ry. Co., 13 I. C. C. 250, 254; California Sugar Co. v. S. P. L. A. & S. L. R. R. Co., 19 I. C. C. 6; C. & C. Traction Co. v. B. & O. S. W. R. R. Co., 20 I. C C. 486, order of Commission enjoined, 195 Fed. 962 Louisville Board of Trade v. I. C. & S. T. Co., 27 I. C. C. 499, 504; C. O. & P. Ry. v. C. & N. W. Ry., 33 I. C. C. 573; Jurisdiction Over Urban Electric Lines, 33 I. C. C. 536, 538, 539; Lourie Mfg. Co. v. C. N. R. R., 42 I. C. C. 448, 450, 453; Mich. Ry. v. M C. R. R., 49 I. C. C. 255; Lourie Mfg. Co. v. C. N. R. R., 49 I. C. C. 64, 67; St. Louis Electric Terminal Ry. Co. v. Big Four Route, 55 I. C. C. 52; St. Louis Electric Terminal Ry. Co. v. C. C. C. & St. L. Ry. 55 I. C. C. 52, 57, 59; Chicago, Lake Shore & South Bend Ry. Co. v. Director General, 58 I. C. C. 135, 140; Chicago, Lake Shore & South Bend Ry. Co. v. Director General, 58 I. C. C. 647, 653, 654; St. Louis Terminal Co. v. C. C. C. & St. L., 58 I. C. C. 597; Cancellation of Joint Class Rates from Toledo & Western R. R., 59 I. C. C. 122; Class and Commodity Rates of Kansas City Rys. Co., 59 I. C. C. 382; Cancellation of Joint Through Rates M. & K. Ry. Co., 59 I. C. C. 404; Cement to W. B. & A. Stations, 63 I. C. C. 264; State of Idaho v. Director General, 66 I. C. C. 330; Rate Cancellation from Indiana to Ohio, 66 I. C. C. 449; Buckeye Pipe Line Co. v. B. & O. R. R., 73 I. C. C. 19; Hood Coal Co. v. M. V. T. Co., 73 I. C. C. 54; Farmers Square Deal Grain Co. v. I. U. Ry.,

74 I. C. C. 593; C. L. S. & S. B. Ry. v. L. E. & W. Ry., 88 I. C. C. 525.

III. RIGHT TO FUEL RATES AND DIVISIONS.

ALL CITATIONS

In Re Restricted Rates, 20 I. C. C. 426, 431; Hurst v. B. V. T. R. R., 51 I. C. C. 697, 700, 701; Montana Rates and Fares, 61 I. C. C. 500; Intrastate Fares of the C. N. S. & M. R. R., 62 I. C. C. 188; State of Idaho ex rel. v. O. S. L. R. R. Co., 83 I. C. C. 4; Cement from Bonner Springs, 83 I. C. C. 176.

IV. TRANSFERS AND RATES

IMPORTANT CASES SINCE 1908

(a) Special rates made to apply exclusively on the electric lines to school pupils not over 18 years of age are unlawful and discriminatory, but such rates may be put in, provided they apply to all young persons within the age limit specified. Bitzer v. W. Va. Ry. Co., 24 I. C. C. 255, 257.

(b) Higher fares may be charged on the electric lines between the same points on express trains than on local trains. Bitzer v. W. Va. Ry. Co., 24 I. C. C. 255, 259.

(c) A rule of a street railway company which prohibits the sale on its trains of round-trip tickets to interstate passengers from its station in Washington, D. C., where such tickets are kept on sale, is not unlawful, but defendant required to accord passengers boarding cars at Bureau of Engraving and Printing the same privileges as are accorded at other non-agency stations. Ford v. W. Va. Ry. Co., 24 I. C. C. 632.

(d) Fact that the combined passenger and newspaper traffic has increased to a point where the transportation facilities are inadequate does not furnish any justification for proposed increased rates on newspapers transported in passenger cars between stations on the Kansas City, Kaw Valley & Western Ry. Newspapers on Passenger Cars, 57 I. C. C. 743.

(e) So rates of electric lines authorized to be so increased by the same percentages as are approved herein for trunk lines in the same territory, but this is not to be construed as a disapproval of increases made or proposed in the regular manner in the passenger fares of electric lines. Increased Rates, 1920, 58 I. C. C. 220, 254.

(f) Proposal to establish, in lieu of a 5-cent fare, an 8-cent interstate local passenger fare between Jersey City and Hoboken, N. J., and Hudson Terminal station, New York, down town, and a 7-cent fare between Jersey City and Hoboken and stations in New York, Christopher street to thirty-third street, inclusive, uptown, found not justified, but present 6-cent fare down town and 10-cent fare uptown, established by special permission of the Commission in order that respondent might obtain additional revenue to which it was prima facie entitled, found justified. Local Fares on Hudson & Manhattan R. R., 58 I. C. C. 270.

(g) In accordance with act of Congress, approved July 2, 1918, 40 Stat. 742, 748, the space-basis system to govern the transportation of mails by electric roads found fair and reasonable. Reasonable rates and certain rules prescribed for different classes of mail service. Electric Railway Mail Pay, 58 I. C. C. 455.

(h) The service of interurban electric railways is distinguished by its local and limited character and by the fact that the bulk of their revenues are derived from the transportation of passengers. Their facilities for handling freight are usually inadequate or lacking so as to disable them from engaging in its general transportation. The amount of business interchanged by them with connecting carriers is ordinarily very small. Proposed Control of Sacramento Northern by W. P. R. R., 71 I. C. C. 653, 657.

(i) Standard and commutation fares of the Chicago, Lake Shore & South Ry. Co., for the transportation of passengers within the State of Illinois, lower than the corresponding interstate fares authorized in Increased Rates, 1920, 58 I. C. C. 220, 58 I. C. C. 302, found unduly preferential to intrastate passengers, unduly prejudicial to interstate passengers, and unjustly discriminatory against interstate commerce. Similar fares of the Aurora, Elgin & Chicago R. R. Co. and the Southern Illinois Ry. & Power Co. found not unduly preferential or discriminatory. Intrastate Rates within Illinois, 77 I. C. C. 173.

ALL OTHER CITATIONS

Beall v. W. A. & M. V. Ry. Co., 20 I. C. C. 406, 408; Silvester v. City & Suburban Ry. of Wash., 22 I. C. C. 201, 204; Omaha & C. B. St. Ry. Co. v. I.

C. C., 19 Fed. 40, 43; O. & C. B. St. Ry. Co. v. I. C. C., 179 Fed. 240, 243, order of Commission sustained, however, in O. & C. B. St. Ry. Co. v. I. C. C., 191 Fed. 40; West End Improvement Club v. O. & C. B. Ry. & Bridge Co., 17 I. C. C. 239, 248, 249, order temporarily enjoined on ground the act does not apply to street railways; Omaha & C. B. St. Ry. Co. v. I. C. C., 191 Fed. 40, 43; Porportional Commodity Rates Between Kerper and Wilson, Ohio, Unrep. Op. A-893; Passengers Fares between Somerset, Md., and Point in the District of Columbia, Unrep. Op. A-954; St. Louis, Mo.-Illinois Passenger Fares, 41 I. C. C. 584, 591, 601; Gasoline from Coffeyville, Kans., 43 I. C. C. 100, 101; Morgan v. F. V. R. R., 46 I. C. C. 327, 328; Lourie Mfg. Co. v. C. N. R. R., 49 I. C. C. 64, 68; Aurora, Elgin & Chicago R. R. Co. v. I. H. B. R. R., 51 I. C. C. 331, 333; City of East Liverpool Ohio, v. S. E. L. & B. V. T. R. R., 51 I. C. C. 563, 569; Hurst v. B. V. T. R. R., 51 I. C. C. 697, 702; Louisville Passenger Fares, 52 I. C. C. 366; Badger Lumber Co. v. A. T. & S. F. Ry. Co., 58 I. C. C. 97, 103, 107; United Iron Works, Inc., v. Director General, 59 I. C. C. 312; Class and Commodity Rates of Kansas City Railways Co., 59 I. C. C. 382; Local and Joint Passenger Fares, 59 I. C. C. 430; Local Fares Hudson & Manhattan Railroad Co., 58 I. C. C. 270; Joint Passenger Fares, 59 I. C. C. 170; Greater Bellville Board of Trade v. E. St. L. & S. Ry., 60 I. C. C. 741; William Wylie Beall v. Wheeling Traction Co., 60 I. C. C. 600; Intrastate fares of the C. N. S. & M., 62 I. C. C. 188 Fares of the Washington-Virgina Ry. Co., 62 I. C. C. 200; Gillespie Coal Co. v. I. T., 62 I. C. C. 335; Montana rates and fares, 61 I. C. C. 500; Commodity rates on brick from Danville to Bronson, Ill., 63 I. C. C. 277; Beall v. W. T. Co., 63 I. C. C. 220; Rates, fares and charges of the N. Y. C. R. R. Co., 64 I. C. C. 55; City of New Albany v. L. & N. Ry. & L. Co., 64 I. C. C. 468; Ohio Rates, Fares and Charges, 64 I. C. C. 493; Ohio and Pa. Rates, Fares and Charges, 64 I. C. C. 517, 524; Intrastate Rates within Illinois, 66 I. C. C. 350; Indiana Passenger Fares of C., L. & S. B. Ry. Co., 60 I. C. C. 180; Buckeye Pipe Line Co. v. B. & O. R. R. Co., 73 I. C. C. 19; Hood Coal Co. v. M. V. T. Co., 73 I. C. C. 54; Elimination of Michigan R. R. Co. from Fruit Tariff, 74 I. C. C. 228.

V. FACILITIES.

IMPORTANT CASES SINCE 1908

(a) Where electric interurban lines are common carriers and are engaged in interstate traffic, it is their duty, under express and affirmative provisions in the Act, to provide cars and all other reasonable facilities necessary properly to serve the public. Louisville Board of Trade v. I. C. & S. T. Co., 27 I. C. C. 499, 504.

ALL OTHER CITATIONS

Knapp Supply Co. v. Ohio Electric Ry. Co., 38 I. C. C. 627.

VI. OPERATION.

See Operation.

IMPORTANT CASES SINCE 1908

(a) A branch line proper may as well be operated by electricity as by steam, and no reason is obvious why the building of such branch lines ought not to be encouraged. New England Investigation, 27 I. C. C. 560, 609.

VII. REGULATION.

See Rules and Regulations.

IMPORTANT CASES SINCE 1908

(a) Defendant electric railway's published round-trip fare between Washington, D. C., and Robey, Va., was 50c, the fare one way being 30c. Under its rules, defendant sold round-trip fares only through its ticket agent. At 14th and B. streets, S. W., Washington, defendant had a station but no ticket agent and refused to permit passengers boarding at that station to procure round-trip tickets on the trains, thereby compelling passengers to pay single fares both ways. HELD, while it was not improper to require that round-trip tickets be purchased of the ticket agent at stations where there were such agents, it was unjustly discriminatory to prohibit the sale on the train of such tickets at stations having no ticket agent. Ford v. Washington-Virginia Ry. Co., 24 I. C. C. 632.

(b) Reduction of time within which commutation tickets of certain electric lines operating from Belleville and East St. Louis, Ill., to St. Louis, Mo., may be used, by limiting their use to the calendar month in which issued in lieu of 60 day period previously in effect, not found unreasonable as carriers are merely standardizing their practice and bringing it into conformity with that which has been in effect on their other divisions. Greater Belleville Board of

Trade v. E. St. L. & S. Ry. Co., 60 I. C. C. 741, 746.

VIII. SWITCHING CONNECTIONS.

See Switch Tracks and Switching §7.

IMPORTANT CASES SINCE 1908

(a) The power of the Commission to order a switch connection is provided in section 1 of the Act, and is limited to making such connection with a lateral branch line of railroad or with a private sidetrack. St. Louis, Springfield & Peoria R. R. v. P. & P. U. Ry. Co., 26 I. C. C. 226, 230.

(b) The Commission has no jurisdiction to order a switch track to be built connecting an independent electric line with a steam road where the electric line does not form a physical connection with such road. St. Louis, Springfield & Peoria R. R. v. P. & P. Ry. Co., 26 I. C. C. 226, 231.

(c) If a connection between an electric line and a steam road is not sufficient to render the service for through routing which the law requires, both carriers are under obligation to make the facilities adequate. St. Louis, Springfield & Peoria R. R. v. P. & P. U. Ry. Co., 26 I. C. C. 226, 231.

(d) Respondent proposed to cancel its switching charge for interchange of cars with the P. & N., at Paris, S. C. The P. & N. is an electric carrier of standard guage extending from Spartenburg to Greenwood, both in South Carolina, a distance of 128 miles. It parellels the Southern all the way, serves generally the same stations, and at no point is more than two or three thousand feet from the rails of the Southern. It is equipped for interchange of traffic with steam roads. In March or April, 1920, the Minter Homes Company purchased a part of the property of the former Camp Sevier, situated just south of the main line of the Southern at Paris and separated from the P. & N. by the tracks of the Southern. During the war the P. & N., in order to reach Camp Sevier, built a track about a thousand feet long connecting with the southbound track of the Southern. The Southern provided the frogs and switches for the connection with its track and a minor portion of the track. It switched freight to and from the P. & N., at a tariff charge of $2 per car, now $2.50, which was absorbed by the P. & N. on competitive traffic. On June 28, 1920, about two or three months after the transfer of the camp property and several months after the use of the connecting track for government shipments had ceased, the Southern took up about 230 feet of the track, thus destroying the connection. A witness for the Southern stated that if the cancellation is allowed to become effective the Southern will extend the Greenville switching limits to include Paris, and, with this Commission's permission, will do so upon less than statutory notice. It would appear that the assumption of the Southern at the time the track was removed that the necessity for the connection had ceased was not without justification. The only question before the Commission for determination upon this record is the propriety and lawfulness of the cancellation of the published charge for the service which is no longer physically possible for respondent to render. HELD, that respondent, upon extending, by proper tariff publication, the switching limits of Greenville so as to include Paris, as proposed by it, will have justified cancellation. This finding is without prejudice to the rights of shippers in an appropriate proceeding to seek reestablishment of the cancelled charge should the track connection, as a result of the order of the state commission, or otherwise be later restored. Switching and Absorption at Paris, 60 I. C. C. 210.

ALL OTHER CITATIONS

Chicago, Lake Shore & South Bend Ry. Co., v. Director General, 58 I. C. C. 135, 647, 654; Class and Commodity Rates of Kansas City Rys. Co., 59 I. C. C. 382.

ELEVATION

See Allowances §8 (3); Transit.

ELKINS ACT

See Crimes I.

EMBARGOES

See Car Congestion; Demurrage §3½; Reconsignment §4½.

CASES 1887-1908

(a) Complainant attacked defendants as guilty of unjust discrimination by reason of unreasonable delay in forwarding and delivering a carload of baled hay from Condit, O., to Washington, D. C., resulting in damages in the sum of $1,159.20. At this time there existed an unprecedented congestion of traffic

upon all lines of railroad connecting with the field of bituminous coal due to a strike of coal miners. In consequence, the B. & O., issued to its connections embargo notices to the effect that certain kinds of freight would not be accepted by it. HELD, it is proper for carriers to issue embargo notices and the Commission is unable to find from the testimony that any undue or unreasonable prejudice or disadvantage resulted to complainant, complaint dismissed. S. S. Daish & Sons v. C. A. & C. Ry., 9 I. C. C. 513.

(b) Embargo against one shipper, discrimination. Roger & Co. v. P. & R. Ry. Co., 12 I. C. C. 308.

(c) Embargo against one commodity and individual. A special embargo of complainant's shipments of hay and straw destined to defendant's Third and Arch streets station in Philadelphia, held to constitute an unlawful discrimination. Whatever may be said of an embargo against one commodity only in a time of congestion can be said for an embargo which refuses transportation facilities to some establishments while according such facilities to their competitors. Rogers & Co. v. P. & R. Ry. Co., 12 I. C. C. 308.

(d) Complainant attacked as discriminatory an embargo placed by defendant on complainants shipment of hay and straw destined to its station in Philadelphia. HELD, this resulted in discrimination against complainant for the reason competitors of complainants receiving these commodities at the same station were not embargoed. E. L. Rogers & Company v. P. & R. Ry., 12 I. C. C. 309.

(e) In July, 1906, defendant issued a special embargo on complainant's shipments of hay and straw destined to its Twenty-third and Arch streets station in Philadelphia: HELD, upon the facts of the case: (1) That such embargo constituted an unlawful discrimination against complainant. Whatever may be said of an embargo against one commodity only in a time of congestion, can be said for an embargo which refuses transportation facilities to some establishments while according such facilities to their competitors. If the exercise of such a power were to be at all tolerated, carriers would be able to issue sentences of commercial death against some of their patrons, while continuing to serve others. (2) That this Commission has jurisdiction to forbid such discrimination and to award reparation for the detriment directly and proximately resulting from it, but as the record in the case fails to show that the shipments made during the embargo period were interstate, no order of reparation will be entered until after proper showing that said shipments were interstate. Rogers & Co. v. Phila. & Reading Railway Co., 12 I. C. C. 309.

(f) Reparation for detriment proximately resulting from embargo against one commodity and individual, not ordered where record fails to show that shipments made during the embargo period were interstate. Rogers & Co. v. P. & R. Ry. Co., 12 I. C. C. 309.

(g) Whatever may be said of an embargo against one commodity only in a time of congestion, nothing can be said for an embargo which refuses transportation facilities to some establishment while according such facilities to their competitors. If the exercise of such a power were to be at all tolerated, carriers would be able to issue sentence of commercial death against some of their patrons, while continuing to serve others. E. L. Rogers & Company v. P. & R. Ry., 12 I. C. C. 309, 311.

IMPORTANT CASES SINCE 1908

(h) In a certain case embargoes were placed by some lines against movement of their own coal cars beyond their rails, a practice held unlawful in Mo. & Ill. Coal Cases, 22 I. C. C. 39, and in that case carriers were expected to make such rules for return of cars as would terminate such abuses. Where carriers have failed in this respect Commission is empowered to determine individual or joint regulation or practice that is just, fair, and reasonable. Car Supply Investigation, 42 I. C. C. 657, 662, 671.

(i) The question whether or not an embargo unduly prejudiced those who desired to ship a particular commodity upon which it was in effect is one of fact, determinable only upon consideration of all the facts, circumstances, and conditions in a particular case and a showing that there was no accumulation of that commodity at a carrier's termini does not of itself justify a finding of undue prejudice and disadvantage in a case where there was an excessive accumulation of other freight. Prudential Oil Corporation v. M. & M. Transp. Co., 43 I. C. C. 696, 699.

(j) The Commission's jurisdiction is limited to determining the lawfulness of the practices of embargoes and to requiring after full hearing the establishment and maintenance of such regulations or practices as may be found to be just, fair and reasonable. Baltimore Chamber of Commerce v. B. & O. R. R. Co., 45 I. C. C. 40, 53.

(k) The Act does not inhibit the declaration of an embargo by a carrier, and the advisability or the necessity of declaring embargoes is a matter of policy to be determined in the first instance by the carrier. Baltimore Chamber of Commerce v. B. & O. R. R., 45 I. C. C. 40, 53.

(l) Carriers may not, under the guise of an embargo, attempt to accomplish results which the law requires shall be effected only by means of published tariffs. Powell-Myers Lumber Co. v. St. L. I. M. & S. Ry. Co., 45 I. C. C. 594, 596.

(m) An embargo on traffic is an emergency measure adopted where it is physically impossible for carriers to transport freight, or where there is an unusual accumulation of traffic. Under such circumstances there is temporarily and to a limited extent a failure by a carrier to fulfill its obligations as a common carrier. Such failure is unlawful unless it has sufficient justification, and, with respect to interstate traffic, also violates that provision of the Act to regulate commerce which, requires that carriers subject thereto shall "furnish * * * transportation upon reasonable request therefor." That some embargoes may be justifiable is obvious, but carriers may not, under the guise of an embargo, attempt to accomplish results which the law requires shall be effected only by means of published tariffs. Powell-Myers Lumber Co. v. St. L. I. M. & S. Ry. Co., 45 I. C. C. 594, 595, 596.

(n) Federal embargoes are declared in the interest of the general public and must be observed. By observing them the carrier incurs no liability to the shipper whose goods are embargoed. Union Hay Company v. C. St. P. M. & O. Ry. Co., 45 I. C. C. 594, 597.

(o) A shipper who chooses to defeat the spirit of an embargo against the making of export shipments to New York before he has secured his ocean space suffers the penalty represented by the difference between the provisions of the export and the domestic tariff schedules. New York Produce Exchange v. B. & O. R. R., 46 I. C. C. 666,672.

(p) No charge should be made for a reconsignment or change in route made necessary by an embargo or by the confiscation of freight. Reconsignment Case, 47 I. C. C. 590, 616.

(q) If under all the facts a particular embargo could not be justified by the carriers, it is clear that they could not justify refusal to reconsign to the embargoed point, although the tariff might so provide. Reconsignment Case, 47 I. C. C. 590, 635.

(r) Where physical disabilities prevent the carriers from handling certain kinds of traffic for particular destinations, or where the consignees are unable promptly to accept delivery, the embargo is properly invoked. Coal from Arkansas and Other States, 49 I. C. C. 727, 731.

(s) Unlike rate increases, the embargo is but a temporary measure, which leaves the rate structure undisturbed. Coal from Arkansas and Other States, 49 I. C. C. 727, 731.

(t) An embargo was in effect at the billed destination. A car was reconsigned but complainant failed to request change in name of consignee. Upon arrival at new destination consignee could not be located and complainant did not give delivery instructions until after receipt of a second telegram. Delivery again not affected due to accrued demurrage and car was towed across the river and subsequently towed back and delivered. It was held that demurrage and towage charges not unreasonable or otherwise unlawful. Currie & Campbell v. Director General, 57 I. C. C. 450.

(u) A carrier accepted reconsignment instructions after being informed that car would be accepted by connecting point. Failure to comply with further instructions for reconsignment to another point received while shipment was on carrier's rail, or to inform the connecting carrier before shipment left reconsignment point, resulted in higher charges than would otherwise have lawfully accrued. Reparation awarded. Lowry Lumber Co. v. Director General, as Agent, 58 I. C. C. 12.

(v) But it is within the jurisdiction of the Commission to condemn an embargo which results in an unreasonable

practice. Herman Gross v. Director General, 58 I. C. C. 604, 606.

(w) The law does not require that notices of embargoes be published as tariffs are published. La Fayette Box Board & Paper Co. v. Director General, as Agent, 59 I. C. C. 105, 107.

(x) Where an embargo in effect prohibits movement to a point except upon special permits and carrier accepts shipments from connections in addition to those for which permits were issued and complainants are unable to unload within free time, demurrage accruing is not unreasonable or otherwise unlawful. Timken Roller Bearing Co. v. W. & L. E. Ry. Co., 59 I. C. C. 149.

(y) Unless tariffs prohibit reconsignment to embargoed points no demurrage charges accrue. McGowin Lumber & Export Co. v. Director General, as Agent, 64 I. C. C. 694, 697.

(z) Shipments found misrouted where embargoes were a desirability of the carriers, which did not confer upon them the right of diverting shipments to higher rated routes contrary to shippers' instructions, especially where there were no provisions in tariffs at time shipments moved prohibiting reconsignment to embargoed points, and nothing which would have precluded shipper from specifically routing via lower rated routes had it billed shipments to final destinations in the first instance. McGowin Lumber & Export Co. v. Director General, as Agent, 64 I. C. C. 694, 697.

(aa) Because of an embargo, shipper authorized change in destination and ultimately reconsigned shipment to originally billed point. Shipper might have stood upon his right to have joint rate specified in original billing protected, but since he consented to the substitution of a different contract in the face of a warning that change in destination could not be made the effective means of diversion after arrival at new destination, he thereby assumed liability for the combination rates charged and legally applicable over route of movement. George Pottery Co. v. Director General, as Agent, 60 I. C. C. 372.

(bb) Charges applicable on shipments of cotton on which shipper directed compression in transit at a point off the initial carrier's rails, because of an embargo, found unreasonable to extent they exceeded lower charges from more distant points of origin with carrier's privilege of compression at points on its own line, which lower charges were subsequently established from points of origin here involved. Reparation awarded. Tarver, Steele & Co. v. Director General, as Agent, 60 I. C. C. 666.

(cc) Due to an embargo via the normal route, shipper was obliged to route intrastate shipments for delivery via route over which higher rate applied. HELD: As distances over both routes practically the same and shipments moved during federal control, when the carriers were being operated as part of a national system, and were, for then-present purposes, a single line, higher rate charge found unreasonable. Reparation awarded. Barrett Co. v. Director General, as Agent, 61 I. C. C. 401.

(dd) An embargo placed by Fuel Administrator against complainant's plant became effective while shipments en route and cars were constructively placed in carrier's yards. HELD: Embargo not applicable to complainant's shipments, and since demurrage accrued as a result of such constructive placement and not to disability of complainant, demurrage found unlawfully assessed and should be refunded. Union Bag & Paper Corp. v. Director General, as Agent, 61 I. C. C. 424, 427.

(ee) The contention that carriers having established through rates and provided for reconsignment it was unlawful to assess penalty charges upon shipments held on account of embargoes, notwithstanding tariff provisions to the effect that reconsignment orders would not be accepted to a point against which an embargo was in force at the time shipment was forwarded from point of origin, not sustained. American Wholesale Lumber Asso. v. Director General, as Agent, 66 I. C. C. 393, 398.

(ff) If a shipper habitually delays cars for unloading at destination the carriers may place an embargo against freight consigned to him and thus prevent further detention of equipment; if the shipper habitually delays loading cars the carrier may refuse further supply and thus prevent detention and accumulation of cars at the loading point. American Wholesale Lumber Asso. v. Director General, as Agent, 66 I. C. C. 393, 405.

(gg) The right to refuse shipments temporarily for good cause by the es-

tablishment of embargoes, which are not required to be filed with the Commission is recognized. Krauss Bros. Lumber Co. v. Director General, 66 I. C. C. 637, 639.

(hh) The obligation to accept articles tendered for transportation is governed by general principles of law; to reconsign, by rules lawfully on file with the Commission. The right to refuse shipments temporarily for good cause by establishment of embargoes, which are not required to be filed, is recognized. The right to reconsign depends entirely upon the construction of the rules, which are required to be filed in the same manner as rates. If carriers do not restrict such rules to the extent of their capacity to perform the service, the shipper can not be held liable for detention when it is not directly responsible therefor and can not abate the cause thereof, as in the case of an embargo, which is a disability of the carrier. Krauss Bros. Lumber Co. v. Director General, as Agent, 66 I. C. C. 637, 639.

(ii) An embargo is an emergency measure placed because of some disability on the part of the carrier which makes the latter unable properly to perform its duty as a common carrier. It is not placed for the protection of the shipper. John E. Murray v. Director General, 69 I. C. C. 477, 479.

(jj) Tariff authorized diversion or reconsignment at joint rates but provided that such orders would not be accepted to embargoed points except under authorized permits. Delivering line declined to issue permits to divert en route, but shipments were permitted to move to embargoed points by being first billed to an open destination on its line and then rebilled therefrom under permits, for which combination rates were assessed. HELD, purpose of embargo defeated and permits issued negatived prohibition against diversion or reconsignment to embargoed points. The legal rates were thus the joint rates to final destination, plus diversion or reconsignment charges. Reparation awarded. Humble Oil & Refining Co. v. Director General, as Agent, 73 I. C. C. 275.

(kkll) Embargoes are justified by such necessities as may arise from congestion of carrier facilities, inability of consignees to receive shipments, or other causes beyond the control of the carrier, and their object is to prevent stagnation and facilitate movement of traffic. Humble Oil & Refining Co. v. Director General, as Agent, 73 I. C. C. 275, 276.

(mm) Carriers placed embargo on export traffic except when moving under special permits. Routes inserted in permits were invariably inserted by shipper in bills of lading. Contention that under General Order No. 1 of the director general, and the commission's order of April 26, 1918, rates over the cheapest and customary routes should have been protected. HELD, commission's order provided that where routing specified in bill of lading was disregarded charges should be adjusted according to the rates applicable over the route specified. Shipper exercised option of voluntarily accepting the cheapest routes available when permits were issued in lieu of withholding shipments until the desired routes become available. North Packing & Provision Co. v. Director General, as Agent, 73 I. C. C. 749.

(nn) A route justifiably embargoed against certain traffic is not available to a shipper tendering such traffic. A carrier participating in such route may refuse to accept a shipment so tendered and is not bound to protect the rate over such embargoed route if the shipper elects, because of such embargo, to forward his shipment by a more expensive route. North Packing & Provision Co. v. Director General, as Agent, 73 I. C. C. 749.

(oo) Common carriers have the right in order to prevent complete paralysis of their operating facilities, to protect themselves by embargo against acceptance of freight over a certain route or routes which may be congested. North Packing & Provision Co. v. Director General, as Agent, 73 I. C. C. 749, 752.

(ppqq) A route that is embargoed against certain traffic cannot be said to be available to shippers tendering such traffic. North Packing & Provision Co. v. Director General, 73 I. C. C. 749, 752.

(rr) Under the Hepburn Act of 1906, amending the Interstate Commerce Act, an interstate carrier can not at the request of a consignee, who is under contract to receive shipments, declare an embargo and refuse to furnish cars for shippers; that if it temporarily does so and then removes the embargo, the latter act is but a return to its duty under the act; and failure to notify consignee of such removal does not relieve the latter from liability for demurrage

provided by the published tariff. Menasha Co. v. Chicago & Northwestern Ry., 241 U. S., 55; Newton Oil Mill v. Director General, as Agent, 74 I. C. C. 113, 115.

(ss) To avoid embargo via the usual route shipments were specifically routed by shipper over route taking higher combination rate. HELD: Facts that were lower ratas were in effect over routes other than route of movement, that a lower joint rate was subsequently established over the route traversed, and that between other points there were joint rates made on substantially the same basis as that in connection with the less costly route, do not prove unreasonableness. International Paper Co. v. M. C. R. R. Co., 74 I. C. C. 385.

(tt) Embargo placed against domestic freight for New York Harbor delivery except when moving under permits, issued only upon condition that delivery be acepted at Brooklyn terminals. Such delivery accepted under protest necessitating hiring outside lighters or drayage to plants. Tariffs provided for free lighterage delivery, but since bills of lading did not call for such delivery the contracts of carriage were fulfilled when Brooklyn delivery accepted. Permit system was lawfully established and embargo merely closed a delivery service theretofore accorded, neither of which resulted in unreasonable or unlawful rates or practices. American Mfg. Co. v. Director General, as Agent, 77 I. C. C. 52.

(uu) Complainant attacked defendant's action in placing embargoes against shipments for complainant's plant which is located within the free lighterage limits of Brooklyn, N. Y., and defendants refusal to issue permits for and deliver shipments to complainant's plants by lighter, requiring complainant to accept delivery of their shipments at various freight stations in Brooklyn at a greater cost and resulted in collection of illegal charges. The only question involved is reparation. On Jan. 15, 1918, the director general placed embargoes against domestic freight for lighterage delivery in New York Harbor, and effective April 1, 1919, lighterage of domestic carload freight was resumed under the permit system, but complainants received no such deliveries until May 3, 1919. In the period between Feb. 14, 1918, and May 3, 1919, complainant was compelled to accept delivery at the railroad terminals in Brooklyn. In order to secure a permit the consignee was required to designate the specific station at which he would receive the shipment. In order to secure delivery of their inbound shipments from rail stations in Brooklyn, to which they were consigned after permits for lighterage delivery could not be obtained, the complainants in some cases engaged outside lighters and in others purchased trucks and leased motor trucks and employed labor and teams. During the entire period in question the schedules of the carriers provided for lighterage deliveries direct to complainant's plants. These embargoes did not absolutely deprive the complainant of the opportunity to receive their shipments, but only deprived them temporarily of a service which they had formerly enjoyed. The rate was the same regardless of the manner of delivery. But aside from a few isolated cases, the record shows that the shipments involved moved as routed in the bills of lading, and the legally applicable rates for the services performed were assessed and collected. HELD, the embargoes and permit system were lawfully established and did not result in any unreasonable or discriminatory practices, complaints dismissed. American Manufacturing Co. v. Director General, 77 I. C. C. 52.

(vv) An embargo is a war measure or extraordinary remedy. Primarily, it is not intended as an incentive to promptly release equipment but to prevent further movement until such time as measures can be taken to remove accumulation of cars. American Manufacturing Co. v. Director General, 77 I. C. C. 52, 55.

(ww) Where physical disabilities prevent common carriers from handling certain kinds of traffic for particular destinations, the Commission has recognized the carriers right to declare embargoes The advisability or necessity for such action is to be determined by the carrier in the first instance, subject to appropriate penalty or correction if laid without legal justification or in a manner to transgress a mandate of law. American Manufacturing Co. v. Director General, 77 I. C. C. 52, 55.

(xx) The director general was authorized, through his agents, in the exercise of the war powers conferred upon him, to issue embargoes. American Mfg. Co. v. Director General, as Agent, 77 I. C. C. 52, 55.

(yyzz3a) An embargo is an emergency

adopted where it is physically impossible for carriers to transport freight, or where there is an unusual accumulation of traffic. American Manufacturing Co. v. Director General, 77 I. C. C. 52, 56.

(3b) The permit system approved which creates what may be called a modified embargo, provided the permits were necessary and properly policed. American Manufacturing Co. v. Director General, 77 I. C. C. 52, 56.

(3c) The reasonableness of an embargo must be tested by the conditions existing when they were issued. American Manufacturing Co. v. Director General, 77 I. C. C. 52, 56.

(3d) Under the permit system complainants were enabled to receive traffic and keep their plants in full operation. Contention that embargoes would have been legal if carriers had absolutely prevented traffic from moving, but that since traffic was permitted to move under permits and under certain conditions and in certain channels the embargoes were ineffective. HELD: There is no force to this contention. American Mfg. Co. v. Director General, as Agent, 77 I. C. C. 56.

(3ef) An embargo is flexible and can be changed and modified readily. An embargo is a temporary measure, which leaves the rate structure undisturbed. American Manufacturing Co. v. Director General, 77 I. C. C. 52, 57.

(3ghi) Whether or not an embargo unduly prejudiced those who desired to ship a particular commodity upon which it was in effect is one of fact, determinable upon consideration of all of the facts, circumstances and conditions in a particular case. American Manufacturing Co. v. Director General, 77 I. C. C. 52, 58, 59.

(3j) Frequently embargoes take the form of a temporary discontination of a particular station delivery, and consignees ordinarily receiving their traffic at that station must accept delivery of their shipments at a more distant point. If action of carriers in issuing embargoes is otherwise lawful, it can not be urged that a receiver of freight who had established his business in proximity to the embargoed terminal should be reimbursed for the added cost incurred in bringing his freight from the more distant point. American Mfg. Co. v. Director General, as Agent, 77 I. C. C. 52, 58.

(3k) Carriers embargoed traffic to New York Harbor points. Complainant's shipments were permitted to go forward under permits which contained an agreement that they would perform their own lighterage service. Refusal of carriers to make an allowance, as provided in tariffs, for lighterage service to Shooters Island, in New York Harbor, found not unreasonable or otherwise unlawful following American Mfg. Co., 77 I. C. C. 52, and Compagnie Auxiliare, 77 I. C. C. 60. Permits were only for movement to Jersey City and Elizabethport and the contracts of transportation were terminated at those points by the express agreement of the parties. Standard Shipbuilding Corp. v. Director General, as Agent, 77 I. C. C. 64.

(3l) Cars were ordered by shipper without specifying destination of shipments. Embargo having been placed on traffic to intended destination, empty cars remained on sidetrack at shipper's plant and demurrage charges accrued. HELD: Cars were ordered by shipper, and carrier was under no obligation to remove them unless instructed to do so. No such instructions having been given, demurrage charges were applicable during time cars were held by shipper. Brennan Packing Co. v. Director General, as Agent, 77 I. C. C. 307.

(3m) Upon shipper's order, without specifying destination of loaded movement, car delivered and loaded. Embargo prevented movement of car, and Federal regulation prohibited return of contents to shipper's plant. Shipper unable to dispose of shipment locally because of contract for entire output. Car remained on sidetrack and demurrage charges accrued. HELD: Partial interference of Federal regulations with disposition of contents of car does not constitute ground for ordering refund of demurrage. Brennan Packing Co. v. Director General, as Agent, 77 I. C. C. 307.

(3n) Complainant attacked rates charged on a carload of wooden bull wheel cants and pins, in the rough, shipped Oct. 29, 1918, from Parkersburg, W. Va., to Ranger, Tex., as inapplicable and unreasonable. An embargo was in effect against Ranger except under permits, but the agent of the B. & O., at Parkersburg accepted the shipment and issued a through bill of lading. Upon arrival at St. Louis complainant was advised of the embargo and instructed to furnish disposition orders, and delivery was thereupon authorized at Strawn, Tex.,

14 miles east of Ranger. The car finally was moved from Strawn to Ranger without issue of a permit. Charged at commodity rate of 60.5c applicable to Strawn and Ranger and after arrival additional charges of 15c class A was charged from Strawn to Ranger, upon the theory that the shipment had been twice reconsigned. The reconsignment rules named a charge of $2 per car in addition to the through rate by way of the reconsignment point on shipments diverted in transit prior to arrival at original destination. HELD, charges collected inapplicable, and unreasonable to extent they exceeded commodity rate of 60.5c, reparation awarded. Parkersburg Rig & Reel Co. v. Director General, 78 I. C. C. 299.

(3na) Embargoes in effect against destination, except on shipments made under authorized permits. Without notifying complainant of embargo, carrier accepted shipment and issued through bill of lading. Before shipment reached destination complainant was advised of embargo and ordered carrier to deliver shipment to another point whence it moved to original destination without permit. Charges were prepaid at joint commodity rates. Additional charges collected at destination on theory that shipment was twice reconsigned, found inapplicable and unreasonable, as reconsignment would not be accepted at or to an embargoed point. Parkersburg Rig & Reel Co. v. Director General, as Agent, 78 I. C. C. 299.

(3o) Due to embargo impelled by strike conditions on trunk line connections, defendant short line declared embargo and notified shippers accordingly. Subsequent to such notice, complainant ordered cars from defendant and loaded them, after which they were removed by defendant to hold tracks where they remained until its connections would accept them. Demurrage assessed during this period found applicable and not unreasonable. Cars were placed for loading at instance of complainant and apparently for its convenience. United Paperboard Co. v. M. & E. R. R. Co., 80 I. C. C. 640,

(3p) Shipment moved under permit during existence of embargo. Prior to arrival at originally billed destination reconsignment requested and denied. Shipment arrived at originally billed destination where demurrage accrued and subsequently upon instructions from shipper was forwarded to destination requested in reconsignment instructions. HELD: Following Skilton case, 56 I. C. C. 251, and Wood case, 53 I. C. C. 183, demurrage charges, and combination rates to extent they exceeded joint rate to ultimate destination, found illegal. Effective reconsignment tariff did not prohibit reconsignment to embargoed points, and fact that shipment moved into embargoed territory under permit did not make tariff inapplicable. Reparation awarded. American Lumber & Mfg. Co. v. G. R. R., 80 I. C. C. 759.

(3pa) An embargo is a temporary measure which leaves the rate structure unimpaired. It may take the form of a complete suspension of all transportation service or a suspension of a part only of the service. In either event the rate structure remains unchanged and unaffected, but if the embargo is partial, charges may not be assessed in excess of the tariff rates for that part of the service which has been actually performed. Compagnie Auxiliare v. D. L. & W. R. Co., 87 I. C. C. 443, 447.

(3pb) Embargoes are not published in the same manner as tariffs and shippers are not chargeable with knowledge of their terms. Empire Lumber Co. v. Director General, 88 I. C. C. 424, 425.

(3q) A so-called embargo, by which a railroad company at the request of a paper company, owning and operating a private side track, refused to furnish cars to shippers for interstate consignment to such paper company, which the latter, under contracts with the shippers was under an obligation to receive and did in fact receive, violates the provisions of the Hepburn Act, requiring railway companies to provide and furnish transportation to shippers upon reasonable request therefor, and such embargo could be removed by the railroad company without notice to the paper company, although such action produced a congestion of cars beyond the ability of the paper company to handle on its side track in the usual way, and thus render the paper company liable to demurrage charges. Menasha Paper Co. v. C. & N. W. Ry. Co., 36 Sup. Ct. 501.

ALL OTHER CITATIONS

Peale, Peacock & Kerr v. C. R. R. Co. of N. J., 18 I. C. C. 25, 34; Mo. & Ill. Coal Co. v. I. C. R. R. Co., 22 I. C. C. 39, 47; New York Hay Exchange Assn.

v. L. V. R. R. Co., 29 I. C. C. 90; Spring Coal Co. v. N. & W. Ry. Co., Unrep. Op. A-536; Berger-Crittendon Co. v. C. M. & St. P. Ry. Co., (Wis., 1915), 150 N. W. 496, 500, 501, 530,, Hudson Motor Car Co. v. M. C. R. R., 42 I. C. C. 1; Export Grain Storage Charges, 42 I. C. C. 530, 543; Eastern Export Iron and Steel Case, 43 I. C. C. 5, 7; Eagle Pass Lumber Co. v. G. H. & S. A. Ry., 47 I. C. C. 219; Schaeffer & Son v. L. I. R. R., 48 I. C. C. 25, 30; Woolman & Co. v. T. St. L. & W. R. R. 48, I. C. C. 441; Eagle Pass Lumber Co. v. G. H. & S. A. Ry., 48 I. C. C. 693, 694; Wall Rope Works, v. Penn. R. R., 49 I. C. C. 199; Cady Lumber Co. (Inc.) v. G. & W. Ry., 49 I. C. C. 165; Brunswick-Balke-Collender Co. v. P . M. R. R. 49 I. C. C. 530; Graham County Lumber Company v. S. Ry., 50 I. C. C. 231; Coal from Arkansas and Other States, 49 I. C. C. 727, 731; Meany & Saisselin v. Erie R. R., 173 N. Y. S. 96; Nichols & Cox Lumber Co. v. N. Y. C. R. R., 51 I. C. C. 174; Davis Sewing Machine Co. v. P. C. C. & St. L. R. R., 51 I. C. C. 191; Barber & Co. v. C. C. C. & St. L. Ry., 51 I. C. C. 194; Higging Lumber & Export Co. v. N. O. G. N. R. R., 51 I. C. C. 214; Brabston v. C. of G. Ry., 51 I. C. C. 459; Holgate Bros. Co. v. P. R. R., 51 I. C. C. 515; Wood v. N. Y., P. & N. R. R. Co., 53 I. C. C. 183; Wall Rope Works, Inc. v. Pa. R. R., 55 I. C. C. 337; Cannon Mfg. Co. v. Southern Ry., 56 I. C. C. 128, 130; Sellen v. L. V. R. R., 55 I. C. C. 117; Atlantic Lumber Co. v. N. Y. P. & R. R. Co., 57 I. C. C. 129; Trantum & Danzer (Inc.) v. N. Y. P. & R. R. Co., 57 I. C. C. 281; Currie & Campbell v. Director General, as Agent, 58 I. C. C. 12; Lowry Lumber Co. v. Director General as Agent, 58 I. C. C. 113, 117, 118, Goss v. Director General, 58 I. C. C. 604, 607, 609; Watters-Tonge Lumber Co. v. B. & O. S. W., 59 I. C. C. 229; Meeds Lumber Co. v. Director General, 59 I. C. C. 243; Joseph I. Leiberman, et al v. C. & N. W., 59 I. C. C. 599, 600; Dort Motor Co. v. Director General, 59 I. C. C. 374; Duvall & Co. v. Director General, 59 I. C. C. 442; Seaboard By-Products Coke Co. v. Director General, as Agent, 59 I. C. C. 453; DuPont de Nemours & Co. v. Director General, as Agent, 59 I. C. C. 659, 660, 661; Manufacturers Export Clearing House v. Director General, as Agent, 61 I. C. C. 85; Diversion & Reconsignment Rules, 61 I. C. C. 385, 388; Barrett & Co. v. Director General, as Agent, 61 I. C. C. 401; Frick-Reid Supply Co. v. Director General, as Agent, 68 I. C. C. 151; Lee Pendergrass Cotton Co. v. Director General, as Agent, 68 I. C. C. 637, 642; Danzer & Co. v. G. & S. I. R. R. Co., 69 I. C. C. 59; Murray v. Director General, as Agent, 69 I. C. C. 482; Kaw Boiler Works Co. v. Director General, as Agent, 83 I. C. C. 339.

EMERGENCY RATES

See Evidence §21½; Experimental.

IMPORTANT CASES SINCE 1908

(a) Rate legally applicable on ice from Jacksonville, Fla., to Atlanta, Ga., found not unreasonable as compared with lower rate in the opposite direction or as compared with lower rate temporarily established after shipments moved to meet an ice shortage at Atlanta. Atlantic Ice & Coal Corp. v. S. Ry. Co., 61 I. C. C. 111.

(b) Reduced return rates were established by the Director General as emergency rates to prevent cattle from starving. Because of the high price of winter feed and under impression that such reduced rates would be applied, shipper sent his cattle south for wintering, which cattle were subsequently returned. HELD: Since no emergency existed and there was no tariff authority for the reduced return rate on cattle moving from point of origin here involved, rates charged found not unreasonable. Parks v. Director General, as Agent, 64 I. C. C. 147.

(c) So it has been held that fifth-class rates on iron tanks, k. d., from Cushing, Okla., to Central City, Ohio, and Morgantown, W. Va., found not unreasonable as compared with lower emergency commodity rate established from Cushing to Roxana, Ill., upon representation of a competing company which contemplated the removal of its refinery to the latter named point, and which expired by limitation. Pure Oil Co. v. Director General, as Agent, 64 I. C. C. 444.

(d) Complainant attacked rates charged on 26 carloads of soft coal, shipped June 29, and Oct. 1, 1918, from points in the Linton and Princeton districts of southwestern Indiana to Aurora and Frankton, Ind., as unreasonable to extent they exceeded $1.30 and $1.32 subsequently established. Shipments to Frankton originated at Fort Branch

and moved over the C. & E. I. to Terre Haute, Big Four through Indianapolis, to Anderson and Pan Handle beyond, 207 miles, charged at rate of $2.30 applicable rate $2. Shipments to Aurora moved over same routes, 190 miles, rates applicable varied from $1.40 to $2.60. The movement, theretofore, from Indiana mines had been light and the only rates generally available were combination rates. In January 1918 carriers established a scale of distance rates. The shipments to Frankton represented the only coal purchases made by complainant at Fort Branch and it is apparent that those to Aurora were emergency movements. HELD, rates attacked unreasonable to extent they exceeded $1.60 per ton, reparation awarded. Opp. Coal Co. v. Director General, 68 I. C. C. 349.

(e) The practice of securing revenue through a minimum higher than the capacity of cars furnished should be condemned, but where abnormally low per car charges resulted from emergency rates established as a temporary relief measure a shipper has no well-founded claim because he could not load to the prescribed minimum. Devereux Co. v. Director General, as Agent, 73 I. C. C. 289, 290, 291.

(f) Rates on emergency shipments of gas oil, gasoline, and distillate, in tank-car loads, from Oklahoma points to Potwin, Kans., found not unreasonable or unduly prejudicial as compared with lower rates to other Kansas refining points, which rates were subsequently made applicable to Potwin. Rates assailed compare favorably with those in the reverse direction prescribed in National Petroleum Asso., 57 I. C. C. 355. Vickers Petroleum Co., v. Director General, as Agent, 73 I. C. C. 578.

(g) Sixth-class rate on sporadic shipments of ice from White Lake, N. Y., to Scriba, N. Y., found not discriminatory or unduly prejudicial but found unreasonable to extent it exceeded lower commodity rate subsequently established, as a result of negotiations, prior to the movement, to take care of emergency shipments made necessary by an ice shortage at Scriba. Reparations awarded. Evans Dairy Co., Inc., v. Director General, as Agent, 73 I. C. C. 581.

(h) Emergency rates established by the director general to afford relief to drought-stricken territory and assessed on hay, feed, bran, and shorts, from points in Washington to destinations in Montana, found applicable. Another section of the same tariff named specific commodity rates, but since they were restricted to apply westbound, the "application of rates" provisions can not be construed as making them applicable on traffic moving eastbound. Devereaux Co. v. Director General, as Agent, 73 I. C. C. 627.

(i) Class rates on sporadic shipments of artificial ice from Hamlet, N. C., to Atlanta, Ga., found unreasonable as compared with rates on similar emergency shipments from other points to Atlanta, and to extent they exceeded distance commodity rate between stations in North and South Carolina projected to distance traversed by shipments in issue. Reparation awarded. Fruit Growers Express v. Director General, as Agent, 74 I. C. C. 701.

(j) Upon complaint seeking a reduction of 50 per cent in the rates on cotton seed products, hay, grain, and other feedstuff for cattle from points in Oklahoma, Arkansas, Louisiana, Colorado, and Kansas, and from points in Texas over interstate routes, to afford relief to drought-stricken points in Western Texas, such rates to expire by limitation, HELD: Present rates are not unreasonably high per se, nor under normal conditions, and the freight rate factor is a comparatively small item in the total cost of stock feed laid down in Western Texas. American National Live Stock Asso. v. S. P. Co., 74 I. C. C. 760.

(k) Complainant attacked as unreasonable rates on cotton seed, cottonseed products, hay, grain, and other feed for cattle from Oklahoma, Arkansas, Louisiana, Colorado, Kansas, and from points in Texas over interstate routes, to destinations in that portion of Western Texas affected by drought. Complainants do not attack the rates as unreasonable for movement under ordinary circumstances, but they contend that in view of the serious conditions resulting from the drought the Commission should as an emergency matter require defendants to reduce by 50 per cent their rates on feed into this territory. The situation here presented is not unlike other cases which have been before the Commission where the shipper or producer finds himself in financial difficulties arising from a complexity of economic conditions, one of which is the measure of the freight rates. A reduction in the cost of stock feed

through a reduction in the freight rate is the relief here asked, but in this case the Commission is met with complainants admission upon the record that the rates attacked would not be too high if the situation were normal. There is also convincing affirmative evidence that the existing rates are not unreasonably high per se and there is also the further significant showing that the freight rate factor, considered alone, is a comparatively small item in the present total cost of stock feed laid down in western Texas. Nevertheless the effective relief of the cattle industry of western Texas, and a resultant stimulation of present and future traffic, may well afford ground for further consideration by the carriers of some reduction in rates as one of the means whereby such relief may be accomplished. HELD, rates attacked not unreasonable, complaint dismissed. American National Live Stock Asso. v. S. P. Co., 74 I. C. C. 760.

(l) The Commission should not set up its judgment as to the possible and proper thing to do as against the judgment of other public officers, presumed to be performing their duty lawfully, who met a situation of extreme difficulty as best they could under the limitations imposed by war, and with existing or procurable facilities overtaxed. Clearly it should not do so when the preponderance of evidence supports the action as having been taken in good faith, in a timely manner, to the extent reasonably necessary, and so as to apply with substantial uniformity upon all similarly circumstanced persons and traffic. American Mfg. Co. v. Director General, as Agent, 77 I. C. C. 52, 57.

(m) Rate on emergency shipments of coal from Liberty Mine, Ala., to Kellerman, Ala., during Federal control, found unreasonable to extent it exceeded lower local or so-called commercial rate from Kellerman to Holt and Tuscaloosa, Ala. Reparation awarded. Central Iron & Coal Co. v. Director General, as Agent, 77 I. C. C. 301.

(n) Charges on cottonseed cake from Memphis, Tenn., to Mosquero, N. Mex., collected on basis of 50 per cent of applicable class rates, under emergency reduction on stock feeds during drought, found not unreasonable. While applicable class rate was admittedly unreasonable as compared with lower commodity rate subsequently established, charges were not unreasonable for the service performed. McIntosh v. Director General, as Agent, 77 I. C. C. 364.

(o) Complainant attacked rate of 40.5c charged on blackstrap molasses, carloads, shipped from points in Louisiana to St. Joseph, Mo., between August 26, 1920, and June 9, 1921, as unreasonable, unjustly discriminatory and unduly prejudicial. Blackstrap is the lowest grade of cane molasses and is used in mixed livestock feed. On June 10, 1921, defendants established so-called emergency rates of 30c from this origin territory to St. Joseph These rates were established on account of abnormal conditions prevailing in the blackstrap trade, and because western carriers had made similar reductions in sugar beet molasses, a competitive article, from Colorado and Utah. They were published to expire on certain dates, but were extended from time to time. HELD, rates attacked not unreasonable or otherwise unlawful, complaint dismissed. Grain Belt Mills Co. v. A. T. & S. F. R. Co., 80 I. C. C. 745.

ALL OTHER CITATIONS

MacIntyre v. C. St. P. M. & O. Ry., 55 I. C. C. 421; Michigan Paper Mills Traffic Asso. v. N. Y. C. R. R., 55 I. C. C. 679; Gulf Pipe Line Co. of Okla. v. T. & N. O. R. R. Co., 57 I. C. C. 437; Pittsburgh Crucible Steel Company v. Director General, as Agent, 61 I. C. C. 56; American National Live Stock Asso. v. S. P. Co., 74 I. C. C. 760; National Hay & Milling Co. v. C. B. & Q. R. R., 89 I. C. C. 1.

EMPLOYES

See Employer's Liability Act; Evidence §64½

CASES 1887-1908

(a) Members of a labor organization, employees of a railroad company, and the officers of such organization though not such employees, who, by threatening to withhold their labor from such company unless it violates the interstate commerce act by refusing to accept cars containing interstate freight from another road with which such organization is in conflict, cause it to refuse to accept such freight, are civilly liable to the latter road for any loss inflicted in pursuance of their conspiracy. Toledo, A. A. & N. M. R. Co. v. Pennsylvania Co., 5 I. C. C. 522.

(b) While an employee may bestow or withhold his labor as he will, if he uses the benefit which his labor is or will be to another, by threatening to

withhold or, agreeing to bestow it, or by actually withholding it or bestowing it, for the purpose of inducing, procuring, or compelling that other to commit an unlawful and criminal act, such withholding or bestowing his labor is itself an unlawful and criminal act. Toledo, A. A. & N. M. R. Co. v. Pennsylvania Co., 5 I. C. R. 522.

(c) Members of a labor organization who induce railroad companies to refuse to handle interstate freight from a company with which such organization is in conflict, violate the provisions of the interstate commerce law declaring any carrier or any director, officer, receiver, agent, or person acting for or employed by an incorporated carrier, who, alone or with any other corporation, person or party, shall wilfully fail or omit to do any act, or cause, or willingly suffer or permit, any act required by such act to be done or not to be done, or aid or abet such omission or failure, to be guilty of a misdemeanor. Toledo, A. A. & N. M. R. Co. v. Pennsylvania Co., 5 I. C. R. 522.

(d) An injunction will lie to prevent the chief officers of a labor organization from enforcing or putting into operation a rule of such organization making it the highest offense against the order for a member in the employ of a railroad company to handle cars received from another company with which a conflict approved by such chief officers exists, where refusal to handle such cars will constitute a violation of the Interstate Commerce Act requiring the furnishing of equal facilities for the interchange of traffic; and such officers may be required to rescind a direction already given for the enforcement of such rule,—especially where the order so directed to be rescinded will induce violations of an injunction previously granted against the company and its employees. Toledo, A. A. & N. M. R. Co. v. Pennsylvania Co., 5 I. C. R. 522.

(e) The provisions of the interstate commerce law requiring connecting railroads to receive and deliver passengers and freight from other roads, and afford equal facilities for the interchange of traffic, apply with equal force to their officers and employees. Toledo, A. A. & N. M. R. Co. v. Pennsylvania Co., 5 I. C. R. 545.

(f) Employees of a railroad company need not be made parties to an injunction restraining its officers and employees from refusing equal facilities for the interchange of traffic to another road, in order to make the injunction binding upon them, but it is sufficient if they are served with full and proper notice of the orders and process of the court. Toledo, A. A. & N. M. R. Co. v. Pennsylvania Co., 5 I. C. R. 545.

(g) The proper practice, upon the refusal of employees to obey an injunction against a railroad corporation, is the issuance of a citation requiring them to appear and show cause why they should not be attached for contempt. Toledo, A. A. & N. M. R. Co. v. Pennsylvania Co., 5 I. C. R. 545.

(h) Employees of a railroad company assume, upon entering the service, an implied obligation to perform their duties in such a manner as will enable it to discharge its obligations to the public faithfully and protect it against irreparable losses, injuries, and excessive damages by any acts of omission on their part. Toledo, A. A. & N. M. R. Co. v. Pennsylvania Co., 5 I. C. R. 545.

(i) Employees of a railroad company may be restrained from commission of violence or intimidation, or from enforcing rules and regulations which result in irremediable injuries to their employers and to the public. Toledo, A. A. & N. M. R. Co. v. Pennsylvania Co., 5 I. C. R. 545.

(j) An employee of a railroad company is not guilty of contempt as disobeying an injunction restraining the company from refusing to another road equal facilities for the interchange of traffic, where, rather than perform the duties necessary to such interchange, he quits the service in good faith, unconditionally and absolutely, while his train is safely stored in the company's yard and no special injury can result, no lives be imperiled, or property jeopardized, by his refusal to continue in the service; but so long as he continues in the service he is guilty of contempt in refusing to obey such injunction. Toledo, A. A. & N. M. R. Co. v. Pennsylvania Co., 5 I. C. R. 545.

(k) A combination of railroad employees to act concertedly in quitting their employment in a way to injure their employer, aid in enforcing a boycott, injure the public, and oppress other employers, is criminal. Toledo, A.

A. & N. M. R. Co. v. Pennsylvania Co., 5 I. C. R. 545.

(l) An engineer who, while on the road with his train, refuses to switch into the train a car from another road with which the labor organization to which he belongs is in conflict, declares that he quits the employment of the company, and refuses repeated orders to proceed with his train; but, upon receiving an order from such labor organization, completes his trip, and thereafter, upon being told what his next run will be, gives no notice of having quit or intending to quit his employment,—is guilty of contempt as violating an injunction restraining the company from refusing equal facilities for the interchange of traffic to such other company, of which he has notice. Toledo, A. A. & N. M. R. Co. v. Pennsylvania Co., 5 I. C. R. 545.

(m) Where the property of a railway or other corporation is being administered by a receiver, under the superintending power of a court of equity, it is competent for the court to adjust difficulties between the receiver and his employees, which, in the absence of such adjustment, would tend to injure the property and to defeat the purpose of the receivership. Waterhouse v. Comer., 5 I. C. R. 564.

(n) It follows, then, that it is in the power of the court, in the interest of public order, and for the protection of the property under its control, to direct a suitable arrangement with its employees or officers, to provide compensation and conditions of their employment, and to avoid, if possible, an interruption of their labor and duty, which will be disastrous to the trust and injurious to the public. Waterhouse v. Comer., 5 I. C. R. 564.

(o) Rule twelve of an association of locomotive engineers, styled the Brotherhood of Locomotive Engineers, which provides: "That hereafter when an issue has been sustained by the grand chief, and carried into effect by the Brotherhood of Locomotive Engineers, it shall be recognized as a violation of obligations if a member of the Brotherhood of Locomotive Engineers, who may be employed on a railroad run in connection with or adjacent to said road, handle the property belonging to said railroad or system in any way that may benefit said company with which the Brotherhood of Locomotive Engineers are at issue, until the grievances or issues or differences of any nature or kind have been amicably settled,"—is plainly a rule or agreement in restraint of trade or commerce and violative of §1 of the act of Congress of July 2, 1890. Waterhouse v. Comer, 5 I. C. R. 564.

(p) Construing several clauses of the interstate commerce law recited in the opinion with U. S. Rev. Sta. § 5540, it follows that a combination of persons, without regard to their occupation, which will have the effect to defeat the provisions of the interstate commerce law inhibiting discriminations in the transportation of freight and passengers, and further to restrain the trade of commerce of the country, will be obnoxious to the penalties therein prescribed. Waterhouse v. Comer, 5 I. C. R. 564.

(q) In this case, the movants having avowed their purpose, in open court, to submit to the construction to be made by the court relating to rule twelve of the brotherhood, the receiver is directed to enter into an appropriate contract with them, subject to the general operation of this decision with reference to said rule. Waterhouse v. Comer, 5 I. C. R. 564.

ALL OTHER CITATIONS

B. & O. R. R. Co. v. I. C. C., 221 U. S., 612, 619, 620, 31 Sup. Ct. Rep. 621, 55 L. ed. 878; In Re the Application of the Georgia Southern & Florida Ry. Co., 13 I. C. C. 134, 136; In Re Petitions for Extension Under Hours of Service Law, 13 I. C. C. 140, 142, 146.

EMPLOYER'S LIABILITY ACTS

See Personal Injuries; Safety Appliance Acts.

IMPORTANT CASES SINCE 1908

(a) In a case arising under the federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665), the statute of Nebraska, section 8833, Comp. St. 1922, which abrogates the assumption of risk of an employee of a railway company, where the railroad company is guilty of negligence, is not applicable, and the federal law as to assumption of risk is controlling on the state courts. Preble v. Union Stockward Co., (Nebr. 1923), 193 N. W. 910.

(b) The federal court interpretation of the federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665) must

prevail over any state law or rule of interpretation of a state court. Preble v. Union Stockyard Co., (Nebr. 1923), 193 N. W. 910.

EMPTY CARS

See Cars and Car Supply §7⅝; Classification §12⅞.

EQUALIZATION OF RATES

I. CONTROL AND REGULATION.
§1. Jurisdiction of Commission.
II. CIRCUMSTANCES AND CONDITIONS.
§2. In General.
§3. Commercial advantages and disabilities.
§3½. Costs of shippers.
§4. Competition.
(1) In general.
(1½) Pipe line competition.
(2) Railroads.
(3) Rail-and-water competition.
(4) Water competition.
(5) Market competition.
§5. Low state rate.
§6. Preference of markets.
§7. Size of community.
IIII. EFFECT OF EQUALIZATION.
§8. Adjustment of related rates.

CROSS REFERENCES

See Advanced Rates §5 (2) §11½; Blanket Rates §7, §8, §10; Classification §20; Differentials §5, §6, §7; Discrimination; Evidence §66; Local Rates; Long and Short Hauls; Market Competition; Relative Rates; Reasonableness of Rates §28.

I. CONTROL AND REGULATION.

See Control and Regulation; Interstate Commerce Commission I.

§1. Jurisdiction of Commission.

See Jurisdiction of Commission.

CASES 1887-1908

(a) Complainant petitioned the Commission to order and allow to remain in effect the equalizing arrangement whereby raw material from Chicago, Ill., to Marshalltown, Iowa, and from Marshalltown to Missouri River was moved at the same rate as from Chicago to Missouri River direct. From the statement of the petition it is apparent that what is prayed for is an exceptional privilege—a privilege not granted to manufacturers in general and which must be of great value to the line of trade which is thus favored. The petitioner makes no complaint of violation of law by the railroads; the complaint is that a privilege is not granted. The privilege is one which, if lawful, the companies might withhold on their own view of what was dictated by their interest or policy. On the other hand, if the privilege is one which the railroad companies can not grant voluntarily because of its coming under the condemnation of the law, neither can the Commission give authority to grant it. HELD, the Commission is powerless to make any order. Re Iowa Barb Steel Co. 1 I. C. C. 605.

(aa) It is the province of the Commission to interfere and secure, if possible, a fair adjustment in cases of unreasonable rates or unjust discrimination; but the Commission has no more authority to place competing millers in different states upon precisely the same footing than it has to equalize conditions in all localities and in every industry. The Mayor, etc. of Wichita v. M. P. Ry. Co., et al, 10 I. C. C. 35.

IMPORTANT CASES SINCE 1908

(b) It is not the duty of a carrier to place all its shippers in a position to meet the markets which they may desire to supply, nor has the Commission the power to require the railroads, in the face of varying trade conditions, to adjust their rate schedules in such manner as to insure to a market the continuance of a trade it has once enjoyed. Lake Cargo Coal Rates, 46 I. C. C. 159, 165.

(c) Any differences in inbound rates must be reflected in the ability of one city to compete with others, but marked dissimilarity of conditions affecting the competing points may and should be recognized in any relative adjustment of rates, and where such recognition entails rate disparities the primary question is whether the disparities are fully warranted by the varying conditions. Tuscaloosa Board of Trade v. A. G. S. R. R., 47 I. C. C. 483, 506.

(d) It is no function of this Commission to stabilize markets. Lake Charles Rice Milling Co. v. A. & N. Ry. Co., 77 I. C. C. 700, 705.

ALL OTHER CITATIONS

Pittsburgh Plate Glass Co. v. P. C. C. & St. L. Ry. Co., 13 I. C. C. 87, 99 102; Bovaird Supply Co. v. A. T. & S. F. Ry.

Co., 13 I. C. C. 56, 66; Union Pacific Tea Co. v. Penn. R. R. Co., 14 I. C. C. 545, 548; Beatrice Creamery Co. v. Ill. Cent. R. R. Co., 15 I. C. C. 109; Swift & Co. v. C. & A. R. R. Co., 16 I. C. C. 426, 429; Chicago Lumber & Coal Co. v. Tioga Southeastern Ry. Co., 16 I. C. C. 323, 334; Valley Flour Mills v. A. T. & S. F. Ry. Co., 16 I. C. C. 73, 76; Virginia-Carolina Chemical Co. v. St. L. S. W. Ry. Co., 16 I. C. C. 49, 52, 54; Saginaw Board of Trade v. Grand Trunk Ry. Co., 17 I. C. C. 128, 137; Ponchatoula Farmers' Ass'n. v. I. C. R. R. Co., 19 I. C. C. 513, 515, 516; Truck Growers' Ass'n. v. A. C. L. R. R. Co., 20 I. C. C. 190; Douglas & Co. v. C. R. I. & P. Ry. Co., 21 I. C. C. 541, 543; Railroad Commission of Nevada v. S. P. Co., 21 I. C. C. 329, 336; In Re Advances on Coal to Lake Ports, 22 I. C. C. 604, 613; Baltimore Chamber of Commerce v. B. & O. R. R. Co., 22 I. C. C. 596, 603; International Agricultural Corporation v. L. & N. R. R. Co., 22 I. C. C. 488, 494; Railroad Commission of Kansas v. A. T. & S. F. Ry. Co., 22 I. C. C. 407, 411; Albree v. B. & M. R. R., 22 I. C. C. 303, 319; Gile & Co. v. S. P., 22 I. C. C. 298; Empson Packing Co. v. C. M. Ry. Co., 22 I. C. C. 268, 270; Carstens Packing Co. v. O. & W. R. R. Co., 22 I. C. C. 77, 81; In Re Investigation of Rates on Meats, 22 I. C. C. 160, 163; Arlington Heights Fruit Exchange v. P. Co., 22 I. C. C. 149, 151; Ashland Fire Brick Co. v. S. Ry. Co., 22 I. C. C. 115, 120, 121; Elk Cement & Lime Co. v. B. & O. R. R. Co., 22 I. C. C. 84, 86; Florida Fruit & Vegetable Shippers' Protective Ass'n. v. A. C. L. R. R. Co., 22 I. C. 11, 14; Bituminous Coal Operators v. P. R. R. Co., 23 I. C. C. 385, 391; Sioux City Terminal Elevator Co. v. C. M. & St. P. Ry. Co., 23 I. C. C. 98, 109; A. T. & S. F. Ry. Co. v. I. C. C., 190 Fed. 591, 594, 596; In Re Advances on Cooperage, 24 I. C. C. 656, 659; Globe Milling Co. v. C. M. & St. P. Ry. Co., 24 I. C. C. 594, 597; Slider v. S. Ry. Co., 24 I. C. C. 312, 313; National Refining Co. v. M. P. Ry. Co., 24 I. C. C. 315, 317; Cement Rates from Pennsylvania to New Jersey Points, 26 I. C. C. 687, 688; West Virginia Rail Co. v. B. & O. R. R. Co., 26 I. C. C. 622, 625; Louisville Cottonseed Products Co. v. L. & N. R. R. Co., 26 I. C. C. 607, 609; Rates on Linseed Oil, 26 I. C. C. 265, 270; Meridian Fertilizer Co. v. V. S. & P. Ry. Co., 26 I. C. C. 224, 225; Sioux City Terminal Elevator Co. v. C. M. & St. P. Ry. Co., 27 I. C. C. 457, 463; Omaha Grain Exchange v. C. R. I. & W. Ry. Co., 30 I. C. C. 680, 686; Page Milling Co. v. N. & W. Ry. Co., 30 I. C. C. 605, 612; Michigan Mfrs. Asso. v. P. M. R. R. Co., 31 I. C. C. 329, 335; Cheek & Sons v. C. P. Ry. Co., 31 I. C. C. 265, 269; 1915 Western Rate Advance Case, 35 I. C. C. 497, 624; Bituminous Coal Rates to the Southeast, 37 I. C. C. 652, 658; Big Basin Lumber Co. v. S. P. Co., 37 I. C. C. 730, 737; Import and Domestic Rates, Clay, 39 I. C. C. 132, 135; Connor Lumber & Land Co. v. A. C. & Y. Ry. Co., 40 I. C. C. 111, 114; Hutchinson Traffic Bureau v. A. T. & S. F. Ry., 40 I. C. C. 160, 164; The Missouri River-Nebraska Cases, 40 I. C. C. 201, 259; Kornfalfa Feed Milling Co. v. A. T. & S. F. Ry. Co., 41 I. C. C. 668, 670; Southern Rice Growers' Asso. v. T. & N. O. R. R. Co., 43 I. C. C. 90, 95; National Syrup Co. v. C. & N. W. Ry. Co., 43 I. C. C. 228, 230; Gt. Western Sand & G. Co. v. C. M. & St. P. Ry., 45 I. C. C. 529, 530; Bituminous Coal to C. F. A. Territory, 46 I. C. C. 66, 119; Lake Cargo Coal Rates, 46 I. C. C. 159, 166; Harrisonburg Milling Co. v. A. A. R. R., 52 I. C. C. 63, 72; Natchez Chamber of Commerce v. L. & A. Ry., 52 I. C. C. 105, 122, 123; Allegheny Ore & Iron Co. v. C. & O., 53 I. C. C. 415, 424; National Tube Co. v. L. T. R. R., 55 I. C. C. 469, 479; J. D. Hollingshead v. Director General, 62 I. C. C. 147, 150; Natchez Chamber of Commerce v. Director General, 60 I. C. C. 397, 400.

II. CIRCUMSTANCES AND CONDITIONS.

§2. In General.

See **Differentials; Evidence §2, §56; Reasonableness of Rates §12½, §28.**

CASES 1887-1908

(a) Complainant petitioned the Commission to order and allow to remain in effect the equalizing arrangement whereby raw material from Chicago to Marshalltown, Iowa, and from Marshalltown to Missouri River was moved at the same rate as from Chicago to Missouri River direct. HELD, Whether a special privilege granted by railroad companies to manufacturers in a single line of trade, but not to manufacturers in general, is consistent with the rule of equity and justice which the Law undertakes to establish, is a question upon which an opinion ought to be expressed only after the most careful consideration; and the

Commission ought clearly to see that duty requires an answer, before it proceeds to give one on exparte application. The Commission will not express an opinion whether neither by complaint nor by application for relief is a case stated which will come within its jurisdiction. The Commission has not been given a general dispensing power to relieve hardships under the law, but its power in that regard is strictly limited. Re Iowa Barb Steel Wire Co. 1 I. C. C. 605.

(aa) It is not a ground of complaint against a railroad company that it equalizes its rates as between small and large towns, even though the effect may be prejudicial to the large towns which before had been specially favored. Crews, Danville Chamber of Commerce v. R. & D. R. R. Co., 1 I. C. C. 705, 707.

(ab) Different localities are more or less favored, in regard to transportation facilities either by nature or the enterprise of man. It can not be maintained that it is the duty of the common carrier to equalize these existing inequalities at his own expense. All that is required of him is not to create them him self arbitrarily. He must treat all alike that are situated alike, but he can not be bound to wipe out existing differences. He may be obliged to carry freight at a lower rate to some localities than to others, but this in itself does not constitute an injustice or injury to the shipper in a less favored locality, so long as the charges are reasonable in themselves and alike to all in the same situation. Boston Chamber of Commerce v. L. S. & M. S. R. R., 1 I. C. C. 754, 760.

(b) No substantial damage is suffered by Lincoln from the difference in rates between St. Louis and Omaha and St. Louis and Lincoln, inasmuch as the distributing rates from Lincoln are so arranged, in comparison with those from Omaha, that the difference in the rates to these points is equalized; and although this is not done by the defendant road, it is sufficient that nearly all points available to Lincoln jobbers are reached by lines over which the adjustment of rates is made. That a disparity exists as to merchandise which is consumed at Lincoln, coming from St. Louis, as against merchandise consumed at Omaha, coming from the same city, must be fairly attributable to the situation of Lincoln a substantial distance west of the line of common rates from eastern points. Lincoln Board of Trade v. Missouri Pac. R. Co., 2 I. C. R. 98.

(c) Rates having been established from St. Louis to Omaha in view of the distance over the Wabash line, the action of the Missouri Pacific in meeting the Wabash rates, although too low to be greatly desirable for its longer line, and involving loss of former revenue at intermediate points on the main line south of Omaha, by the application to the situation of the long and short haul clause, cannot be properly criticised. Lincoln Board of Trade v. Missouri Pac. R. Co., 2 I. C. R. 98.

(d) When freight is offered to carriers for shipment it is their duty to take it for what they can get, not above a reasonable compensation for the service to be performed by them and not below a rate which will yield them a profit. The duty of equalizing rates beyond their through line is not imposed on them as receivers of freight for shipment. The origin of the goods or the fact that they come over from some other railroad or over a wagon road is not an element which enters into the question of what they may reasonably demand for the transportation services they are to render. James & Abbott v. V. & Ga. R. R., 2 I. C. C. 609, 612.

(e) When a carrier engages in transportation for which, by reason of competitive conditions, or for purposes of its own, it receives low rates from some patrons and at some localities, it accepts the legal obligation to give impartial service to other patrons and at other localities that sustain similar relations to the traffic. Manufacturers and Jobbers Union of Mankato, Minn. v. M. & St. L. R. Co., 3 I. C. C. 115, 117.

(f) Equality of charges is required under circumstances and conditions substantially similar, and relative equality is necessary in the degree of similarity. Manufacturers and Jobbers Union of Mankato, Minn. v. M. & St. L. R. Co., 3 I. C. C. 115, 117.

(g) The law undertakes to forbid discriminations which are unjust, but not to equalize advantages springing from rates that in themselves are just. Bates v. Pennsylvania R. Co., 3 I. C. C. 296, 301.

(h) Complainant attacked rates from Eastern Seaboard territories as unjustly discriminatory against the rates from Chicago, Ill., and Cincinnati, O., to southern territory. The rates on traffic of the numbered classes from Chicago and Cincinnati to southern territory are made higher than they otherwise would be, for the purpose of securing to the lines from northeastern cities the transportation of that traffic from the territory set apart to them under Southern Railway & Steamship Association raises a prima facie presumption of the unreasonableness of those rates. The cost on freight in general per ton per mile on the roads south of the river appears to have been about 25 per cent on the average greater than the cost per ton per mile on the roads from Chicago to the river. HELD, the rates from Chicago and Cincinnati to southern territory should be about 35 per cent to 50 per cent higher per ton per mile than from Chicago to Cincinnati. Freight Bureau v. C. N. O. & T. P. R. Co., 4 I. C. C. 592.

(i) Carriers have no right to disregard distance and natural advantages for the purpose of bringing about commercial equality. Commercial Club of Omaha v. C. R. I. & P. R. Co., 6 I. C. C. 647, 674.

(j) To justify interference by the Commission with the adjustment of rates as between rival localities it must appear that the preference and advantage to the one, and the corresponding prejudice and disadvantage to the other, are so appreciable, and established with certainty as to be justly declared unreasonable. Commercial Club v. C. & N. W. R. Co., 7 I. C. C. 386, 404.

(k) That the 19-cent rate on corn from Sioux City and other points in adjacent territory should be reduced, the 17-cent rate on corn now in effect from most points in western Iowa should be extended to Sioux City and points in Iowa on and east of the Sioux City & part of the C., St. P. M. & O. system), and corresponding reduction should be made from other points in southeastern South Dakota. HELD, further, that while no opinion is expressed as to what is the proper relation of the rates on wheat and corn from Sioux City and adjacent territory, the difference of 4 cents which now prevails from most shipping points in that section should not be exceeded. Grain Shippers' Asso. v. Illinois Central R. Co., 8 I. C. C. 128.

(l) Common carriers are bound by every principle of justice and of law to accord equal rights to all shippers who are entitled to like treatment, both in the receiving of supplies and the shipment of their products, and a carrier who under any pretext whatsoever grants to one shipper an advantage which it denies another violates the spirit and thwarts the purpose of the law. Castle v. B. & O. R. Co., 8 I. C. C. 333, 345.

(m) It is the province of the Commission to interfere and secure, if possible, a fair adjustment in cases of unreasonable rates or unjust discrimination; but the Commission has no more authority to place competing millers in different states upon precisely the same footing than it has to equalize conditions in all localities and in every industry. Wichita v. Missouri P. R. Co., 10 I. C. C. 35.

(n) Complainant attacked as unreasonable rates on coal from South McAlester, Indian Territory, to Denison, Tex., and unduly discriminatory in favor of Dallas, Tex., although the distance to Dallas is more than twice as great as to Denison. Competitive conditions on the part of other carriers force a lower rate to Dallas than to Denison and the Commission does not think that the cause presents any question of discrimination. The sole issue to be considered is the unreasonableness of the rate charged. Distance South McAlester to Denison is 97 miles. Manifestly the present rate is too high. The average rate upon the defendant system received for the transportation of coal is but 6 mills per ton and its average rate on all traffic was 9.59 mills for the year ending June 30, 1903. The rate of $1.90 yields nearly 2c per ton mile. Nothing appears in the cost of movement or otherwise which calls for an especially high rate. HELD, the complainant is entitled to an order that defendant cease and desist from charging the present rates, but the Commission has no power to name a rate for the future. Denison Light & Power Company v. M. K. & T. R. Co., 10 I. C. C. 337.

(o) A ruling that an antecedent haul to one locality, and no previous transportation to a competing locality, constitute justification for a lower charge

from the former to a common market would be in effect to approve the equalization of natural advantages and disadvantages as between localities; and such equalization is not sanctioned by the Act to Regulate Commerce. Cannon Falls Farmer's Elevator Co. v. Chicago G. W. R. Co., 10 I. C. C. 650.

(p) Freight rates to Charlotte, N. C., from New York and other northern and eastern points, and from Louisville, Chicago, and other western points, are complained as unjust, and those from the west as greater for the shorter distance to Charlotte than for longer distances through Charlotte to more distant localities. The rates to Charlotte are made by combining rates to Virginia cities with the local rates from those cities, to Charlotte. Competition forces low rates to the Virginia cities, and also compels the low rates in force from the west to certain points east of Charlotte. If through rates to Charlotte lower than the combination of charges to and from the Virginia cities were established, the disadvantage now resulting to Charlotte dealers in the competition with dealers at Virginia cities would to that extent be removed, and the carriers are recommended to consider taking such action; but unless the present through charges are unreasonable the Commission is without authority to require discontinuance of the charges now exacted. HELD, That the facts presented do not constitute a basis for an order of relief which would be enforced, and therefore the complaints must be dismissed. Charlotte Shippers' Asso. v. Southern R. Co., 11 I. C. C. 108.

(q) Upon complaint that defendants charge higher rates on canned goods, grain, flour, hay and packing-house products from Cincinnati, Ohio and Memphis, Tenn., to Helena and McRae, Ga., than to Cordele and Fitzgerald, Ga., towns in the section of country surrounding Helena and McRae, —HELD: That the situation of Helena and McRae is not so similar to that of Cordele as to require the application of Cordele rates to the first-named places, but that the rates in question to Helena and McRae should not exceed those now in effect to Fitzgerald. Davenport v. Southern R. Co., 11 I. C. C. 650.

(r) Complainant attacked as unreasonable rate charged on sugar carloads from New Orleans, La., to McAlester, I. T., and unduly discriminatory as compared with rate to Muskogee, I. T. Rate charged 38c, rate to Muskogee 35c. Subsequently defendants published the same rate to McAlester. HELD, complaint dismissed. Hale Halsell Grocery Company v. M. K. & T. Ry., 12 I. C. C. 136.

(s) Complainant attacked as unreasonable and unjustly discriminatory rates charged on refined oil from Erie, Kas., to Joplin, Mo., as compared with rate to St. Louis, Mo. Distance to Joplin 69 miles., to St. Louis, 400 miles, rate charged to both places 17 cents, which was subsequently reduced to 15c to Joplin. The rates to Joplin, St. Louis, and Kansas City from these producing points are apparently adjusted with a view to placing the shippers on an equitable basis and affording them equal opportunities in the markets. HELD, rate attacked not unreasonable, complaint dismissed. E. M. Wilhoit v. M. K. & T. Ry., 12 I. C. C. 139.

(t) Complaint alleged that defendants' rates, which are higher from Louisville, Cincinnati, Memphis, and Nashville to Moultrie, Ga., than from the same points of origin to Tifton, Valdosta, Quitman, Thomasville and Fitzgerald, Ga., are unreasonable and unjustly discriminatory: HELD, Upon the record made in this case, that the circumstances and conditions surrounding the transportation of freight by defendants from such points of origin to Moultrie are not substantially dissimilar from those surrounding the transportation from such points of origin to other nearby Georgia points, and that the practice of charging such higher rates to Moultrie is unjustly discriminatory, unreasonable and unlawful; and, HELD, further, that the just and reasonable practice would be to charge for such transportation to Moultrie the same rates from such points of origin as are charged therefrom to Tifton, Valdosta, Quitman, Thomasville and Fitzgerald. So. Grocery Co. et al, v. Ga. Nor. Ry. Co., et al, 12 I. C. C. 230.

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(u) The opportunity to buy in a widely extended market is a valuable one to merchants in that it presents a larger field for competition and ordinarily offers the best quality at the lowest price; and a carrier has no right, by refusing through routes and reasonable joint rates, to restrict or circumscribe this opportunity. It is the duty of common

carriers to haul the traffic that is offered and to make the necessary arrangements and furnish facilities and establish reasonable rates therefor; and a carrier is not justified in refusing traffic from points on other lines on the ground that such traffic would displace in the markets traffic from points on its own lines and thus adversely affect its revenues. Star Grain & Lumber Co. v. A. T. & S. F. Ry. Co., 14 I. C. C. 364, 367.

(v) Before the Commission can conclude that a rate on a given commodity is too high, because it is higher than some other rate named, it must know that the rate selected as the standard for a comparison is a reasonable and a fair one. Darling & Co. v. B. & O. R. R. Co., 15 I. C. C. 79, 83.

(w) A rate is not unreasonable simply because a lower rate is in effect via lines of other carriers. South Canon Coal Co. v. C. & S. Ry. Co., 17 I. C. C. 286.

(x) Carriers may not haul a particular class of traffic or traffic for a particular community at less than the cost of the service and recoup themselves from the charges levied against other charges. In Re Rates for Single Packages, etc., 22 I. C. C. 328, 335.

(y) Carriers are not required to establish rates that will guarantee a profit to shippers. R. R. Com. of Kans. v. A. T. & S. F. Ry. Co., 22 I. C. C. 407, 410.

(z) It is not enough to show that in miles the distance is less from a producing center via one gateway to a consuming center in order to equalize the rate between the same points via another gateway. It must be shown that the cost of transportation is less, or rather that the combination of rates is less as estimated by the general level of rates in the territory through which the transportation is conducted. In Re Investigation of Unreasonable Rates on Meats, 23 I. C. C. 656, 669.

(aa) The chief function of section 6 is to accord and require the application of the same rate to all shippers and to promote equality of treatment between them. Crescent Coal Mining Co. v. C. & E. I. R. R. Co., 24 I. C. C. 149, 158.

(bb) A discrimination predicated upon the maintenance of a different basis of rates by one road or set of roads serving two competing points falls within section 3, while an "equalization" between two different coal fields served by different groups of lines does not. Wickwire Steel Co. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 415, 422.

(cc) The question of rates to and from jobbing points has been and is continually being pressed upon the Commission's attention by complaining shippers. The desire of jobbers located at various points is to have rates into and out of their particular points equalized, so that the through rates to consuming territores shall be the same, no matter through which point the traffic moves. It is well settled that undue prejudice and disadvantage against a distributing point cannot be predicated merely upon the fact that the combination of inbound and outbound rates exceeds the combination via a competitive distributing point. Rates on knitting factory products, 25 I. C. C. 634, 639. It is not practicable to have rates into and out of all jobbing points so constructed that the resulting through charges from the factory to ultimate destination are the same via all jobbing centers. Advantages of location, competitive conditions, the volume and flow of traffic and numerous other considerations come into play and must be given due weight in determining the adjustment of rates into and out of different jobbing points. Mobridge Grocery Co. v. C. M. & St. P. Ry., 52 I. C. C. 308, 309.

(dd) Ocean rates are generally not published and are subject to fluctuations. Therefore an equalization based on such rates by no means constitutes a permanent basis upon which to construct rail rates to the ports. Unless the process of equalization rests upon substantial, fairly permanent, and controlling facts and natural relationships, it can not be proper and lawful. Inland Steel Co. v. Director General, 57 I. C. C. 339, 340.

(eeff) It is impossible under the present system of rate making in this country to so adjust rates that the in-and-out charges will be the same in the aggregate for all jobbing points which buy and sell in common markets. Fort Dodge Commercial Club v. Diretcor General, 57 I. C. C. 343, 345.

(gg) It does not follow as a matter of law that rates should be the same for the same distance over two different roads. I. C. C. v. U. P. R. R., 222 U. S. 541, 549, 32 Sup. Ct. 108, 56 L. ed. 308.

(hh) Grain rates into and out of the various markets authorized to be increased by the general percentages herein approved, with the understanding that carriers will file tariffs restoring the equalization through such grain markets now enjoying that basis. Increased rates, 1920., 58 I. C. C. 220, 253.

(ii) In applying the increased class and commodity express rates herein approved, rates on milk and cream authorized to be equalized with those applied by the railroad lines between the same points. Express Rates, 1920, 58 I. C. C. 281, 297, 711.

(jj) The act does not require that in-and-out charges be equalized through all jobbing points. Ft. Dodge Commercial Club v. Director General, 60 I. C. C. 224.

(kk) The owner of a coal mine having access to two carriers has a property right in the advantage of such location, of which he cannot lawfully be deprived by an order of the Interstate Commerce Commission under the guise of a regulation, which in effect deprives him of his property without due process of law. New River Co. v. Chesapeake & O. Ry. Co. 293 Fed. 460.

ALL OTHER CITATIONS

Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 23 I. C. C. 195, 202, 205; Bituminous Coal Operators v. Penn. R. R. Co., 23 I. C. C. 385, 391; Red River Oil Co. v. T. & P. Ry. Co., 23 I. C. C. 438, 442; Andy's Ridge Coal Co. v. So. Ry. Co., 18 I. C. C. 405, 410; Males Co. v. L. & H. R. Ry. Co., 17 I. C. C. 280, 282; Crowell & Spencer Lumber Co. v. T. & P. Ry. Co., 17 I. C. C. 333; Chamber of Commerce of Milwaukee v. C. R. I. & P. Ry. Co., 15 I. C. C. 460, 467; Kindel v. N. Y. N. H. & H. R. R. Co., 15 I. C. C. 555, 561; Van Blatz Brewing Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 184; Lawrence Hensley Fruit Co. v. U. P. R. R. Co., Unrep. Op. 189; Lindauer Pulp & Mfg. Co. v. D. R. L. & W. Ry. Co., Unrep. Op. 251; Lagomarcini-Grupe Co. v. C. B. & Q. R. R. Co., Unrep. Op. 269; Buffalo Oil Co. v. C. N. O. & T. P. Ry. Co., Unrep. Op. 289; Rosebrough v. P. Exp. Co., Unrep. Op. 438; Gamble-Robinson Commission Co. v. St. L. & S. F. R. R. Co., Unrep. Op. 438, 506; Anguish v. C. I. & L. Ry. Co., Unrep. Op. 580; Reinhardt Grain Co. v. M. & N. A. R. R. Co., Unrep. Op. 591; Port Arthur Board of Trade v. A. & S. Ry. Co., 27 I. C. C. 388, 402; Aransas Pass Channel & Dock Co. v. G. H. & S. A. Ry. Co., 27 I. C. C. 403, 415; State of Kansas v. A. T. & S. F. Ry. Co., 27 I. C. C. 673, 690; Iowa State Board of Railroad Commissioners v. A. E. R. R. Co., 28 I. C. C. 193, 197, 198; Toledo Produce Exchange v. A. A. R. R. Co., 30 I. C. C. 498; New Orleans Shippers' Asso. v. I. C. R. R. 34 I. C. C. 32; Henderson Commercial Club v. I. C. R. R., 36 I. C. C. 20, 27; California Portland Cement Co. v. A. T. & S. F. Ry., 37 I. C. C. 99; Brownsville Cotton Oil & Ice Co. v. C. R. I. & P. Co., 37 I. C. C. 503; Big Basin Lum. Co. v. S. P. Co., 37 I. C. C. 730; The Missouri River-Nebraska Cases, 40 I C. C. 201, 212, 213; Transit at Kansas Points, 40 I. C. C. 358, 365; Milling Logs in Transit on Tap Lines, 40 I. C. C. 597, 600; Dallas Chamber of Commerce v. A. T. & S. F. Ry. Co., 40 I. C. C. 619, 635; Grand Rapids Plaster Co. v. L. S. & M. S. Ry., 41 I. C. C. 1; Coal to Red Wing, Minn., 41 I. C. C. 309, 313; Traffic Bureau, Toledo Commerce Club v. C. H. & D. Ry. Co., 43 I. C. C. 446, 455; Proportional Rates to Ohio River Crossings, 43 I. C. C. 458, 465; Hutchinson Traffic Bureau v. C. R. I. & P. R. R., 43 I. C. C. 689, 693; R. R. Commissioners of Florida v. S. Exp. Co., 44 I. C. C. 645, 647; Tuscaloosa Board of Trade v. A. G. S. R. R., 47 I. C. C. 483, 506; Nat'l. Wool Grower's Asso. v. Bullfrog-Goldfield R. R., 48 I. C. C. 587; Lamb-Fish Lumber Co. v. A. C. & Y. Ry., 49 I. C. C. 187; California Walnut Growers Asso. v. A. & R. R. R., 50 I. C. C. 558, 567; Wheeler Lumber Bridge & Supply Co. v. C. R. I. & P. Ry., 52 I. C. C. 370; Commercial Club of Duluth v. B. F. & I. F. Ry. Co., 53 I. C. C. 85, 90, 95; Edwin H. Henderson v. Director General, 53 I. C. C. 713; Memphis-Southwestern Investigation, 55 I. C. C. 515; Orange Rice Mill Co. v. T. & O. Ry., 55 I. C. C. 661; Peoria Board of Trade v. A. T. & S. F. Ry., 55 I. C. C. 42, 49; Ball Bros. Glass Mfg. Co. v. Director General, 58 I. C. C. 331; El Paso Sash & Door Co. v. Director General, 58 I. C. C. 659; S. P. Co. v. Int. Com. Comm., 219 U. S. 433, 443, 31 Sup. Ct. 288, 55 L. Ed. 283; Penn. R. R. Co. v. International Coal Mining Co., 173 Fed. 1, 6, Lehigh & Wilkshire Coal Co. v. Director General, 63 I. C. C. 3; Corporation Commission of New Mexico v. Director General, 63 I. C. C. 1; Douglas Chamber of Commerce v. A. T. & S. F. Ry. Co., 64 I. C. C. 405; United Iron

Works, Inc., v. Director General, 64 I. C. C. 601; Grain and Grain Products from Memphis, 66 I. C. C. 19; Iola Cement Mills Traffic Asso. v. Director General, as Agent, 66 I. C. C. 495; Public Service Commission of Indiana v. A. T. & S. F. Ry. Co., 66 I. C. C. 512; Pacific Creamery Co. v. A. T. & S. F. Ry., 68 I. C. C. 340; Grain from Illinois Points to New Orleans, 69 I. C. C. 38; Portland Traffic & Transportation Association v. Director General, 69 I. C. C. 165; West Virginia Metal Products Corporation v. B. & O. R. R. Co., 69 I. C. C. 474; Salt from Louisiana Mines to Chicago, 69 I. C. C. 312, 316; Cement from Leeds, Ala., to Virginia Cities, 69 I. C. C. 353; Cotton and Cotton Linters, 69 I. C. C. 735; Certain-teed Products Corp. v. A. T. & S. F. Ry., 73 I. C. C. 82; Douglas Chamber of Commerce v. Director General, as Agent, 73 I. C. C. 292; Salt Lake Chemical Co. v. Director General, 74 I. C. C. 399; Cairo Board of Trade v. A. G. S. R. R. Co., 83 I. C. C. 761, 768; Iola Cement Mills Traffic Asso. v. A. W. Ry., 87 I. C. C. 451; Naval Stores from Southern Points, 87 I. C. C. 740; Portland Flouring Mills Co. v. G. N. Ry., 88 I. C. C. 94; Cleveland Provision Co. v. A. G. S. Ry., 88 I. C. C. 161; Phoenix Chamber of Commerce v. A. T. & S. F. Ry., 88 I. C. C. 178; Seaboard By Product Coke Co. v. Director General, 88 I. C. C. 261; Radiant Glass Co. v. Director General, 88 I. C. C. 295; Michigan Tanning & Extract Co. v. Director General, 88 I. C. C. 298; National Car Coupler Co. v. B. & O. R. R. 88 I. C. C. 325; Goodwin Preserving Co. v. L. B. & T. Ry., 88 I. C. C. 725; Co-operative Oil & Paint Co. v. Director General, 88 I. C. C. 747; Jackson Traffic Bureau v. B. R. & C. Ry. 89 I. C. C. 282.

§3. Commercial Advantages and Disabilities.

See Blanket Rates §7; Commercial Conditions; Discrimination §4, §5; Differentials §5, §6, §7; Evidence §2; Express Companies §19; Interstate Commerce Commission; Reasonableness of Rates §12½.

CASES 1887-1908

(a) Rates should not be fixed in inverse proportion to the natural advantages of competing towns, with the view of equalizing "commercial conditions." Eau Claire Bd. of Trade v. Chicago M. & St. P. R. Co., (Com.), 4 I. C. R. 65.

(b) That rates should be fixed in inverse proportion to the natural advantages of competing towns, with the view of equalizing commercial conditions as they are sometimes described, is a proposition unsupported by law and quite at variance with every consideration of justice. Each community is entitled to the benefits arising from its location and natural conditions, and any exaction of charges unreasonable in themselves or relatively unjust, by which those benefits are neutralized or impaired, contravenes alike the provisions and the policy of the statute. Eau Claire Board of Trade v. C. M. & St. P. R. Co., 4 I. C. C. 65, 77.

(c) A town favorably situated with respect to one through route, but competing in a common market with another town more favorably located on another through route, should not have a reduction of the local rate over roads connecting the two through routes, for the purpose of overcoming the natural advantage which the latter competing town enjoys. Chamber of Commerce of Minneapolis v. G. N. R. Co., 4 I. C. C. 230.

(d) A milling town possessing great natural, acquired and improved advantages for the carrying on of that industry, and favorably situate in point of distance to a large grain producing region, is entitled to the benefits arising from its location, and carriers of grain to that point and to a competing town considerably more remote from points of production, and in other particulars less advantageously located, are not justified in making rates on grain to the competing towns which destroy the advantage the former is entitled to enjoy. Chamber of Commerce of Minneapolis v. G. N. R. Co., 4 I. C. C. 230, 234.

(e) A carrier cannot be compelled to disregard distance between two competing cities for the purpose of putting the two cities on a commercial equality. New York Produce Exch. v. Baltimore & O. R. Co., 7 I. C. C. 612.

(f) Defendant contended that as coal from its mines at Rich Hill has less value for domestic purposes than Myrick coal it might equalize such difference in value by making a lower rate on Rich Hill coal. Complainant's cost of mining at Myrick is nearly 50 cents a ton more than it costs defendant to mine its coal at Rich Hill. HELD, That

there is in fact no such difference in value as to justify defendant's rate adjustment in favor of Rich Hill; that if difference in quality is to be equalized in favor of the defendant the question arises why should not difference in cost of mining be equalized in favor of complainant; that if any such process of equalization is permissable defendant may absolutely dictate the comparative value of every mine and industry upon its road; and that such rates should be examined with closest scrutiny when resorted to by the carrier in its own favor. McGrew v. Missouri Pac. Ry. Co., 8 I. C. C. 630.

(g) It is the province of the Commission to interfere and secure, if possible, a fair adjustment in cases of unreasonable rates or unjust discrimination; but the Commission has no more authority to place competing millers in different states upon precisely the same footing than it has to equalize conditions in all localities and in every industry. Mayor and Council of Wichita, Kas. v. M. P. R. R. 10 I. C. C. 35, 40.

(h) Manistee and Ludington are salt producing points in Michigan, and salt shipped from those points to places on the Missouri River is carried by a boat line on Lake Michigan to Chicago, and by railroads from Chicago to the Missouri River. The through rate is 53 cents per barrel of which the boat line receives, according to the destination, from 30 to 33 1-3 per cent, amounting to from 16 to 18 cents per barrel. Established vessel lines on the lake formerly carried the salt to Chicago for from 8 to 11 cents per barrel, but additional services are rendered by the boat line, including stowage at points of shipment and unloading, cooperage, docking, storage, insurance, handling and loading in cars at Chicago, representing a cost of about 8½ cents per barrel. The boat line and the salt are owned by distinct corporations, but the same persons own controlling interests in both organizations. Salt interests at Detroit complained that this division to the boat line amounted to a rebate from the tariff to the salt shippers from Manistee and Ludington and enabled them to undersell Detroit Salt in the Western markets. It further appeared that coal used in producing Detroit salt costs on the average about 75 cents to each ton of salt, while Manistee and Ludington salt producers also operate lumber mills and use the refuse from lumber manufacture for fuel in the salt works. HELD, That it is no part of the duty of the Commission to equalize differences in the natural advantages of localities through the adjustment of tariff rates, and that upon the facts shown in this investigation it does not appear that the share of the through rate allowed to the boat line is so grossly disproportionate to the value of the entire through service as to amount to a rebate in favor of the salt interests of Manistee and Ludington, which also control the boat line. Re Transportation of Salt 10 I. C. C. 148.

(i) It is no part of the duty of the Commission to equalize differences in the natural advantages of localities through the adjustment of tariff rates. Re Transportation of Salt, 10 I. C. C. 148.

(j) It can be no duty of the Commission to equalize natural advantages between localities through the adjustment of tariff rates. Re Transportation of Salt, 10 I. C. C. 148, 171.

(ja) A ruling that an antecedent haul to one locality and no previous transportation to a competing locality constitute justification for a lower charge from the former to a common market, would be in effect to approve the equalization of natural advantages and disadvantages as between localities, and such equalization is not sanctioned by the Act to regulate commerce. Cannon Falls Farmers' Elev. Co. v. C. G. W. R. Co. et al. 10 I. C. C. 650.

(k) Commission has often ruled against equalizing commercial conditions. Howard Mills Co. v. Mo. Pacific Ry. Co., 12 I. C. C. 258.

(l) Natural advantages of location are neither to be enlarged nor minimized by the Commission, whose duty and purpose is to secure just and reasonable transportation rates, as nearly equal as possible for all localities and individuals, having due regard to differences in circumstances and conditions. Enterprise Manufacturing Co. v. Georgia R. R., 12 I. C. C. 451, 456.

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(m) A carrier cannot lawfully so group its mines with respect of rates as to unduly discriminate against any locality. The duty imposed by law is to give equal treatment to all shippers who are in a position to demand it, and this includes the right to reach competitive markets on relatively equal terms. Where

the same carrier serves two districts, which, by their location, the character of their output and distance from markets, are in substantially similar circumstances and conditions, it cannot lawfully prefer one to the other in any manner whatsoever. Black Mountain Coal Land Co. v. S. Ry. Co., 15 I. C. C. 286, 292.

(n) Carriers should keep in close touch with commercial conditions pertaining to sales of commodities and the needs of communities, and adjust their charges, when practicable, within reasonable limitations to meet those conditions and encourage sales and the movement of freight; yet it cannot be held to be a duty of the carrier, in adjusting charges, to equalize the value of commodities in their final distribution. Chicago Lumber & Coal Co. v. T. S. Ry. Co., 16 I. C. C. 323, 331.

(o) Because carriers have constructed a system of rates on a zone or blanket system is not sufficient reason to justify the collection of unreasonable charges to any point. Every city is entitled to the advantage of its location and may not lawfully be subjected to high freight charges merely because carriers for reasons of convenience or otherwise include it with a number of other points in surrounding territory, which latter points are not similarly situated. Corporation Commission of North Carolina v. N. & W. Ry. Co., 19 I. C. C. 303, 309.

(p) Carriers may have a limited right to encourage and protect by rate equalization communities which are under natural disadvantages, notwithstanding the fact that substantially more burdensome transportation conditions are encountered in handling the traffic from such points. The Commission, however, can not prescribe a rate that is less than reasonable, nor can it require the removal of discrimination unless it is found to be unjust. Cast Iron Pipe from North Carolina Points, 38 I. C. C. 183, 186.

(q) That rates should be fixed in inverse proportion to the natural advantages of competing towns, with the view of equalizing commercial conditions as they are sometimes described, is a proposition unsupported by law and quite at variance with every consideration of justice. Each community is entitled to the benefits arising from its location and natural conditions, and any exaction of charges unreasonable in themselves or relatively unjust, by which those benefits are neutralized or impaired, contravenes alike the provisions and the policy of the statute. Inland Empire Shippers' League v. Director General, 59 I. C. C. 321, 338.

(r) While the Commission will not attempt to readjust inbound and outbound rates so as to put all competing jobbing plants on a parity in common territory, the inability of jobbing points generally to compete in their contiguous territory is a condition that may, and should, be considered in determining whether a rate adjustment to the jobbing points is just and reasonable and free from undue prejudice. Certain-Teed Products Corp. v. A., T. & S. F. Ry. Co., 73 I. C. C. 82, 86.

(s) It is not necessary, in order to preserve advantages of location, that rates should be based rigidly on mileage or on cost of service. Kalmath County Chamber of Commerce v. S. P. Co., 74 I. C. C. 207, 213.

(t) In distributing commodities in competitive territory, the point that can avail itself of a long carload haul and a short less-than-carload haul is ordinarily entitled to a lower total transportation charge than the point using a short carload haul and a long less-than-carload haul. Certain-Teed Products Corp. v. A., T. & S. F. Ry Co., 77 I. C. C. 444, 445, 446.

(ta) In adopting a policy of rate equalization in which distance is disregarded, carriers can not accord advantages of such rates to certain points of origin and deny them to other competing points from which traffic moves under substantially similar circumstances and conditions. Rates from River Crossings to Nebraska, 78 I. C. C. 439, 442.

(u) Equalization of commercial advantages and disadvantages through regulation of rates from competing points of production, irrespective of the transportation services performed, is not the function of the Commission. Western Coal Rates, 80 I. C. C. 383, 461.

(v) The Commission can not regulate rates for the purpose of equalizing cost of production or manufacture and primarily it is not its concern to equalize market competition. Vinegar Rates from Pacific Coast, 81 I. C. C. 666, 669.

(va) The equality of treatment among shippers which the law requires of car-

riers extends only to shippers whom it is under a duty to serve. Tacoma Traffic & Transp. Bureau v. N. P. Ry., 87 I. C. C. 507, 513.

(vb) The right of carriers to meet competitive conditions and equalize localities is subject to the limitation that no undue prejudice will be caused thereby. Lincoln Gas Co. v. B. & O. R. R., 88 I. C. C. 379, 384.

(w) The Interstate Commerce Act as amended does not attempt to equalize fortune, opportunities or abilities. On the contrary, it in turn contemplates that if a carrier receives services from an owner of property transported or uses instrumentalities furnished by the latter, he shall pay for them, the only restriction being that he shall pay no more than is reasonable, and the only permissive element being that the Commission determine the maximum in case there is complaint or upon its own motion. I. C. C. v. Diffenbaugh, 222 U. S. 42, 46, 32 Sup. Ct. 22, 56 L. ed. 83.

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Great Western Portland Cement Co. v. A. T. & S. F. Ry. Co., Unrep. Op. 454; Willson Bros. Lumber Co. v. P. S. & N. R. R. Co., Unrep. Op. 375; Bovaird Supply Co. v. A. T. & S. F. Ry. Co., 13 I. C. C. 56, 64; Quimby v. Maine Central R. R. Co., 13 I. C. C. 246, 248; Hecker-Jones-Jewell Milling Co. v. B. & O. R. R. Co., 14 I. C. C. 356, 359; Burnham, Hanna, Munger Co. v. C. R. I. & P. Ry. Co., 14 I. C. C. 299, 303; Greater Des Moines Committee v. C. G. W. Ry. Co., 14 I. C. C. 294, 297, 298; George's Creek Basin Coal Co. v. B. & O. R. R. Co., 14 I. C. C. 127, 133; Kindel v. N. Y. N. H. & H. R. R. Co., 15 I. C. C. 555, 561; Kansas City Transportation Bureau v. A. T. & S. F. Ry. Co., 15 I. C. C. 491, 498; City of Spokane v. N. P. Ry. Co., 15 I. C. C. 376, 419; Bulte Milling Co. v. C. & A. R. R. Co., 15 I. C. C. 351, 364; Black Mountain Coal Land Co. v. S. Ry. Co., 15 I. C. C. 286, 293; Hafey v. St. L. & S. F. R. R. Co., 15 I. C. C. 245, 246; Avery Manufacturing Co. v. A. T. & S. F. Ry. Co., 16 I. C. C. 20, 23; Board of Trade of Winston-Salem v. N. & W. Ry. Co., 16 I. C. C. 12, 16; Florida Fruit and Vegetable Ass'n. v. A. C. L. R. R., 17 I. C. C. 552, 561; Saginaw Board of Trade v. Grand Trunk Ry. Co., 17 I. C. C. 128, 135; Acme Cement Plaster Co. v. L. S. & M. S. Ry. Co., 17 I. C. C. 30, 33; Colorado Coal Traffic Ass'n. v. C. & S. Ry. Co., 18 I. C. C. 572, 576; Ponchatoula Farmers' Ass'n. v. I. X. R. R. Co., 19 I. C. C. 513, 516; Harbor City Wholesale Co. v. S. P. Co., 19 I. C. C. 323, 331; Maricopa County Commercial Club v. S. F. P. & P. Ry. Co., 19 I. C. C. 257, 258; Railroad Commission of Nevada v. S. P. Co., 19 I. C. C. 238, 256; California Sugar Co. v. S. P. L. A. & S. L. R. R. Co., 19 I. C. C. 6, 9; National Refining Co. v. C. C. C. & St. L. Ry. Co., 20 I. C. C. 649; Truck Growers' Ass'n. v. A. C. L. R. R. Co., 20 I. C. C. 190; League of Commission Merchants v. A. C. L. R. R. Co., 20 I. C. C. 132, 133; East St. Louis Cotton Oil Co. v. St. L. & S. F. R. R. Co., 20 I. C. C. 37, 41; Sinclair & Co. v. C. M. & St. P. Ry. Co., 21 I. C. C. 490, 507, 508; Boileau v. P. & L. E. R. R. Co., 22 I. C. C. 640, 654; In Re Advances on Coal to Lake Ports, 22 I. C. C. 604, 613; In Re Advances in Rates for the Transportation of Freight in Single Packages and Small Lots, 22 I. C. C. 328, 335; Norman Lumber Co. v. L. & N. R. R. Co., 22 I. C. C. 239; In Re Investigation of Rates on Meats, 22 I. C. C. 160, 163; Milburn Wagon Co. v. L. S. & M. S. Ry. Co., 22 I. C. C. 93, 100, 101; Elk Cement and Lime Co. v. B. & O. R. R. Co., 22 I. C. C. 84, 88; Carstens Packing Co. v. O. & W. R. R. Co., 22 I. C. C. 77, 81; Sioux City Term. El. Co. v. C. M. & St. P. Ry. Co., 23 I. C. C. 98, 107; In Re Advances on Meats and Packing House Products, 23 I. C. C. 656, 664; Blodgett Milling Co. v. C. M. & St. P. Ry. Co., 23 I. C. C. 448, 451; Red River Oil Co. v. T. & P. Ry. Co., 23 I. C. C. 438, 442; Bituminous Coal Operators v. P. R. R. Co., 23 I. C. C. 385, 391; In Re Transportation of Wool, Hides and Pelts, 23 I. C. C. 151, 170; Chamber of Commerce of Ashburn v. G. S. & F. Ry. Co., 23 I. C. C. 140, 145; Massee & Felton Lumber Co. v. S. Ry. Co., 23 I. C. C. 110, 111, 113; National Mfg. Co. v. A. T. & S. F. Ry. Co., 23 I. C. C. 86; Meredith v. St. L. S. W. Ry. Co., 23 I. C. C. 31, 34; Penn. R. R. Co. v. International Coal Mining Co., 173 Fed. 1, 6; S. P. Co. v. Int. Com. Comm., 219 U. S. 433, 443, 31 Sup. Ct. 288, 55 L. ed. 283; In Re Rates on Salt, 24 I. C. C. 192, 194; In Re Advances on Cooperage, 24 I. C. C. 656, 659; Oklahoma Portland Cement Co. v. M. K. & T. Ry. Co., 24 I. C. C. 158, 160; State of Iowa v. A. C. L. R. R. Co., 24 I. C. C. 134, 137; National Refining Co. v. M. P. Ry. Co., 24 I. C. C. 315, 317; Slider v. S. Ry. Co., 24 I. C. C. 312, 313; Boileau v. P. & L. E. R. R. Co., 24 I. C. C.

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§3½. Costs of Shipper.

IMPORTANT CASES SINCE 1908

(a) Defendant contended that as coal from its mines at Rich Hill has less value for domestic purposes than Myrick coal it might equalize such difference in value by making a lower rate on Rich Hill coal. Complainants cost of mining at Myrick is nearly 50c per ton more than it costs defendant to mine its coal at Rich Hill. HELD, that there is in fact no such difference in value as to justify defendants rate adjustment in favor of Rich Hill; that if difference in quality is to be equalized in favor of the defendant the question arises why should not difference in cost of mining be equalized in favor of complainant, that if any such process of equalization is permissable defendant may absolutely dictate the comparative value of every mine and industry upon its road; and that such rates should be examined with closest scrutiny when resorted by the carrier in its own favor. McGrew v. M. P. R. R. Co., 80 I. C. C. 630, 640.

§4. Competition.

(1) In General.

See Competition.

IMPORTANT CASES SINCE 1908

(a) Competition in commodities alone is not a circumstance that will entitle a selling point to have an already low rate made still lower to equal one at a more distant point, which was made to meet competition of carriers and of rates as well as of markets and products. Bovaird Supply Co. v. A. T. & S. F. Ry. Co., 13 I. C. C. 56, 64.

(b) Carriers may, for the purpose of meeting water competition, make rates lower than would otherwise be justifiable, even to the extent of charging a less rate to the more distant point. The carrier may determine for itself whether it will or will not meet such water competition. While, however, the carrier may

in the first instance settle its policy in this respect, it must act under certain limitations. It cannot be permitted to compete at one point and decline to compete at another, where all conditions are the same; nor shall it, ordinarily, be allowed to compete one day and decline to compete the next. The public has the right to require equal and uniform treatment within the bounds of reason. Cases might therefore arise where the Commission would require the continuance of a rate established to meet such competition. Darling & Co. v. B. & O. R. R. Co., 15 I. C. C. 79, 87.

(c) A railroad cannot set up any imaginary water competition. But where a water competition exists that could readily take all the tonnage offered, no reason why rail line may not meet the competition. Bulte Milling Co. v. C. & A. R. R. Co., 15 I. C. C. 351, 359.

(d) It is unjust to fix rates so as to destroy the business of one concern and create a monopoly in favor of other concerns, though it be merely incidental, to meeting competitive rate. Spiegle & Co. v. S. Ry. Co., 19 I. C. C. 522, 525.

(e) Strictly speaking there is no such thing as market competition which is distinct from competition between the lines of transportation serving the market. A market can only compete through the agency which tranports for it. The carrier makes a rate from a given market not out of favor to that locality, but because it desires to obtain traffic which will not otherwise come to it. There would seem, therefore, to be little distinction between the competition of markets and the competition of rival railroads. City of Spokane v. N. P. Ry. Co., 21 I. C. C. 400 , 414.

(f) A carrier may voluntarily accept lower rates than it can be required to accept, and whether or not a carrier will meet competitive conditions at a particular point rests primarily with it. But this principle does not relieve the carrier from the obligation to remove unjust discrimination created by meeting competitive conditions at one point and refusing to meet them at a neighboring point. Chamber of Commerce, Ashburn, Ga., v. G. S. & F. Ry. Co., 23 I. C. C. 140, 149.

(g) Competitive influences may bring about an equalization of rates on traffic to a certain defined territory which is not accorded as to any other territory; and unless unjust discrimination results the carriers are within their rights in maintaining such an adjustment. Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 23 I. C. C. 195, 207.

(h) The Commission has not recognized the right of a carrier to fix its rates to or from a given point on a higher level than they otherwise should be, in order to prevent one community from competing with another, or to keep the products of one community out of a territory, the wants of which may be fully supplied by another community. Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 26 I. C. C. 53, 58.

ALL OTHER CITATIONS

Bovaird Supply Co. v. A. T. & S. F. Ry. Co., 13 I. C. C. 56, 64; Indianapolis Freight Bureau v. P. R. R. Co., 15 I. C. C. 567, 576; North Bros. v. C. M. & St. P. Ry. Co., 15 I. C. C. 70, 71; Florida Fruit & Vegetable Ass'n. v. A. C. L. R. R. Co., 17 I. C. C. 552, 561; Metropolitan Paving Brick Co. v. A. A. R. R. Co., 17 I. C. C. 197, 203; National Petroleum Ass'n. v. M. P. Ry. Co., 18 I. C. C. 593, 595; Colorado Coal Traffic Ass'n. v. C. & S. Ry. Co., 18 I. C. C. 572; Frederick & Kempe Co. v. N. Y. N. H. & H. R. R. Co., 18 I. C. C. 481, 484 Jennison Co. v. G. N. Ry. Co., 18 I. C. C. 113, 124; Breese-Trenton Mining Co. v. W. R. R. Co., 19 I. C. C. 598, 600; Spiegle & Co. v. S. Ry. Co., 19 I. C. C. 522, 525; City of Spokane v. N. P. Ry. Co., 21 I. C. C. 400, 414; Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 23 I. C. C. 195, 207; Chamber of Commerce, Ashburn, Ga., v. G. S. & F. Ry. Co., 23 I. C. C. 140, 149; Concentration of Cotton, 26 I. C. C. 585, 592; Traffic Bureau of Nashville Tenn., v. L. & N. Ry. Co., 28 I. C. C. 533; Eastern Fruit Growers' Asso. v. B. & O. R. R., 33 I. C. C. 343; Lebanon Commercial Club v. L. & N. R. R. Co., 35 I. C. C. 204; Owens Bottle-Machine Co. v. B. & O. R. R., 55 I. C. C. 122.

§4. (1½) Pipe Line Competition

See Pipe Lines.

IMPORTANT CASES SINCE 1908

(a) The Commission may not require rail carriers to maintain rates merely in order that those who use them may better compete with others who are in a position to utilize the less costly service of pipe lines. Proportional rates on Petroleum and its products from Mississippi river Crossings to Canada, 74 I. C. C. 349, 351.

§4. (2) Railroads.

See Evidence §47; Rate Via Competing Line; Railroad Competition.

CASES 1887-1908

(a) The Missouri Pacific, having met the Wabash rate to Omaha, is not necessarily required to give Lincoln the same terms, although the distance is a trifle less and Lincoln is the center of a thriving trade. The Missouri Pacific gives Lincoln equal rates with Omaha upon all business coming from a direction where there is no competition by a shorter route. The discrimination in the St. Louis rate between the traffic to Omaha and Lincoln has been reduced nearly one half since the filing of the petition. Lincoln Board of Trade v. Missouri Pac. R. Co., 2 I. C. R. 98.

IMPORTANT CASES SINCE 1908

(b) It does not follow that because one railroad, as a matter of policy, extends a low rate for a special service, all its connections must be held to an extension of the same policy and rate. Topeka Banana Dealers' Ass'n. v. St. L. & S. F. R. R. Co., 13 I. C. C. 620, 631.

(c) Whatever may have been the practice in the past of "meeting the rate", tariffs must now be adhered to. Menefee Lumber Co. v. T. & P. Ry. Co., 15 I. C. C. 49, 51.

(d) Because the delivering carrier sees fit to state that it will protect a rate made by its competitor, but fails to do so, the Commission cannot hold such lower rate is necessarily reasonable. DeCamp Bros. v. So. Ry. Co., 16 I. C. C. 144, 145.

ALL OTHER CITATIONS

Okla. & Ark. Coal Traffic Bureau v. C. R. I. & P. Ry. Co., 14 I. C. C. 216, 220, 221; East St. Louis Walnut Co. v. C. R. I. & P. Ry. Co., 14 I. C. C. 575, 576; Montgomery Freight Bureau v. W. Ry. of Ala., 14 I. C. C. 150, 152; Shippers' & Receivers' Bureau of Newark v. N. Y. O. & W. Ry. Co., 15 I. C. C. 264, 268; Barton, Reisinger, Davis & Co. v. St. L. I. M. & S. Ry. Co., 15 I. C. C. 222, 225; Palmer & Miller v. L. E. & W. R. R. Co., 15 I. C. C. 107, 108; Godfrey & Son v. T. A. & L. Ry. Co., 15 I. C. C. 65, 67; Commercial Coal Co. v. B. & O. R. R. Co., 15 I. C. C. 11, 14; Hill & Webb v. M. K. & T. Ry. Co., 16 I. C. C. 569; Winters Metallic Paint Co. v. C. M. & St. P. Ry. Co., 16 I. C. C. 562, 563; Swift & Co. v. C. & A. R. R. Co., 16 I. C. C. 426, 429, 430; Ottuma Pickle Co. v. C. M. & St. P. Ry. Co., 16 I. C. C. 368; Pepperell Mfg. Co. v. T. S. Ry. Co., 16 I. C. C. 353, 355; LaSalle Paper Co. v. M. C. R. R. Co., 16 I. C. C. 149, 150; Avery Mfg. Co. v. A. T. & S. F. Ry. Co., 16 I. C. C. 20, 25; Omaha Grain Exchange v. C. & N. W. Ry. Co., 19 I. C. C. 424, 433; Georgia-Carolina Brick Co. v. S. Ry. Co., 20 I. C. C. 148, 149; Iola Portland Cement Co. v. M. K. & T. R. R. Co., 20 I. C. C. 91; Simon Cook v. Wabash R. R. Co., 21 I. C. C. 563, 564; Mission Brewing Co. v. A. T. & S. F. Ry., 38 I. C. C. 171; Whitewater Lumber Co. v. A. C. Ry., 53 I. C. C. 278; Board of Trade of Nashville, Ga., v. G. & F., 58 I. C. C. 59.

§4 (3) Rail-and-Water Competition.

See Rail-and Water Competition.

IMPORTANT CASES SINCE 1908

(a) Water and rail competition may justify lower charges to one point than to another. Columbia Grocery Co. v. L. & N. R. R. Co., 18 I. C. C. 502, 507.

(b) The Commission is hardly prepared to find that discrimination necessarily results from the fact that an all-rail carrier meets the rate of a competing lake-and-rail rate. Board of Trade of Chicago v. A. C. R. R. Co., 20 I. C. C. 504, 509.

ALL OTHER CITATIONS

Class and Commodity Rates to and from Quincy, Ill., and Groups, 33 I. C. C. 409; Elmore-Benjamin Coal Co. v. C. & O. Ry., 36 I. C. C. 528, 531.

§4. (4) Water Competition.

See Evidence §14 (5); Water Competition.

CASES 1887-1908

(a) Complainant asked that Santa Barbara, Cal., be given the benefit of terminal rates on westbound transcontinental shipments, and based its petition upon the contention that the transportation conditions and circumstances obtaining in that city are similar to those which exist at other Pacific coast cities in California to which such rates are voluntarily extended by the rail carriers. HELD, that, from the facts disclosed by the record, there is no real, potential, compelling competition between the transcontinental rail carriers and those carrying similar traffic by water which affects directly the rail rates obtaining at Santa Barbara, and that the complaint should be dismissed. Commercial

Club, etc. v. S. Pac. Co., et al., 12 I. C. C. 495.

IMPORTANT CASES SINCE 1908

(b) Carriers may, for purposes of meeting water competition, make rates lower than would otherwise be justifiable, even to the extent of charging a less rate to the more distant point. The carrier may determine for itself whether it will or will not meet such water competition. While, however, the carrier may in the first instance settle its policy in this respect, it must act under certain limitations. It cannot be permitted to compete at one point and decline to compete at another, where all conditions are the same; nor shall it, ordinarily be allowed to compete one day and decline to compete the next. The public has the right to require equal and uniform treatment within the bounds of reason. Cases might therefore arise where the Commission would require the continuance of a rate established to meet such competition. Darling & Co. v. B. & O. R. R. Co., 15 I. C. C. 79, 87.

(c) Railroad cannot set up any imaginary water competition. But where a water competition exists that could readily take all the tonnage offered, no reason why rail line may not meet the competition. Bulte Mining Co. v. C. & A. R. R. Co., 15 I. C. C. 351, 359.

(d) Carriers cannot be compelled, as a matter of law, to meet water competition; they do it of their own volition, or whenever the same is potent enough to compel them to do so in order to secure the traffic. In each instance the carrier determines for itself whether such water competition has sufficient influence on the traffic to make it reduce its rates. Bainbridge Board of Trade v. L. H. & St. L. Ry. Co., 15 I. C. C. 586, 594;

(e) That carriers are at liberty to meet water competition in whatever way and at whatever point and to whatever extent they see fit cannot be admitted. City of Spokane v. N. P. Ry. Co., 19 I. C. C. 162, 168.

(f) If one city is on the water and can operate boats to another city, it has an advantage which the rail carriers between the same points may recognize without violating the prohibition against undue preference against intermediate cities. So if the water points at one end of the line are grouped, the water points at the other end of the line should be likewise grouped or the influence of the water recognized. In Re Application of the Southern Pacific Co., 22 I. C. C. 366, 375.

(g) Taking all the circumstances into consideration, including the control exercised by the railroad corporations over certain steamship companies and the depressed earnings of the water lines, the evidence does not indicate that defendants are now compelled to maintain their all rail rates between the Virginia cities and eastern seaboard ports on a subnormal basis because of water competition. There is ground for the inference that the water lines feel the necessity, in order that they may secure a substantial share of the traffic, of maintaing their rates at a somewhat lower level generally than the rail rates, but there seems no basis for a belief that the latter are at present held down by the water rates. Indeed, a more reasonable conclusion is that the steamship companies would willingly follow the lead of the carriers on land if all the rail rates were increased. This may be a situation brought about by conditions which are temporary in character, but they have persisted now for some length of time and there is no certainty that they are temporary. Corporation Commission of North Carolina v. Director General, 57 I. C. C. 523, 544.

ALL OTHER CITATIONS

Payne Gardner Co. v. L. & N. R. R. Co., 13 I. C. C. 638, 643; Burnham, Hanna, Munger Dry Goods Co. v. C. R. I. & P. Ry. Co., 14 I. C. C. 299, 311, 313, sustained, I. C. C. v. C. R. I. & P. Ry., 218 U. S. 88, 30 Sup. Ct. 651, 54 L. Ed. 946, reversing 171 Fed. 680, 683, enjoining Commission's order; Acme Cement Plaster Co. v. L. S. & M. S. Ry. Co., 17 I. C. C. 30; Kentucky Wagon Mfg. Co. v. I. C. R. R. Co., 18 I. C. C. 360, 363; Cohen & Co. v. Mallory Steamship Co. 23 I. C. C. 374, 377; Bituminous Coal Rates to Baltimore and Other Cities, 33 I. C. C. 307, 316; Alexandria Traffic Bureau v. M. L. & T. R. R. & S. S. Co., Unrep. Op. A-955; Bristol Brass Corporation v. Director General, as Agent, 78 I. C. C. 301; Elem Coal Co., v. L. V. R. R. Co., 80 I. C. C. 647.

§4. (5) Market Competition.

See Supra §6; Market Competition.

CASES 1887-1908

(a) It is not the duty of carriers, nor is it proper, that they undertake by adjustment of rates or otherwise to impair or neutralize the natural commercial advantages resulting from location

or other favorable condition of one territory in order to put another territory on an equal footing with it in a common market. Each locality competing with others in a common market is entitled to reasonable and just rates at the hands of the carriers serving it and to the benefit of all its natural advantages. If this result in prejudice to one and advantage to another, it is not the undue prejudice or advantage forbidden by the statute, but flows naturally from conditions beyond the legitimate sphere of legal or other regulation. Commercial Club of Omaha v. C. R. I. & P. R. Co., 6 I. C. C. 647, 675.

(b) Complainant attacked commodity rates charged on cotton goods from points in Texas to Wichita, Kans., as unreasonable compared with the rates to Omaha, Kansas City and Chicago. Rates are 96c to Wichita, Kans., 50c to Kansas City and St. Louis and 55c to Omaha and Chicago. The average distances range from 458 miles to Wichita to 1,038 miles to Chicago. Active market and carrier competition exists for the sale and transportation of this traffic to the points other than Wichita, to which substantially agreed rates are maintained by the four carriers reaching that point from all markets. A rate from Texas producing points to Wichita of 50c would be highly profitable to carriers and complainant; a Wichita jobber formerly had, by the rebate system, a rate as low as 50c from Galveston, 250 miles further. Until recently the tariff rate to Wichita from these points was $1.16. The present rates to Kansas City and other Missouri river points and to Wichita exclude the Wichita jobber from competition. HELD, present rate of 96c to Wichita unreasonable and unjust, and should not exceed 50c per 100 pounds. Johnson Latimer Dry Goods Co. v. A. T. & S. F. Ry., 12 I. C. C. 48.

IMPORTANT CASES SINCE 1908

(c) It is not the function of this Commission to equalize commercial conditions or neutralize geopraphical advantages by such adjustments as will enable a shipper to compete in markets otherwise closed to him; especially under depressed market conditions. Connor Lumber & Land Co. v. A. C. & Y. Ry. Co., 40 I. C. C. 111, 114.

(d) So long as their competitors in Nebraska are accorded equalized rates the lower Missouri River cities can not lawfully be denied whatever rate advantages would accrue from rate schedules made upon the same principle. The Missouri River-Nebraska Cases, 40 I. C. C. 201, 259.

(e) The construction of rates by equalizing the rates in and out of competing jobbing centers is impracticable, even if it might be assumed that the rate factors necessary to bring about the equalization would always be fair and reasonable. Wheeler Lumber Bridge & Supply Co. v. Director General, 59 I. C. C. 6, 10.

(f) While the Commission will not attempt to readjust inbound and outbound rates so as to put all competing jobbing points on a parity in common territory, the inability of jobbing points generally to compete in their contiguous territory is a condition that may, and should be, considered in determining whether a rate adjustment to the jobbing points is just and reasonable and free from undue prejudice. Certain-Teed Products Corp. v. A. T. & S. F. Ry. Co., 73 I. C. C. 82, 86.

(g) In adopting a policy of rate equalization in which distance is disregarded, carriers can not accord advantages of such rates to certain points of origin and deny them to other competing points from which traffic moves under substantially similar circumstances and conditions. Rates from River Crossings to Nebraska, 78 I. C. C. 439, 442.

ALL OTHER CITATIONS

Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co., 30 I. C. C. 597, 600; Nebraska State Ry. Comm'n. v. U. P. R. R., 34 I. C. C. 381, 382; Rates on Bituminous Coal, 36 I. C. C. 401, 409; Public Service Commission of Missouri v. Wabash R. R., 37 I. C. C. 297; Natl. Pickle & Canning Co. v. C. M. & St. P. Ry., 37 I. C. C. 403; Bituminous Coal Rates to the Southeast, 37 I. C. C. 652; Michigan Paper Mills Traffic Assn. v. A. & V. Ry., 38 I. C. C. 517; The Missouri River-Nebraska Cases, 40 I. C. C. 201, 206, 207; Michigan Paper Mills Traffic Assn. v. A. & V. Ry., 43 I. C. C. 16; Commercial Club of Greeley v. C. & S. Ry., 53 I. C. C. 66; Alexandria Chamber of Commerce v. M. P., 53 I. C. C. 311; Alexandria Chamber of Commerce v. Director General, 53 I. C. C. 687; Michigan Paper Mills Traffic Assn. v. N. Y. C. Ry., 55 I. C. C. 679; Bartlett-Collins Glass Co. v. St. L. & S. F. Ry., 56 I. C. C. 236; City of Warrenton v. Director General, 56 I. C. C. 714; Barnett Oil & Gas

Co. v. Director General, 59 I. C. C. 689; Stone Products Co. v. Director General, 61 I. C. C. 51; Chamber of Commerce of Johnson City, Tenn., v. S. Ry. Co., 64 I. C. C. 709; Salt from Louisiana Mines to Chicago, 69 I. C. C. 312, 316; Constantin Refining Company. v. Director General, 73 I. C. C. 197, 200; Rath Packing Co. v. Director General, as Agent, 73 I. C. C. 203; Empire Refineries v. Director General, as Agent, 73 I. C. C. 207; Williamette Valley Lumbermen's Asso. v. S. P. Co., 73 I. C. C. 733; Decker & Sons v. Director General, 74 I. C. C. 171; Klamath County Chamber of Commerce v. S. P. Co., 74 I. C. C. 207; South Dakota Ry. Commissioners v. A. & W. Ry., 74 I. C. C. 295; Norfolk Hide & Metal Co. v. C. & N. W. Ry., 74 I. C. C. 482; Niedringhaus Metal Ware Corp. v. A. T. & S. F. Ry., 74 I. C. C. 502; Barndsdall Refining Co. v. A. T. & S. F. Ry., 74 I. C. C. 530; S. P. Co. Ownership of Atlantic S. S. Lines, 77 I. C. C. 124, 128; Application of U. S. Steel Products Co., 77 I. C. C. 685, 686; Anson Gilkey Hurd Co. v. S. P. Co., 78 I. C. C. 495; Inland Crystal Salt Co. v. B. A. & P. Ry., 78 I. C. C. 659; Iowa Malleable Iron Co. v. Director General, 78 I. C. C. 667; Sugar Cases of 1922, 81 I. C. C. 488; Burlington Shippers Asso. v. A. T. & S. F. Ry., 88 I. C. C. 46; Lake Dock Coal Cases, 89 I. C. C. 170.

§5. Low State Rate.

See Discrimination §11; State Rates and Regulations.

IMPORTANT CASES SINCE 1908

(a) Where state rates have been fixed at an unduly or unreasonably low figure, there is a forum in which to test that question, and until such test has been invoked, it cannot be recognized as proper to "neutralize" the reduction in state rates by increases in interstate rates. Commercial Club of Omaha v. Anderson & Saline River Ry. Co., 18 I. C. C. 532, 536.

(b) The maintenance of lower rates in intrastate traffic than on like interstate traffic between the same points affords some evidence of unjust discrimination, but it is not conclusive evidence. Merrill & Bro. v. I. C. R. R., 36 I. C. C. 523, 524.

ALL OTHER CITATIONS

Marble Falls Insulator Pin Co. v. H. & T. C. R. R. Co., 15 I. C. C. 167, 169; Marshall Oil Co. v. C. & N. W. Ry. Co., 14 I. C. C. 210, 213, 214.

§6. Preference of Markets.

See Market Competition; Reasonableness of Rates.

CASES 1887-1908

(a) It is not the duty of a carrier to regulate markets. If by reason of competition in transportation or the condition of the markets a carrier sees fit to move traffic at very low rates in order to participate in the business, that may be done and often is done, but that is a very different matter from compelling it to reduce all its rates to equalize competition between shippers from different fields of supply and by different and unrelated routes. Rice Robinson & Witherop v. W. N. Y. & P. R. R., 2 I. C. C. 298, 301.

(b) When a carrier makes rates to two competing markets which give the one a practical monopoly over the other because it can secure reshipments from the favored locality and none from the other, it goes beyond serving its fair interest, and disregards the statutory requirements of relative equality as between persons, localities, and particular descriptions of traffic. Savannah Bureau of Freight & Transportation v. L. & N. R. Co., 8 I. C. C. 377, 405.

(c) Complainant attacked rates on freight from Louisville, Ky., Cincinnati, O., St. Louis, Mo., Chicago, etc., to Wilmington, N. C., are unreasonable and unjust as compared with the rates from the same points to Norfolk, Richmond and other Virginia cities. The present adjustment of rates on freight traffic from Chicago, St. Louis and other related points of shipment to Wilmington, N. C., operates largely to deprive that city in its competition for trade in common territory with Norfolk and Richmond and other Virginia cities of the benefits of those primary markets and to limit Wilmington to such intermediate points of supply as Cincinnati and Louisville, from which points the rate relations appear to be fair and reasonable and this subjects Wilmington to disadvantages which are in substantial degree undue and unreasonable and for which the defendant carriers are to that extent responsible. Rates from Cincinnati and Louisville to Norfolk are much lower than those from St. Louis and Chicago to Norfolk, and the competitive conditions governing the rates from Cincinnati and Louisville appear to be of the same general character as those which apply to rates from Chicago or

St. Louis. The same is true of rates to Wilmington from Cincinnati, Louisville, Chicago or St. Louis. HELD, that what constitutes just rate relations from Cincinnati and Louisville to Norfolk and Wilmington is a fair basis for relative rates from St. Louis and Chicago and that basis should be adopted with the modification in favor of the carriers that the readjustment may be made on the basis of the East St. Louis rates, and the established practice of charging practically the same rates from St. Louis and Chicago to Wilmington continued. Rates from Chicago, St. Louis and East St. Louis to Wilmington should be 135 per cent of the rates from East St. Louis to Norfolk. Wilmington Tariff Asso. v. C. P. & V. R. R., 9 I. C. C. 118.

IMPORTANT CASES SINCE 1908

(d) No shipper is obliged to confine himself to the nearest markets, but the markets of the country are and should be open to anyone who can reach them under just and reasonable rates. It is not possible to adjust rates so that every town may be a jobbing and distributing point and be on an equality with all jobbers or manufacturers at other points. Certain natural advantages of location must be recognized, and often they are, of necessity, controlling. Competitive conditions between carriers, between producing points, and in common markets, must be given due weight. Distance, while in no sense controlling, must be taken into consideration. New Albany Furniture Co. v. M. J. & K. C. R. R. Co., 13 I. C. C. 594, 600.

(e) No locality, manufacturer or shipper has an exclusive right to supply a market. Avery Mfg. Co. v. A. T. & S. F. Ry. Co., 16 I. C. C. 20, 24.

(f) While a carrier ought not and should not be required to equalize access to markets for all engaged in a common business, if the shippers are differently situated and are not entitled to the same rates, it may be perfectly lawful for it to give equal access to markets to localities of dissimilar distances, where such distances involve no material increase in the transportation expense. Avery Mfg. Co. v. A. T. & S. F. Ry. Co., 16 I. C. C. 20, 24.

(g) A carrier may not, in order to protect mills located on its line, exact unreasonable rates on traffic originating at mills located upon other lines. Acme Cement Plaster Co. v. C. G. W. Ry. Co., 18 I. C. C. 19, 20, 24.

(h) The Commission, in determining whether a carrier and its connections unduly discriminate in their transportation charges from competing coal mines to a common market cannot undertake to equalize differences in the cost of production, whether natural or artificial. Andy's Ridge Coal Co. v. So. Ry. Co., 18 I. C. C. 405, 409.

(i) Neither the east nor the west has any vested right to sell a certain amount of goods in southern territory. Each section is entitled to a reasonable rate and to do what business it can under that rate. Receivers' and Shippers' Ass'n of Cincinnati v. C. N. O. & T. P. Ry. Co., 18 I. C. C. 440, 459.

(j) No jobbing point is entitled because of unfair adjustment of rates to exclusive posession of, or complete supremacy in, a particular consuming territory. A carrier may not by the establisment and maintenance of unreasonable rates give possession of a consumng territory to the jobbers at a point selected or favored by the carriers. Jobbers are shippers and every shipper is entitled to reasonable rates. Every locality is entitled to reasonable and nondiscriminatory rates, and the dealers at any point are entitled to trade wherever and as far as reasonable rates will permit. Billings Chamber of Commerce v. C. B. & Q. R. R. Co., 19 I. C. C. 71, 75.

(k) It is doubtful whether rates may be constructed for the express purpose of compelling the manufacture or merchandising of a commodity at particular points. City of Spokane v. N. P. Ry. Co., 19 I. C. C. 162, 168.

(l) While general commercial conditions should be considered, and while defendants might properly decline to apply the same rate to the longer haul from New York to Spokane which they apply to the shorter haul from Chicago, it may be doubtful whether they should be permitted to construct a tariff for the express purpose of compelling the manufacture or the merchandising of a given commodity at Chicago or upon the Missouri River or at the Atlantic seaboard. Some system of rates which on the whole seem just and reasonable should be established, and these different communities should be permitted to do what ever business they can under that rate system. City of Spokane v. N. P. Ry. Co., 19 I. C. C. 162, 168.

(m) Impossible under the present system of rate making in this country to so adjust rates that the in-and-out charges will be the same in the aggregate for all jobbing points which buy and sell in Common markets. Ft Dodge Commercial Club v. Director General, 57 I. C. C. 243, 345.

(n) Rates on grain from points in Iowa, Nebraska and Missouri, to Cairo, Ill., found not unreasonable, discriminatory, or unduly prejudicial, as substantial equalization appears to have been effected at Cairo through the medium of transit, and the Commission is not warranted in requiring carriers to reduce their inbound rates to Cairo for the purpose of equalizing that market with St. Louis, Mo., and Memphis, Tenn. Cairo Board of Trade v. A. T. & S. F. Ry. Co., 61 I. C. C. 219.

ALL OTHER CITATIONS

Montgomery Freight Bureau v. Western Ry. of Ala., 14 I. C. C. 150, 151; Chamber of Commerce of Milwaukee v. C. R. I. & P. Ry. Co., 15 I. C. C. 460, 464; Bulte Milling Co. v. C. & A. R. R. Co., 15 I. C. C. 351, 364; Black Mountain Coal Land Co. v. So. Ry. Co., 15 I. C. C. 286, 292, 294; Williams Co. v. V. S. & P. Ry. Co., 16 I. C. C. 482, 486; Valley Flour Mills v. A. T. & S. F. Ry. Co., 16 I. C. C. 73, 78; Duncan & Co. v. N. C. & St. L. Ry. Co., 16 I. C. C. 590, 595; Florida Fruit & Vegetable Ass'n. v. A. C. L. R. R. Co., 17 I. C. C. 552, 562; Southern Bitulithic Co. v. I. C. R. R. Co., 17 I. C. C. 300; National Petroleum Ass'n. v. M. P. Ry. Co., 18 I. C. C. 593, 595; Jennison Co. v. G. N. Ry. Co., 18 I. C. C. 113, 123; Commercial Club of Omaha v. C. & N. W. Ry. Co., 19 I. C. C. 156, 159; Board of Trade of Chicago v. A. C. R. R. Co., 20 I. C. C. 504, 507; In Re Advance in Rates-Western Case, 20 I. C. C. 230, 232, 234; In Re Advances in Rates—Western Case, 20 I. C. C. 307 354; Alabama Coal Operators' Association v. S. Ry. Co., 21 I. C. C. 230, 232; In Re Advances on Coal to Lake Ports, 22 I. C. C. 604, 625; Suffern Grain Co. v. I. C. R. R. Co., 22 I. C. C. 178, 181; In Re Investigation of Rates on Meats, 22 I. C. C. 160, 163; Milburn Wagon Co. v. L. S. & M. S. Ry. Co., 22 I. C. C. 93, 100; Van Natta Bros. v. C. C. C. & St. L. Ry. Co., 23 I. C. C. 1, 5; In Re Advances on Barley, 24 I. C. C. 664, 669; Commercial Club of Superior v. G. N. Ry. Co., 24 I. C. C. 96, 109; Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co., 24 I. C. C. 55, 71; North Fork Cannel Coal Co. v. A. A. R. R. Co., 25 I. C. C. 241, 246; In Re Advances on Cottonseed Products, 25 I. C. C. 237, 239; In Re Lumber Rates, 25 I. C. C. 50, 59; Omaha Grain Exchange v. C. B. & Q. R. R. Co., 26 I. C. C. 533, 556; Rates on Linseed Oil, 26 I. C. C. 265, 270; Toledo Produce Exchange v. A. A. R. R. Co., 27 I. C. C. 536, 543; Metropolis Commercial Club v. I. C. Ry. Co., 30 I. C. C. 40; Class and Commodity Rates from Stations in Maine, 31 I. C. C. 18, 21; Pueblo Commerce Club v. D. & R. G. R. R. Co., 31 I. C. C. 133.

§7. Size of Commuity.

See Evidence §33, §53.

CASES 1887-1908

(a) It is not a ground of complaint against a railroad company that it equalizes its rates as between small and large towns, even though the effect may be prejudicial to the large towns which before had been specially favored. Crews v. R. & D. R. R. Co., 1 I. C. R. 703.

(aa) Complainant charged unjust rates and discrimination against Danville, Va. HELD, It is not a ground of complaint against a railroad company that it equalizes its rates as between small and large towns, even though the effect may be prejudicial to the large towns which before had been specially favored. The spirit and purpose of the Act requires that when the circumstances and conditions will fairly admit of it the charges to all points for a like service should be made relatively equal. When the reasonableness of rates is in question the charges made on long through lines cannot form a just basis for comparison with local rates for relatively short distances. A carrier is not responsible for rates made by a connecting road because merely of its giving them in connection with its own rates to parties desiring to make through shipments. A carrier is not compellable by law to give to the merchants of a town on its line the privilege of shipping their goods from the point of purchase to their own locality and again from thence to the place at which the goods may be sold by them at the same rate which would have been charged had there been but one shipment from the point of purchase to the point of ultimate delivery. The fact that a refusal to give the through rate for one shipment operates prejudicially to the town desiring the privilege and favorably to another town does not make

the refusal operate as unjust discrimination when the carrier applies the same rule to all towns and accords the privilege to none. Discrimination must consist in the doing for or allowing to one party or place what is denied to another; it can not be predicated on action which in itself is impartial. Further HELD, tariffs have since been amended showing same rates to Danville as to Richmond and the evidence offered to show that the rates of the defendant are excessive and unjust is too inconclusive to justify any finding to that effect. Crews, Danville Chamber of Commerce v. R. & D. R. R. Co. 1 I. C. C. 703.

(ab) Complainant attacked class rates as unreasonable and discriminatory from Chicago, Ill., to Lincoln, Neb., Fremont, Neb., compared with rates to Omaha and from Omaha to these destination points, in that the rates through from Chicago were lower than the rates to and from Omaha. HELD, Trade centers, or large commercial towns, are not, as a matter of right, entitled to have more favorable rates than the smaller towns for which they form distributing centers; and if carriers shall give to such smaller towns rates as favorable as to the larger, the Commission will not interfere. The fact that under rates which are impartially arranged as between large and small towns one large distributing center may have an advantage over another in competition for the business of the small towns, does not make out a case of undue preference in favor of the one distributing center as against the other. Impartial rates are not rendered illegal by their effect upon the business of localities. A distributing center, however great or important, can not demand as a matter of right that the rates from a common source of supply to more distant and smaller towns shall be made up of the sum of the rate to itself and the rate thence to such smaller towns; but the carriers may make rates from the common source of supply to the smaller towns directly, as single rates; and if the single rate is less than the sum of the two which are made to and from the distributing center, it is not for that reason necessarily objectionable, a case can not be decided on a theory which is neither presented by the complaint nor advanced in the taking of the testimony. Complaint dismissed. Freight Bureau of Omaha Board of Trade v. C. B. & Q. R. 2 I. C. C. 32.

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(ac) Advantages of location, such as proximity to a navigable stream or strong competition between carriers naturally result in lower rates to a town so situated, and it is not the province of the Commission to disturb the resulting rate relations unless the discrepancy is so great as to effect an unjust discrimination against the non-competitive points. But the mere fact that a given town has been recognized as a trade center and is enabled by its more favorable rate adjustment to distribute in a certain territory, cannot justify the continuance of relative rates which result in undue preference. The law contemplates relatively fair rates as between different places, and the dealer located in a small town is entitled to a reasonable adjustment which will enable him to compete on an equitable basis with dealers at trade centers enjoying the benefit of competitive rates.. Payne-Gardner Co. v. L. & N. R. R. Co., 13 I. C. C. 638, 643.

(b) Function of carrier not to promote growth of large shippers at expense of small. California Commercial Ass'n v. Wells, Fargo & Co., 14 I. C. C. 422, 432.

(c) A community is not entitled to advantages in the adjustment of freight rates simply because it is larger than some neighboring community. If a locality has natural advantages, it should be allowed to enjoy them, but it ought not to be given the additional artificial advantage which arises from a discriminating railway tariff. Suffern Grain Co. v. I. C. R. R. Co., 22 I. C. C. 178, 182; Harbor City Wholesale Co. v. S. P. Co., 19 I. C. C. 323, 331.

ALL OTHER CITATIONS

Board of Trade of City of Chicago v. C. & A. R. R. Co., 27 I. C. C. 530, 534; Commercial Club of Duluth v. B. & O. R. R. Co., 27 I. C. C. 639, 649; Chamber of Commerce, Freeport, Ill., v. C. M. & St. P. Ry., 33 I. C. C. 673.

III. EFFECT OF EQUALIZATION

§8. Adjustment of Related Rates.

See Evidence §66; Relative Rates.

CASES 1887-1908

(a) Where carriers have maintained for a considerable period of time a relation of rates affecting an extensive territory, though somewhat more favorable to one community therein than appears to be justified, and commercial

conditions there and elsewhere have become measurably dependent upon the continuance of that relation, it would ordinarily be inexpedient to increase rates at that point as the means of correcting relative injustice to another locality; in such case the only practical remedy is to reduce the rates to the injured town. Daniels v. C. R. I. & P. R. Co., 6 I. C. C. 458, 483.

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(b) Every locality competing in a common market is entitled to rates which are relatively reasonable and just in comparison with rates from other localities served by the same carrier. Black Mountain Coal Land Co. v. S. Ry. Co., 15 I. C. C. 286, 294.

(c) It is the duty of the Commission to determine a question of relative rates on coal as between competing producing districts upon a basis whch will permit them to compete in common markets and under circumstances to which their location and conditions of production fairly entitle them, with respect to their relation one to another. Black Mountain Coal Land Co. v. S. Ry. Co., 15 I. C. C. 286, 295.

(d) A change in one of a series of related rates changes the relation among all of them. Boileau v. P. & L. E. R. R. Co., 22 I. C. C. 640, 654.

(e) It often happens that two rates are so related to each other that to change one (by advancing it) without corresponding change in the other works an unjustifiable discrimination, even though the proposed advance is reasonable. Lumbermen's Exchange of St. Louis v. A. & S. R. R. R. Co., 24 I. C. C. 220, 224.

(f) While the fact that the reduction of a rate must lead to other reductions is a reason why the Commission should proceed with caution, it is no conclusive reason against granting to shippers such reductions, when necessary to give them reasonable rates. Southwestern Shippers' Traffic Assn. v. A. T. & S. F. Ry. Co., 24 I. C. C. 570, 577.

(g) The fact that a relation of rates has been in effect for many years can not justify its continuance, if at this time it unduly wrongs one of the related communities. Commercial Club of Duluth v. B. & O. R. R. Co., 27 I. C. C. 639, 652.

(h) The deprivation of a city of rates based on percentage principle may not be justified. Rates on Potash and Other Commodities, 29 I. C. C. 626, 627.

(i) The car-mile earnings of carriers on all traffic compared with similar earnings on coal shipped from and to the points involved and other computations made on similar bases are proper to be considered and should be given due weight in reaching a conclusion San Toy Coal Co. v. A. C. & Y. Ry., 34 I. C. C. 93.

(j) Ordinarily, rates not involved in an inquiry before the Commission will adjust themselves to the conditions brought about by the order of the Commission, but even though the assumption that they will adjust themselves is erroneous, and the basis for the assumption involves a mistaken factor as to such other rates, still it does not necessarily lead to the conclusion that the regulation of the rate directly involved in the order is invalid, or that the order fixing such a rate should be annulled by judicial authority, provided always the rate so directly involved is reasonable and just for shippers and carriers, with relation to the particular destinations concerned. N. & W. Ry. Co. v. U. S. 195 Fed. 953, 959.

(k) The Commission is not prevented from reducing an unreasonablly high rate between certain points by the fact that through competitive conditions some other rate will have to be made unreasonably low. N. & W. Ry. Co. v. U. S. 195 Fed. 653, 960.

ALL OTHER CITATIONS

Kindel v. N. Y. N. H. & H. R. R. Co., 15 I. C. C. 555, 560; Baer Bros. Merchantile Co. v. M. P. Ry. Co., 17 I. C. C. 225, 229; Acme Cement Plaster Co. v. L. S. & M. S. Ry. Co., 17 I. C. C. 30, 34, 39; Columbia Grocery Co. v. L. & N. R. R. Co., 18 I. C. C. 502, 505; Alexander Sprunt & Son v. S. A. L. Ry. Co., 18 I. C. C. 251, 254; In Re Advances in Rates by Carriers Operating Between the Mississippi and Missouri Rivers, 21 I. C. C. 546, 549; Milburn Wagon Co. v. L. S. & M. S. Ry. Co., 22 I. C. C 93, 101; Chamber of Commerce of Newport News v. S. Ry. Co., 23 I. C. C. 345, 356; Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 23 I. C. C. 195, 208; Ohio River Hay Rates, 27 I. C. C. 465, 466; Chicago-Duluth Grain Rates, 27 I. C. C. 216, 222; Lumber Rates

from Southern Mills to Certain Points in the East, 27 I. C. C. 189, 190; Wisconsin Steel Co. v. P. & L. E. R. R. Co., 27 I. C. C. 152, 153; Rates on Potash and Other Commodities, 29 I. C. C. 626, 628; Fox River Valley Mfrs. Co. v. M. C. R. R. Co., 32 I. C. C. 547; Montana Oil Co. v. A. T. & S. F. Ry., 58 I. C. C. 85; National Paving Brick Manufacturers Association v. A. & V. Ry., 68 I. C. C. 213; Board of Railroad Commissioners of South Dakota v. Director General, 72 I. C. C. 545; Parkersburg Rig & Reel Co. v. W. F. R. & F. W. R. R., 78 I. C. C. 556; Rocbond Co. v. Director General, 80 I. C. C. 26; Standard Oil Co. v. Director General, 80 I. C. C. 643.

EQUIPMENT

See Cars and Car Supply; Evidence §22; Facilities and Privileges; Reasonableness of Rates §13.

ERIE CANAL

See Canals.

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(a) Barge lines operating on Erie Canal have been injured by termination of through route arrangements with lake lines. Lake Line Applications Under Panama Canal Act, 33 I. C. C. 699, 716.

(b) The Erie Canal is generally understood to have played a part in depressing rates from Buffalo to the seaboard. Eastern Export Iron and Steel Case, 43 I. C. C. 5, 10.

ERRONEOUS RATES

See Advanced Rates §5 (6); Demurrage §17; Evidence §22¼; Reparation §8; Routing and Misrouting §3; Tariffs §3 (2); Passenger Fares and Facilities §15.

ESTABLISHMENT OF RATES

See Basing Points and Lines II; Distance Rates I.

EVIDENCE

I. BURDEN OF PROOF.
- §1. In general.

II. CIRCUMSTANCES AND CONDITIONS OF PROBATIVE VALUE.
- §1½. In General.
- §2. Advantage of location.
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- §3. Agreed facts, admissions and agreements.
- §4. Averages.
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- §6½. Bridge mileage.
- §7. Capitalization.
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  - (1) In general.
- §13. Comparison of rates.
  - (1) In general.
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  - (2) Divisions and joint rates.
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- §14. Competition.
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- §14a. Consolidation of Carriers.
- §15. Contract relying on rate.
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- §16. Cost of production.
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- §18. Cost of service.
- §19. Credit.
- §19½. Custom.
- §19¾. Customs duty.
- §20. Distance of haul.
- §21. Dividends.
- §21½. Emergency rates.
- §22. Equipment furnished.
- §22a. Equalization of cost theory.
- §22¼. Erroneous rate.
- §22½. Expert evidence.
- §23. Failure to serve prejudiced locality.
- §24. Fixed charges.

§25. Government regulation and operation.
§25¼. Harbor or water facilities.
§25½. Hearsay evidence.
§25¾. History of rates.
§26. Import duty.
§26½. Interest on capital.
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§27. Investment relying on rate.
§28. Local rates and combinations.
§29. Long continuance of voluntary rate.
§30. Low rate in opposite direction.
§31. Manufactured products.
§31½. Maps.
§32. Market competition.
§33. Merger of terminals.
§34. Mineral Lands Owned by Carrier.
§34¼. Mixed shipments.
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§57. Surplus.
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§59½. Unearned increment.
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§61. Value of commodity.
§62. Value of service.
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§64. Voluntary or subsequent reduction of rate.
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§68. In general.
V. STARE DECISIS.
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CROSS REFERENCES

See Advance Rates III, §5 (4), §6, §16½, §18, §18 (4); Blanket Rates §3 VII; Cars and Car Supply III, §6, §36; Classification II, §17, §19; Courts VI; Discrimination V §4; Divisions §7, §10; Equalization of Rates II; Express Companies VII, XIII; Long and Short Hauls §12; §12 (2); Loss and Damage II, III, IV; Overcharges §5; Passenger Fares and Facilities II; Procedure Before Commission VII, VIII; Proportional Rates IV; Reasonableness of Rates II; Reparation III, §25; Special Rates and Contracts V; State Rates and Regulations; Switch Tracks and Switching V; Tariffs §19; Thru Routes and Joint Rates §15; Undercharges III §4; Water Carrier V; Weights and Weighing IV.

I. BURDEN OF PROOF.

§1. In General.

See Advanced Rates §3; Blanket Rates §16; Burden of Proof; Crimes §25; Discrimination §14; Evidence I; Long and Short

Hauls §12 (1); Loss and Damage §15; Routing and Misrouting §8; Through Routes and Joint Rates §15; Undercharges §5.

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(a) In case of complaint for violation of section 4 of the Act, the burden of proof is on the petitioner to sustain departure from the general rule prescribed by statute, by showing that circumstances and conditions are dissimilar. Re Southern R. & S. Asso., 1 I. C. R. 278.

(b) The burden of proof is on the petitioner charging exaction of unreasonable rates. Harding v. Chicago, etc., R. Co., 1 I. C. R. 375.

(c) On a petition charging the exaction of unreasonable rates, the burden of proofs is on the petitioner to sustain the charges by evidence which shows with reasonable certainty that they are in substance true. Harding v. same, I. C. R. 375.

(de) Complainant has burden of proof. Rice v. Louisville, Nashville R. R. Co. 1 I. C. R. 724.

(ea) Where the evidence adduced in a proceeding which attacks the reasonableness of a rate, fails to establish the grounds relied upon, as stated in the complaint, and upon which it is heard and tried before the Commission by the parties and their counsel, and to which the evidence is directed, but shows that upon a portion of its line, as for example, between St. Peter, in the State of Minnesota, and Pierre, in the Territory of Dakota, that the rates are made upon a basis which seems to grade them with large differences between stations contiguous to each other, and the grounds assigned for this by the carrier are the additional cost of service incident to operating a new line through a thinly inhabited and but little cultivated country, with very light traffic, and in which the transportation is seriously impeded by snow blockades, and where the coal used for fuel in operating the trains has to be brought by the carrier a distance of nearly five hundred miles, but the evidence is not given with that fullness of detail which should sustain such extra rates of charge, the Commission, while it will not hold the rates to be unreasonable, will, also, not hold that they are reasonable, but will investigate this question in a separate proceeding under the Statute, by which all the parties in interest will have an opportunity to be fully heard and can bring forward all the evidence upon a subject that is important and involving valuable rights, alike to the public and to the carrier. Business Men's Asso. v. Ch. & N. W. R. Co., 2 I. C. R. 48.

(f) A prima facie case of unreasonableness of rates is not made out by showing that the rates for a certain commodity are higher in certain cases than certain other rates, and that they produce a large profit to the carrier. When a question of reasonable rates is presented, the whole subject should be laid open, with all the attending circumstances and relations. Howell v. New York, Lake Erie & Western R. Co., 2 I. C. R. 162.

(g) A departure from the rule of equal mileage rates as applied to the several branches of a road is not conclusive that such rates are unlawful; but the burden is on the company making such departure to show its rates to be reasonable, when disputed. Northwestern Iowa Grain & Stock Shippers Asso. v. Chicago & N. W. R. Co. (Com.) 2 I. C. R. 431; New Orleans Cotton Exch. v. Cincinnati, N. O. & T. P. R. Co., (Com.), 2 I. C. R. 289.

(hi) When rates on the line of a carrier are on their face disproportionate or relatively unequal, the burden is on the carrier to justify them when challenged. McMorran & Co. v. G. T. R. R. of Canada, 2 I. C. C. 604, 607.

(j) The common-law rule that he who attacks a contract has the burden to show its invalidity prevails in the Colorado courts. Therefore a contract of rebate must be held valid until shown to be otherwise. Bayles v. Kansas P. R. Co. (Colo.), 2 I. C. R. 643.

(k) Contracts providing that a complainant may ship coal to points north and west on the same terms and rates that respondent for the time being gives other persons do not preclude complainant from showing that such rates are unjust, oppressive, or unreasonable. Complainant is therefore entitled to a hearing upon that question before the Interstate Commerce Commission. Haddock v. Delaware, L. & W. R. Co. (Com.), 3 I. C. R. 302.

(l) Where a claim for reparation is made in a complaint of unreasonable railroad rates, the burden of proof is on complainant. Perry v. Florida C. & P.

R. Co. (Com.), 3 I. C. R. 740.

(m) Where no discrimination is alleged as between points of production tributary to the same market, or on account of disproportionate rates on different kinds of traffic similar in character and volume, it must affirmatively appear that charges assailed as unreasonable are so and ought to be reduced. Lincoln Creamery v. Union P. R. Co. (Com.), 3 I. C. R. 794.

(ma) The burden is on a company making a departure from equal mileage rates, on different branches or divisions of a road, to show its rates to be reasonable when disputed. James v. Canadian P. R. Co., (Com.). 4 I. C. R. 274.

(n) The petitioner or complainant must in all cases prove the existence of facts alleged to be in violation of the act, unless the carrier complained of shall admit the same, or shall fail to answer the complaint. In case of failure to answer, the Commission will take such proof of charge as may be deemed reasonable and proper, and may make such order therein as the circumstances of the case may require. Duncan v. A. T. & S. F. R. Co., 4 I. C. C. 385, 388.

(o) The burden is upon the carrier in all cases where a departure from the rule of the law is proved, to show clearly that this departure is justified. It is not sufficient to raise a mere doubt. "Where the matter is not clear, the object and policy of the law should prevail." Missouri P. R. Co. v. Texas & P. R. Co., 31 Fed. Rep. 862, 4 Inters. Com. Rep. 434; Phillips, Bailey & Co. v. Louisville & Nashville R. Co., 8 I. C. C. 93, 108.

(p) A rate of 17½ cents on grain and grain products from Chicago to New York is not shown, as alleged by the carriers, to be unremunerative or disproportionate as compared with other rates. Whether tested by cost of movement, by what the carriers have voluntarily accepted in the past, or by comparison with rates on somewhat similar kinds of traffic, it is not unprofitable nor unreasonably low. It is from 2 to 5 cents—10 to 40 per cent—higher than the rates actually received in recent years, and nothing appears in the financial condition of the carriers to justify a greater advance. Re Proposed Advances in Freight Rates, 9 I. C. C. 382.

(q) That certain specific rates were too high, inadmissable under a general allegation that rates imposed from points without the State to a certain destination were unjust and unreasonable. Nobles Bros. Grocery Co. v. Ft. W. & D. C. R. Co., 12 I. C. C. 242.

(r) Neither the requirement that complainants must prove the issues raised by competent testimony, nor the requirement that they must make out a prima facie case sufficiently clear and strong to require the Commission in the public interest to enter upon an investigation of its own, is satisfied by a comparison, without any other showing, of the rates complained of, with rates between points in other and distant localities where different physical, competitive and traffic conditions exist. Dallas Freight Bureau v. M. K. & T. R. Co., 12 I. C. C. 427.

(ra) Under its rules and practice shippers have ample opportunity for personally laying their troubles before the Commission and thus showing the actual results of the rates complained of upon their business. Upon a complaint in which no person directly interested in such rates appeared as a witness and the only testimony offered was that of the secretary of a freight bureau having no personal knowledge of the effect of the rates upon the merchants dealing in the commodities involved and whose testimony is limited to a comparison of the rates attacked with rates on the same commodities for equal distances in other parts of the country, where the traffic is much more dense, the net revenues per mile greater, and where the other transportation conditions are entirely different: HELD, record discloses no sufficient basis for an order by the Commission, complaint dismissed. Dallas Freight Bureau v. M. K. & T. Ry. 12 I. C. C. 427, 432.

(s) A complaint should be supported by competent testimony. Poor Grain Co. v. C. B. & Q. Ry. Co., 12 I. C. C. 469.

(t) Where no person directly interested in the rates complained of appeared as witness, and the only testimony offered was that of the secretary of the freight bureau, who had no personal knowledge of the effect of the rates upon the merchants dealing in the commodity involved, and whose testimony was limited to a comparison of the rates attacked, with rates on the same commodity for equal distance in other parts of the country where the traffic is much more dense, the net revenues per mile greater, and

where the other transportation conditions are entirely different, no sufficient basis for an order is disclosed. Dallas Freight Bureau v. M. K. & T. R. Co., 12 I. C. C. 427.

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(u) Where there is a conflict in testimony as to the date of a movement, the rate that was lawfully in effect, the route taken, the size of the car actually used, or the weight of the shipment, official records of the carrier may be resorted to in arriving at a correct conclusion; but where a shipper claims that he ordered a car of a certain size for a particular shipment and this is denied by the carrier, and it is not pretended that the order was in writing, the conflict can be resolved only by considering all the evidence and ascertaining on which side the preponderance of the testimony may lie. Wheeler Lumber, Bridge & Supply Co. v. S. P. Co., 16 I. C. C. 547, 548.

(v) Under the Act of 1910 the burden is on the carrier to prove the reasonableness of advanced rates. In Re Advances on Cattle and Sheep, 23 I. C. C. 7, 12; In Re Advances on Lemons, 23 I. C. C. 27, 28; In Re Investigation of Advances in Rates on Grain, 21 I. C. C. 22, 35; In Re Advances in Rates on Locomotives and Tenders, 21 I. C. C. 103, 111; In Re Investigation and Suspension Docket 24, 21 I. C. C. 546, 555; Ohio Allied Milk Product Shippers v. E. R. R. Co., 21 I. C. C. 522, 528; United States Leather Co. v. S. Ry. Co., 21 I. C. C. 323, 325; Victor Mfg. Co. v. S. Ry. Co., 21 I. C. C. 222, 226.

(w) A group of carriers cannot be pemitted to cast the responsibility of justifying a proposed increase in rates upon a single carrier and claim the benefit of the case made by such carrier, where several roads lead between two points, since the carriers might place the burden of upholding the burden of increase upon that railroad which could make the best showing, having the longest route, most incompetent management, the lowest volume of traffic and the greatest need of additional revenue. In Re Advances on Coal to Lake Ports, 22 I. C. C. 604, 611.

(x) An admission of unreasonableness relieves the carrier of the burden of justifying the advance. Wisconsin State Millers' Ass'n v. C. M. & St. P. Ry. Co., 23 I. C. C. 494, 495.

(y) The burden is on the complainant to show that a rate, reasonable when established, has become unreasonable. National Wool Growers' Ass'n v. O. S. L. R. R. Co., 25 I. C. C. 675, 678.

(z) The burden of proof to show the unreasonableness of rates establishtd prior to Jan. 1, 1910, is upon the shipper. Memphis Freight Bureau v. I. C. R. R. Co., 27 I. C. C. 507, 514.

(aa) And the fact complainants may proceed first at a hearing does not shift the burden of proof. Mixed Car Dealers Asso. v. D. L. & W. R. R. Co., 33 I. C. C. 133, 136.

(bb) Congress placed the burden of proof upon the carrier to justify the propriety of changes in regulations. Stopping Cars in Transit to Complete Loading, 36 I. C. C. 130, 132.

(cc) The burden of the proof is not sustained by reliance generally upon adherence to a comprehensive rate adjustment, at the same time ignoring important incidents and underlying bases of that adjustment. Lettuce from Texas Points, 36 I. C. C. 511, 513.

(dd) A bill of lading, expense bill, and a copy of an invoice purporting to cover shipment offered in evidence. defendants consented that information as to composition of shipment involved might be furnished in affidavits by officers or employees of complainant, to be filed subsequently to hearing. No affidavits filed and complaint dismissed. Marshalltown Buggy Co. v. Wabash R. R. Co., 39 I. C. C. 633, 634.

(ee) Where rates under attack are initial rates, and not increased rates, they do not come within the purview of section 15 as to the burden of justifying their reasonableness; because the tariff included joint rates with rail carriers the burden of proving the unreasonableness is not upon the Great Lakes Transit Corporation or upon the rail carriers concurring in such rates. Bay State Milling Co. v. G. L. T. Corp., 43 I. C. C. 338, 347.

(ff) The statute does not cast a burden upon a protestant to prove the unreasonableness of a proposed rate. Class rates to and from Delaware division stations, 81 I. C. C. 758, 761.

(ffa) In the event that the unreasonableness of the rates charged is established the extent to which they were unreasonable is a question to be decided not from the pleadings but from the evi-

dence. Omaha Steel Works v. A. T. & S. F. R. Co., 87 I. C. C. 403, 405.

(gg) The weight to be given to evidence on the question of reasonableness of rates is a matter peculiarly within the province of the Commission as a body expert on the complexities, intricacies and history of rate-making. I. C. C. v. L. & N. R. R. Co., 33 Sup. Ct. 185, 189; 227 U. S. 88.

ALL OTHER CITATIONS

Thompson Lumber Co. v. I. C. R. R. Co., 13 I. C. C. 657, 664; Taylor v. M. P. Ry. Co., 15 I. C. C. 165, 166; Pabst Brewing Co. v. C. M. & St. P. Ry. Co., 17 I. C. C. 359, 360; Quammen & Austad Lumber Co. v. C. M. & St. P. Ry. Co., 19 I. C. C. 110, 111; Loftus v. Pullman Co., 19 I. C. C. 102, 103; Anadarko Cotton Oil Co. v. A. T. & S. F. R. R. Co., 20 I. C. C. 43, 49; In Re Advances on Lumber and Other Forest Products, 21 I. C. C. 455, 456; Boileau v. P. & L. E. R. R. Co., 22 I. C. C. 640, 651; Alpha Portland Cement Co. v. B. & O. R. R. Co., 22 I. C. C. 446, 450; Chamber of Commerce of Augusta, Ga., v. Southern Ry. Co., 22 I. C. C. 233, 234; Citizens of Somerset v. Washington Ry. & Elec. Co., 22 I. C. C. 187, 188; Carstens Packing Co. v. U. P. R. R. Co., 22 I. C. C. 8, 10; In Re Transportation of Wool, Hides and Pelts, 23 I. C. C. 151, 159; In Re Advances on Coal, 23 I. C. C. 518, 519; In re Advances on Staves, 23 I. C. C. 382; Perry & Co. v. N. P. Ry. Co., 23 I. C. C. 247; E. St. Louis Cotton Oil Co. v. St. L. & S. F. R. R. Co., 24 I. C. C. 588; In Re Advances on Cement, 24 I. C. C. 290; In Re Advances on Lime, 24 I. C. C. 170, 171; Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co., 24 I. C. C. 55, 70; Lesser-Goldman Cotton Co. v. St. L. I. M. & S. Ry. Co., 27 I. C. C. 496; Rates to North Carolina Points, 29 I. C. C. 550, 557; Orgill Bros. & Co. v. I. C. R. R. Co., Unrep. Op. A209; Lumber Rates from the Southwest to Points North, 29 I. C. C. 1, 15; Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co., 29 I. C. C. 428, 435; Kansas Wholesale Grocery Co. v. A. & W. Ry. Co., 32 I. C. C. 139, 145; Rosenblatt & Sons v. A. A. R. R. Co., 33 I. C. C. 324, 326, 329; Chamber of Commerce, Houston Tex., v. I. & G. N. Ry. Co., 32 I. C. C. 247, 256; Anson, Gilkey & Hurd Co. v. S. P. Co., 33 I. C. C. 332, 338; Petit Salt Co. v. C. M. & St. P. Ry. Co., 33 I. C. C. 590, 592; Newport Mining Co. v. C. & N. W. Ry. Co., 33 I. C. C. 645, 648; Holmes & Hallowell Co. v. G. N. Ry. Co., 37 I. C. C. 627, 639; Hides to Boston, Mass., 38 I. C. C. 194; Capital City Oil Co. v. Y. & M. V. R. R. Co., 39 I. C. C. 141, 143; City of Memphis v. C. R. I. & P. Ry. Co., 39 I. C. C. 256, 268; Lumber from Michigan Points, 39 I. C. C. 367, 369, 370; Coal to Cleburne, Tex., 39 I. C. C. 617, 618; Corp. Comm. of Virginia v. C. & O. Ry. Co., 40 I. C. C. 24, 28; Cement to Texas Points, 40 I. C. C. 94, 100; Globe Soap Co. v. A. & S. Ry. Co., 40 I. C. C. 121, 123; Bartlett Hayward Co. v. B. & O. R. R. Co., 40 I. C. C. 151, 155; Pacific Coast-Southwest Lumber, 40 I. C. C. 387, 394; Manure from Jersey City, N. J., 40 I. C. C. 465, 469; Dallas Chamber of Commerce v. A. T. & S. F. Ry. Co., 40 I. C. C. 619, 643; New England Milk Case, 40 I. C. C. 699, 720; Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co., 40 I. C. C. 738, 741; Sanford Day Iron Works v. L. N. R. R. Co., 41 I. C. C. 10, 12; Lake and Rail Rate Cancellations, 42 I. C. C. 513, 521; Producers Sales Co. v. N. Y. N. H. & H. R. R., 48 I. C. C. 438, 440; Grain via Indianapolis from T., St. L. & W. Stations, 59 I. C. C. 733; Carney v. Director General, as Agent, 68 I. C. C. 199, 200.

II. CIRCUMSTANCES AND CONDITIONS OF PROBATIVE VALUE

§1½. In General.

See Advanced Rates §18; Blanket Rates §18; Divisions §7; Equalization of Rates II; Long and Short Hauls §12 (2); Procedure Before Commission VII, VIII; Reasonableness of Rates II; Reparation III.

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(a) A variety of practical considerations must enter into the making of freight rates by a railroad company, and determine to a great extent in every instance the question whether such rates are reasonable or not. Railroad Companies cannot be required to make freight rates upon mere theories or conjectures. Evans v. Oregon Railway & Navigation Co., 1 I. C. R. 641, 646.

(b) Rates established by a common carrier under the influence of a desire to keep upon its line a material for which the road itself has use, or to keep the price thereof low for its advantage, can not be justified. Reynolds v. Western N. Y. & Pa. R. Co., 1 I. C. R. 685.

(ba) The spirit and purpose of the Act requires that when the circumstances and conditions will fairly admit of it the charges to all points for a like service should be made relatively equal. Crews, Danville Chamber of Commerce v. R. & D. R. R. Co., 1 I. C. C. 703, 707.

(c) The length and character of the haul, the cost of the service, the volume of the business, and the conditions of competition, etc., are elements bearing upon such charges. Boston Chamber of Commerce v. Lake Shore & M. S. R. Co., 1 I. C. R. 754.

(d) The fact that a difference is made upon St. Louis and Mississippi business only, as the same is directed either to Omaha or to Lincoln, and not upon other business originating at other portions of the defendant's system, is significant that the real reason for the difference made in the St. Louis traffic is not because Lincoln is situated upon a branch line. Lincoln Board of Trade v. Missouri Pac. R. Co., 2 I. C. R. 98.

(e) The true reason why the rates from St. Louis to Lincoln are higher than the rates from St. Louis to Omaha is that the rates from Chicago are also higher by precisely the same figures, uniform working rates between the two sections having by agreement been carried out by all lines. Lincoln Board of Trade v. Missouri Pac. R. Co., 2 I. C. R. 98.

(ea) Low rates to one place may not be just if still lower rates are given to another. Re Chicago, St. P. & K. C. R. Co. (Com.) 2 I. C. R. 137.

(f) To correctly estimate the causes influencing the movement of cotton and the falling off in the proportion of the crop received at New Orleans in recent years, the rail lines of transportation constructed, improved methods and new conditions must be taken into account. New Orleans Cotton Evchange v. Cincinnati, N. O. & T. P. R. Co., 2 I. C. R. 289.

(g) Where reasonableness of freight rates on oil in car load lots is charged on short local hauls, for example, from Titusville, Pa., to Buffalo, N. Y., and the charge is attempted to be sustained on a comparison of these rates with rates on what is usually an inferior grade of oil transported from Titusville through Buffalo to Perth Amboy, N. J., for export, chiefly in the cars of another company, and it appears that upon such shipments destined to Buffalo there are expensive terminal charges, while upon such shipments to Perth Amboy these terminal charges are far less considerable, the circumstances and conditions which control the making of the rates in each instance are substantially dissimilar. Rice, Robinson & Witherop v. Western New York & Pa. R. Co., 2 I. C. R. 298.

(h) The general rule contemplated by the Statute of equitably graduated charges on like traffic with reasonable reference to the amount of service, is just in itself, and commonly most beneficial both to the carriers and to the public, and is only to be departed from when justified by exceptional conditions, and in such instances no longer than the conditions require. Lehmann Higginson & Co. v. Southern Pacific Co., 3 I. C. R. 80.

(i) It is sufficient to entitle testimony to admission, that there is some evidence of facts, direct or circumstantial, tending to make it competent. Clevland, C. C. & I. R. Co. v. Closser (Ind.), 3 I. C. R. 387.

(j) The statute contemplates and clearly provides for dissimilar conditions that may effect the making of rates by carriers, and in a proper case of that nature it is no less the duty of public tribunals to recognize dissimilarities that justify exceptional rates than to apply the general principles of the law. Kauffman Milling Co. v. M. P. R. R. Co., 3 I. C. C. 400, 408.

(k) Contracts and tariffs filed with the Commission under section six of the Act may be considered, although not specifically introduced in evidence on the hearing. Boston Fruit & Produce Exchange v. New York & N. E. R. Co., 3 I. C. R. 493.

(l) Violation by one carrier of principles laid down in a case as governing relative rates on competitive articles does not justify similar violations by its competitors. Squire & Co. v. Mich. Central R. Co., 3 I. C. R. 515.

(m) Rulings based upon special facts and local conditions are not to be regarded as formulated precepts for general observance. A regulation which promotes fairness and relative equality where the carriage of oil is confined to tank and barrel shipments might be an unjust and oppressive requirement where four-fifths of the transportation is ef-

fected by another mode. Rice v. Cinn. W. & B. R. Co., 3 I. C. R. 841.

(n) A railroad ought not to neglect any traffic of a kind that will increase its receipts more than its expenses; and long haul traffic which can only be had on these terms may sometimes be taken without wronging anyone, when, to carry all traffic or even the major part of it, at the like rates, would be simply ruinous. Raworth v. N. P. R. Co., 3 I. C. C. 857, 864.

(o) Power of concentrated business interests to force concessions in transportation rates which operate to the disadvantage of the general public is not favored. Brownell v. C. & C. M. R. Co., 4 I. C. C. 285, 292.

(p) A carrier is not free to make dissimilarities to any extent it may choose in the freight rates on foreign and domestic traffic, from the fact of the existence of some dissimilarity of conditions. Interstate Commerce Commission v. Texas & P. R. Co. (C. C. App. 2d C.), 4 I. C. R. 408.

(q) No departure from the rule requiring rates in all cases to be reasonable in themselves can be justified on the ground that it is necessary in order to maintain existing trade relations, or to "protect competing markets," or to "equalize commercial conditions," or to secure to carriers traffic from certain territory assumed to be exclusively theirs. Cincinnati Freight Bureau c. Cincinnati, N. O. & T. P. R. Co. (Com.), 4 I. C. R. 592.

(r) The legitimate interests of carrying companies, as well as of traders and shippers, should be considered in determining the lawfulness of rates under the act of Congress to regulate commerce. Texas & P. R. Co. v. Interstate Commerce Commission (U. S. Sup.), 5 I. C. R. 405.

(s) It is impossible to exercise a jurisdiction, such as is conferred by the Act to Regulate Commerce, by any process of mere mathematics or arithmetical calculation. When you have a variety of circumstances differing in the two cases, you cannot say that such a difference of circumstances represents or is equivalent to such a fraction of a penny difference of charge in the one case as compared with the other. A much broader view must be taken, and it would be hopeless to seek to decide a case by any attempted calculation. Interstate Commerce Commission v. L. & N. R. Co., 5 I. C. R. 656.

(t) Whatever would be regarded by common carriers, apart from the operation of the statute, as matters which warranted differences in charges, ought to be considered in forming a judgement whether such differences were or were not unjust. Some charges might be unjust to shippers—others might be unjust to the carriers. The rights and interests of both must be regarded. Interstate Commerce Commission v. Alabama M. R. Co., 5 I. C. R. 685.

(u) All circumstances and conditions which reasonable men would regard as affecting the welfare of the carrying companies and of the producers, shippers, and consumers, should be considered by a tribunal appointed to carry into effect the provisions of the act. Interstate Commerce Commission v. Alabama M. R. Co., 5 I. C. R., 685.

(v) The practice of making one rate on the same product over a large district is only justifiable under special and exceptional circumstances and is not to be encouraged when the difference in the transportation expense from the various parts of such district is considerable and substantial. A. S. Newland v. Northern Pacific R. R. Co., et al, 6 I. C. C. 131.

(w) It is for the interest of the carriers as well as the public that their rates be low enough, if not below a remunerative point, to promote the general movement and distribution of low class commodities, including iron and steel which are in general demand for construction, building, manufacturing, and other purposes; and rates on steel rails and other commodities recognized as among the lowest classes of freight, which yield per-ton per-mile the average received by the carriers on all freight would be unjust. The value of the goods, the cost of the service, the degree of risk to the carrier, among other considerations, have important bearing upon the relation of rates on different kinds of traffic, as well as the reasonableness of a rate on a specified article. Colorado Fuel & Iron Co. v. Southern Pacific Co., 6 I. C. C. 488, 515.

(x) Excess of manufacturing cost to a complainant at one point over that of its competitors in other localities, by reason of inferior raw material and fuel, condition of its plant, cost of labor or other like causes, is not to be considered in ascertaining the rightful rela-

tive adjustment of rates from such places, nor does the magnitude of a complainant's enterprise, the number of persons for whom it provides employment and support, the developing results of its business upon the natural resources of a state, the impracticability of moving its plant to other localities, or the fact that it produces material largely used on railroads for construction or repair, entitle such complainant to different consideration in respect of just rates than individuals and small concerns should receive; but such facts demonstrate the far reaching extent to which serious injury may be effected, directly and indirectly, by methods and practices which the statute was designed to prohibit. Colorado Fuel & Iron Co. v. Southern Pacific Co., 6 I. C. C. 488.

(yz) The magnitude of a shipper's enterprise, the number of persons for whom it produces employment and support, the developing results of its business upon the natural resources of the state, the impracticability of moving its plant to other localities and the fact that it produces material largely used on railroads for construction or repair do not entitle it to different consideration in respect to rates than individuals and small concerns should receive. Colorado Fuel & Iron Co. v. Southern P. Co., 6 I. C. C. 488.

(aa) Whether an agreement entered into by a carrier mainly for the purpose of developing its milk traffic, and under which compensation is afforded to the other contracting party equal to a considerable share of the gross receipts from such traffic, involves extravagant expenditure of revenue and is disadvantageous to the carrier, is a matter for it to determine; but extraordinary or unnecessary cost of operation or management can not be permitted to excuse unreasonable or unjust rates, discriminations, preferences or prejudices. Milk Producers' Protective Asso. v. D. L. & W. R. Co., 7 I. C. C. 92, 164.

(bb) The reasonableness of the rate in a given case depends on the facts, and the function of the Commission is to consider the facts and give them their proper weight. Cary v. Eureka Springs R. Co., 7 I. C. C. 286, 320.

(cc) Although carriers serving but one of two competing cities may, by reducing their rates to the city served by them, prevent the correction of an unjust relation of rates to the two places from common points of supply, nevertheless it is the duty of the Commission to condemn such a relation of charges, and to indicate the basis upon which the rates should be readjusted. Chamber of Commerce v. Chicago, M. & St. P. R. Co., 7 I. C. C. 481.

(dd) Discrimination in favor of a large customer not authorized.—The Interstate Commerce Law does not authorize discrimination in favor of a larger road or better customer. Augusta Southern Ry. Co. v. Wrightsville & Tennille Ry. Co., 7 I. C. C. app. XXXVIII.

(ee) "Whether the circumstances and conditions of carriage have been substantially similar or otherwise are questions of fact depending on the matters proved in each case." Interstate Commerce Commission v. Alabama Midland R. Co. 168 U. S. 170, 42 L. ed. 424; Missouri P. R. Co. v. Texas & P. R. Co. 31 Fed. Rep. 862, 4 Inters. Com. Rep. 434; Phillips, Bailey & Co. v. Louisville & Nashville R. Co., 8 I. C. C. 93.

(ff) If a carrier can profitably make a low rate for the purpose of obtaining traffic in existence which would otherwise pass over a competing line, then it may profitably, under some circumstances, make a low rate for the purpose of bringing into existence traffic which would not otherwise pass over any line. Grain Shippers' Asso. v. Illinois Central R. Co., 8 I. C. C. 158.

(gg) In the absence of some justifying reason it would not be right for American railroads to permanently transact business for foreigners at a less rate than that for which they render a corresponding service to American citizens. Re Export Rate and Domestic Rates on Grain, 8 I. C. C. 214.

(hh) A rate can seldom be considered in and of itself. It must be taken almost invariably in relation to and in connection with other rates, for the freight rates of this country, both upon different commodities and between different localities, are largely interdependent, and it is because they do not bear a proper relation to one another, rather than that they are absolutely either too low or too high, which most often gives occasion for complaint. Geo. Tileston Mill Co. v. N. P. R. R. Co., 8 I. C. C. 346, 361.

(ii) The rate on sugar may properly

be higher from San Francisco to Denver than to the Missouri River, it being found that the circumstances and conditions governing the traffic are different when it is carried to Missouri river points than when it stops at Denver. Kindel v. Atchison, T. & S. F. R. Co., 8 I. C. C. 608.

(jj) A coal operator is not damaged by the failure of a railroad company to establish a rate upon a class of coal not produced at his mine. McGrew v. Missouri P. R. Co, 8 I. C. C. 630.

(kk) It is the duty of the Commission to consider all circumstances and conditions that reasonably apply to the situation, the legitimate interests of the carrying companies as well as those of traders and shippers and the welfare of the communities at localities where the goods are delivered as well as that of communities in the place of shipment, and to give effect to this rule a much broader view must be taken than that of the competition of carriers alone. Mayor and Council of Tifton, Ga., v. L. & N. R. R., 9 I. C. C. 160, 179.

(ll) It is not the policy of the Government in the regulation of railways under the Act to require them to carry on the transportation business at a loss, but that they shall be fairly dealt with, and, having due regard to public as well as private interests, they shall rather derive a reasonable profit from their operations. Johnson v. C., St. P., M. & O. R. Co., 9 I. C. C. 221, 243.

(mm) It is not shown that the rate of 17½ cents on grain and grain products from Chicago to New York is unremunerative or disproportionate as compared with other rates; and whether tested by the cost of movement, by what the carriers have voluntarily accepted in the past, or by comparison with rates on somewhat similar kinds of traffic, it is not shown to be unprofitable or unreasonably low. It is 10 to 40 per cent higher than the rates actually received in recent years, and nothing appears from the financial condition of the carriers to justfy a greater advance. In the Matter of Proposed Advances in Freight Rates, 9 I. C. C. 382.

(nn) Carriers are entitled to charge a reasonable compensation for their services. Except in unusual cases no rate is reasonable which does not yield a fair profit upon the transaction. Re Proposed Advances in Freight Rates, 9 I. C. C. 382, 395.

(oo) The reasons existing for lower lumber rates from the southern pineries do not apply to the reshipment of dressed lumber from Dalton. Farrar v. Southern R. Co., 11 I. C. C. 632.

(pp) A railroad company is entitled to a fair return upon the value of that which it employs for the public convenience. Brabham v. Atlantic Coast Line R. Co., 11 I. C. C. 464.

(qq) Rates on refined oil from Erie, and other oil shipping points in Kansas, to Joplin, St. Louis, and Kansas City held to be apparently adjusted with a view of placing the shippers on an equitable basis and affording them equal opportunities in the markets. Wilhoit v. M. K. & T. Ry. Co., 12 I. C. C. 138.

(qqa) Absorption of a competing line of railway by another in alleged violation of State statutes, is a matter within the control of the State courts, and can be considered by the Commission only in its ultimate result of inducing unreasonable rates. Warren Mfg. Co. v. Southern Ry. Co. 12 I. C. C. 381.

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(rr) It is a maxim of rate making that the rate should be such, if possible, as to move the traffic. Minneapolis Civic & Commerce Asso. v. C. M. & St. P. Ry. Co., 30 I. C .C. 663, 671.

(ss) To sum up, each case before the Commission stands upon its own facts. Allentown Portland Cement Co. v. P. & R. Ry. Co., 31 I. C. C. 277, 280.

(tt) In fixing new rates or in considering those already established the Commission usually adheres to the plan of rate making followed by the carriers. Colonial Salt Co. v. C. B. & Q. R. R. Co., 31 I. C. C. 559, 568.

(uu) Where the complaint puts in issue the charges applicable to through shipments, the evidence is not objectionable as insufficient merely because limited to one factor of the through charge. LaCrosse Shippers' Ass'n. v. C. M. & St. P. Ry., 43 I. C. C. 605, 607.

(vv) Advantage of location, competitive conditions, volume and flow of traffic, and other considerations must be given weight in determining the adjustment of rates into and out of different jobbing points. Wichita Wholesale Fur-

niture Co. v. A., T. & S. F. Ry., 44 I. C. C. 339, 344.

(ww) It does not necessarily follow that one who ships a particular commodity over the lines of a proprietary common carrier procures the transportation for the exact cost of service. The Alaska Investigation, 44 I. C. C. 680, 704.

(xx) The Commission is not unmindful of the fundamental and immensely valuable service which the carriers perform in times of peace and even more in times of war. Successful operation of the railways is vital to our national welfare. The Fifteen Per Cent Case, 45 I. C. C. 303, 312.

(yy) Railroads have been managed by men of conspicuous ability and integrity, in whose achievement the whole nation may well take pride. The Fifteen Per Cent Case, 45 I. C. C. 303, 313.

(zz) A case dealing with a general advance of rates is dealt with from an economic standpoint rather than legal. The Fifteen Per Cent Case, 45 I. C. C. 303, 317.

(3a) Traffic traversing three sides of a square considered a waste of transportation. New Orleans Cotton Exchange v. L. & N. R. R., 46 I. C. C. 712, 751.

(3b) Strict adherence to the rules of evidence is not required in proceedings before the Commission, and while some evidence introduced may later be cast aside as hearsay, the Commission may make such finding and take such action with respect to the rates on a commodity as the whole record and general considerations appear to warrant. Western Trunk Lines Iron & Steel, 47 I. C. C. 109, 122.

(3c) Most rates were made with a view to including remuneration to the carriers not only for the line haul, but for the ordinary terminal services at point of origin and at destination. N. Y. Harbor Case, 47 I. C. C. 643, 708.

(3d) It is necessary to examine and compare the circumstances and conditions surrounding transportation to competing points, wherever situated, provided the same carriers perform, or participate in, the transportation service, and to determine if possible whether or not these differences are properly measured by the difference in rates. Traffic Bureau of Knoxville, Tenn. v. B. & O. R. R., 49 I. C. C. 205, 217.

(3e) In the determination and fixation of rates, the Commission may not legitimately consider facts antecedent to transportation. Eastbound Transcontinental Canned Goods (No. 2), 50 I. C. C. 62, 66.

(3f) No function of the Commission to determine whether or not manner of conducting business at a particular point is economically sound, nor to base the exercise of its authority over defendants in the slightest degree in respect of that subject. United States v. S. V. Ry. Co., 53 I. C. C. 607, 615.

(3g) It is the duty of the carriers to afford equal opportunity to all who desire to employ their services and the fact that the towns represented by the complainant are small and not well equipped to care for these particular commodities does not relieve them of that duty. Arkansas Jobbers & Mfgrs. Assn. v. Director General, 57 I. C. C. 231, 236.

(3h) In the administration of section 15a, it becomes necessary to determine the aggregate value of the railway property defined in that section, and in making this determination the Commission is authorized to utilize the results of its investigation under section 19a but is required to give to the property investment account only that consideration which under such law, it is entitled to in establishing values for rate-making purposes. Increased Rates, 1920, 58 I. C. C. 220, 228.

(3i) In estimating their financial needs for the immediate future, carriers based their figures on actual performance for the 12 month period ended October 31, 1919, compiled from questionnaires sent to carriers in the various groups. Data not accepted as accurate as it was hastily obtained and inadequate, with neither assurance that it was compiled on a uniform basis nor with proof that it is accurate. Increased Rates, 1920, 58 I. C. C. 220, 230.

(3j) Judicial bodies with unanimity hold that evidence offered and admitted for a limited purpose, and facts found upon such evidence, may not be used for another and different purpose in the case, and that the scope of the offer can not therefore be extended beyond the limits placed by the proponent. It is manifest any other rule would result in surprise and injustice. Schlicher v. Director General, 62 I. C. C 181, 185.

(3k) In exercising the power to prescribe just and reasonable rates as provided under section 1 of the act, the Commission is now required by section 15a to initiate, modify, establish, or adjust rates so that carriers as a whole or in designated rate groups, will, under proper standards of operation, earn an aggregate annual net railway operating income, equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation. Rates on Grain Grain Products and Hay, 64 I. C. C. 85, 98.

(3l) The duty cast upon the Commission by section 15a is continuing and looks to the future. It does not constitue a guaranty to the carriers, nor is the obligation cumulative. The Commission is not restricted by past or present statistics of operation and earnings. These are serviceable only as they illuminate the future. What is contemplated by the law is that in this exercise of rate-making power the result shall reflect the Commission's best judgement as to the basis which may reasonably be expected for the future to yield the prescribed return. Rates on Grain, Grain Products and Hay, 64 I. C. C. 85, 99.

(3m) Where two commodities, admittedly noncompetitive, have long ceased to bear any common or recognized relationship, and where the basic rates upon both show no appreciable difference in stability or duration, the presumption that the rates applicable to one of the two fixes a reasonable maximum standard for the other is not convincing. Slater v. S. P. Co., 64 I. C. C. 647, 652.

(3n) If the Commission were to start with a clean slate, some so-called scientific basis of rate making based on strict mileages, might be adopted, but, as it is, the process of rate making and dealing with rate situations must necessarily be one of evolution, not revolution. Kansas Rates, Fares and Charges, 64 I C. C. 679, 681.

(3o) Thriving communities, all in the same general section of the country, striving for population, industry, and business growth, may not need elaborate evidence to show that they are entitled to relief if the rates are not properly related. Pioneer Lumber Co. v. Director General, 64 I. C. C. 485, 489.

(3p) The Commission has held that the manner in which rates are constructed is but one of the elements to be considered in reaching proper conclusions. Madison Lumber & Mill Co. v. Director General, 64 I. C. C. 699, 700.

(3q) A particular element, if considered alone, might appear to warrant a higher or lower rating on an article than would be justified if all proper elements are taken into consideration. Traffic Bureau of Nashville v. L. & N. R. R., 68 I. C. C. 623, 626.

(3r) To preclude any misapprehension it should be stated that the Commission does not sanction by implication any reversion to the type of rate making known as the equalization of freight assembly costs of raw material. Trunk Line and Ex Lake iron ore rates 69 I. C. C. 589, 601.

(3s) Deliveries of coal to piers for unloading into vessels and deliveries of coal to industries or team tracks within a terminal district found to be two classes of movements not made" under substantially similar circumstances and conditions" of carriage. Rates on Bunker Coal, 73 I. C. C. 62, 75.

(3t) Considering the congested conditions in and around Chicago, Ill., a rate of 70 cents per ton, or 3.5 cents per 100 pounds, can scarcely be denominated a high rate even on a low grade commodity and for comparatively short distances. Illinois Brick Co. v. Director General, as Agent, 73 I. C. C. 215, 217.

(3u) Where complainants have been before the Commission and been given an opportunity to prove their allegations among which is that of unreasonableness, the finding with respect thereto must necessarily be based on the record as made. Goss v. Director General, 73 I. C. C. 649, 653.

(3v) The interest that a dock company, as lessor and creditor, may have in the prosperity of a railroad, does not, and can not, interfere with the rights to which the railroad is entitled as a common carrier subject to the act. New-York Dock Ry. v. B. & O. R. R. Co., 73 I. C. C. 656, 659.

(3w) Rates cannot be condemned upon the mere showing that the carriers failed to comply with the instructions of the Director General. Atlas Portland Cement Co. v. Director General, 74 I. C. C., 653.

(3x) Proposed increased charges

found not justified where no one appeared at the hearing for respondent and no evidence was offered in support thereof. Absorption of Charges between Croxton and Jersey City, 74 I. C. C. 329.

(3y) The Commission can not sanction any attempts to attain a desired end by employing piecemeal methods which work to the advantage of one market at the expense of another. Proportional Rates on Grain and Grain Products, 74 I. C. C. 341, 343.

(3z) In distributing commodities in competitive territory, the point that can avail itself of a long c. l. haul and a short l. c. l. haul is ordinarily entitled to a lower total transportation charge than the point using a short c. l. haul and a long l. c. l. haul. Certain-Teed Products Corp. v. A., T. & S. F. Ry. Co., 77 I. C. C. 444, 445, 446.

(4a) Comparative rates are made by the carriers, or reviewed by the Commission, from the standpoint alone of transportation conditions. Anaconda Copper Mining Co. v. Director General, 78 I. C. C. 549, 552.

(4ab) The commission recognizes commercial conditions in dealing with existing groups, and if such conditions may be considered as reasons for continuing a group they may be considered in creation of a group. If the commission may not create a group which, if already created, it could sanction, general similarity of conditions in the two instances would be counteracted by tactical and artificial advantage which existing group would have by virtue alone of its having been voluntarily created and maintained by carriers. Anaconda Copper Mining Co. v. Director General, as Agent, 78 I. C. C. 549, 552.

(4ac) Contention that decisions of the United States Supreme Court make it mandatory upon commission to fix rates at amounts which will not exceed operating costs and a reasonable return upon value of property and that therefore cost of service must be test of reasonableness of rates on traffic earning more than prescribed return, not sustained. Neither directly nor by implication do those cases lay down principle that rates must be fixed at amounts to yield not more than a stated percentage of value of carrier's property used in transporting a particular class of traffic. On the contrary, such doctrine is distinctly disapproved in 236 U. S., 585, and in cases of this character the commission has never followed cost of service principle exclusively. Adriatic Mining Co. v. C. & N. W. Ry. Co., 78 I. C. C., 611, 631, 632.

(4b) A rate can seldom be considered in and of itself. It must be taken almost invariably in relation to and in connection with other rates. Tileston Mill Co. v. N. P. Ry. Co., 8 I. C. C. 346, 361. Atchison Board of Trade v. A., T. & S. F. Ry. Co., 80 I. C. C. 360.

(4c) The absence of a request for a reduction in the rate at or prior to the time of movement is immaterial if the rate charged was, in fact, unreasonable. Spencer Kellogg & Sons v. Director General, 80 I. C. C. 377, 379.

ALL OTHER CITATIONS

Industrial Railways Case, 29 I. C. C. 212, 218; Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co., 29 I. C. C. 428, 433; Atlanta Freight Bureau v. N. C. & St. L. Ry., 29 I. C. C. 476, 490, 494; Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 282, 283; Stonega Coke & Coal Co. v. L. & N. R. R. Co., 39 I. C. C. 523, 541; Concordia Commercial Club v. A. T. & S. F. Ry. Co., 39 I. C. C. 675, 684; Sioux City Live Stock Exchange v. C. St. P. M. & O. Ry. Co., 40 I. C. C. 418, 420; Lachman & Co. v. S. P. Co., 42 I. C. C. 440, 446, 447; Mississippi R. R. Comm v. N. O., M. & C. R. R Co., 42 I. C. C. 574; S. P. Co., Ownership of Atlantic S. S. Lines, 43 I. C. C. 168, 174; Coal to Glencoe, Mo., 43 I. C. C. 412, 414; Traffic Bureau, Toledo Commerce Club v. C. H. & D. Ry. Co., 43 I. C. C. 446, 456; Drayage Absorption, 43 I. C. C. 472, 473; Evans Lumber Co. v. C. of G. Ry. Co., 43 I. C. C. 476, 478; Western Trunk Line Rate Increases, 43 I. C. C. 481, 484; Southeastern Cotton Goods, 43 I. C. C. 530, 533; Rates on Dairy Products, 43 I. C. C. 700, 704, 705, 710, 711; The Alaska Investigation, 44 I. C. C. 680, 704; Southwestern Dairy Products, 44 I. C. C. 379, 383; Hocking Domestic Coal Co. v. K. & M. Ry., 44 I. C. C. 392, 399; La Crosse Shippers Asso. v. C. M. & St. P. Ry. Co., 44 I. C. C. 497, 498; Fuller & Co. v. A. T. & S. F. Ry., 44 I. C. C. 519, 520; La Crosse Shippers Asso. v. C. B. & Q. R. R., 44 I. C. C. 554, 556; The Alaska Investigation, 44 I. C. C. 680, 696, 711; Commercial Cable Co. v. W. U. T. Co., 45 I. C. C. 33, 38; Baltimore Chamber of Commerce v. B. & O. R. R., 45 I. C. C. 40, 51; The Fifteen

Per Cent Case, 45 I. C. C. 303, 326; Milk & Cream Rates to Philadelphia, Pa., 45 I. C. C. 371, 383; Graustein v. B. & M. R. R., 45 I. C. C. 393, 396; The Car Peddling Case, 45 I. C. C. 494, 498, 499; Special Passenger Equipment, 45 I. C. C. 590; Bituminous Coal to C. F. A. Territory, 46 I. C. C. 66, 119, 132; Lake Cargo Coal Rates, 46 I. C. C. 159, 168, 170; Chamber of Commerce of Johnson City, Tenn. v. S. Ry., 46 I. C. C. 527, 533; New York Harbor Case, 47. I. C. C. 643, 666, 698, 735; Producers Sales Co. v. N. Y. N. H. & H. R. R., 48 I. C. C. 438, 440; R. R. Comm. of La. v. A. H. T. Ry. 48 I. C. C. 312, 331; Southwestern Class Case, 48 I. C. C. 379, 383; Terhune Lumber Co. v. G. & S. I. R. R., 48 I. C. C. 433, 434; Traffic Bureau of Knoxville, Tenn. v. B. & O. R. R., 49 I. C. C. 205, 220, 224; Proposed Increases in New England, 49 I. C. C. 421, 438; Eastbound Transcontinental Canned Goods (No. 2), 50 I. C. C. 62, 67; Tanner & Co. v. C., B. & Q. R. R. Co., 53 I. C. C. 401, 407; Goodyear Tire & Rubber Co. v. A. C. & Y. 53 I. C. C. 389, 395; United States v. S. V. Ry. 53 I. C. C. 607, 618; Guilford Lumber Mfg. Co v. S. Ry., 53 I. C. C. 669, 673; Arkansas Jobbers & Mfrs. Assn. v. Director General, 57 I. C. C. 231, 236; New York & Pennsylvania Co. v. Director General, 58 I. C. C. 124, 128; Illinois Classification, 55 I. C. C. 290, 301; Memphis-Southwestern Investigation, 55 I. C. C. 515, 541, 544, 553, 555, 574, 575, 576; Carnation Milk Products Co. v. Director General, 55 I. C. C. 665, 667, 668; Rates on Grain and Grain Products, 56 I. C. C. 133, 140; Perishable Freight Investigation, 56 I. C. C. 449, 464; Muskogee Wholesale Grocer Co. v. M. K. & T. Ry., 57 I. C. C. 125, 127; Inland Steel Co. v. Director General, 57 I. C. C. 339, 340; Phelps Dodge Corp. v. Director General, 57 I. C. C. 714, 718; Anaconda Copper Mining Co. v. Director General, 57 I. C. C. 723, 732, 738; Assignment of Freight Cars, 57 I. C. C. 760, 766; Wholesale Coal Trade Asso. v. Director General, as Agent, 58 I. C. C. 15, 18, 19, 22, 26; Lowry Lumber Co. v. Director General, as Agent, 58 I. C. C. 113, 117; Increased Rates, 1920, 58 I. C. C. 220, 227; Local Fares on Hudson & Manhattan R. R., 58 I. C. C. 270, 275; Natchez Chamber of Commerce v. L. & A. Ry. Co., 58 I. C. C. 610, 631; Living Conditions of Railway Trainmen, 58 I. C. C. 761; Inland Empire Shippers League v. Director General, 59 I. C. C. 321, 341; Intermediate Rate Association v. Director General, 61 I. C. C. 226, 244, 246; National Fireproofing Co. v. Director General, 62 I. C. C. 49, 55; Substitution nor Increases in Rates, 61 I. C. C. 518, 522; Soda Products from Saltville, Va., 61 I. C. C. 559, 562; National Industrial Traffic League v. A. & R. R. Co., 61 I. C. C. 120, 123; Intermediate Rate Asso. v. Director General, 61 I. C. C. 226, 243; Products from Nevada and Utah, 61 I. C. C. 374, 376; Iron Poles, Pipes and Connections, 61 I. C. C. 530, 533; Proctor & Gamble Distributing Co. v. A. C. Ry., 61 I. C. C. 700, 701; Ridge Coal Mining Co. v. M. P. R. R. Co., 62 I. C. C. 259, 261; Pulp Wood to Kingsport, Tenn., 62 I. C. C. 277, 278; Globe Soap Co. v. Director General, as Agent, 62 I. C. C. 307, 310; National Wholesale Grocer's Asso. v. Director General, 62 I. C. C. 373, 375, 382; New England Divisions, 62 I. C. C. 513, 565; Dodge Bros. v. Director General, as Agent, 62 I. C. C. 689, 691; Lafayette Gravel Co. v. C. & E. I. R. R. Co., 62 I. C. C. 729, 731; C. S. Maltby v. S. V., 63 I. C. C. 103, 105; Macon Chamber of Commerce v. N. Y., N. H. & H. R. R. Co., 63 I. C. C. 327, 331; Rates on Grain, Grain Products, and Hay, 64 I. C. C. 85, 89, 91; Pioneer Pole & Shaft Co. v. Director General, as Agent, 64 I. C. C. 744, 746; Tuffli Bros. Coal & Coke Co. v. Director General, 66 I. C. C. 129, 130; Utah State Automobile Asso. v. A., T. & S. F. Ry. Co., 66 I. C. C. 8, 17; Citizens Coal Mining Co. v. Director General, 66 I. C. C. 271, 272; American Wholesale Lumber Asso. v. Director General, 66 I. C. C. 393, 397; Wofford Oil Co. v. Director General, 66 I. C. C. 209, 210; Wofford Oil Co. v. Director General, 66 I. C. C. 509, 510; Central Illinois Light Co. v. Director General, 66 I. C. C. 624, 626; Construction and Repair of Ry. Equipment; N. Y. C. R. R. Co., 66 I. C. C. 732; Reduced Rates, 1922, 68 I. C. C. 676, 705, 733; Meyersdale Smokeless Coal Co. v. B. & O. R. R. Co., 69 I. C. C. 74, 76; Horses and Mules from Kansas City, Mo., 69 I. C. C. 97, 101; Tice v. Director General, as Agent, 69 I. C. C. 140; Adluh Milling Co. v. Director General, as Agent, 69 I.C.C. 377; Grasselli Chemical Co. v. N. Y. C. R. R. Co., 69 I. C. C. 530; Transcontinental Cases of 1922, 74 I. C. C. 48, 71; Memphis-Southwestern Investigation, 77 I. C. C. 473, 483; National

Petroleum Asso. v. Director General, as Agent, 78 I. C. C. 711, 717; Ga. S. & F. Ry. Co. v. Ga. Public Service Com. (Ga. 1923), 289 Fed. 878; Dayton-Goose Creek Ry. Co. v. United States, 44 Sup. Ct. 169; Union Sulphur Co. v. A. & W. Ry. Co., 81 I. C. C. 382, 390; Indiana State Highway Commission v. C. R. I. & P. Ry., 83 I. C. C. 577.

§2 Advantage of Location.

See Blanket Rates §7; Discrimination §9; Equalization of Rates §3; Reasonableness of Rates §19.

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(a) An advantage given to a competing town on a main line must not be unreasonable. Raymond v. Chicago, M. & St. P. R. Co., 1 I. C. R. 627.

(b) Trade centers, or large commercial towns are not, as a matter of right entitled to have more favorable rates than the smaller towns for which they form distributing centers; and if carriers shall give to such smaller towns rates as favorable as to the larger, the Commission will not interfere. Martin v. Chicago, Burlington & Quincy R. Co., 2 I. C. R. 32.

(ba) Trade centers, or large commercial towns, are not, as a matter of right, entitled to have more favorable rates than the smaller towns for which they form distributing centers; and if carriers shall give to such smaller towns rates as favorable as to the larger, the Commission will not interfere. The fact that under rates which are impartially arranged between large and small towns one large distributing center may have an advantage over another in competition for the business of the small towns, does not make out a case of undue preference in favor of the one distributing center as against the other. Freight Bureau of Omaha Board of Trade v. C. B. & Q. R. R., 2 I. C. C. 32, 37.

(c) Where a reduced rate is made at the terminus of a through route, under the compusion of competition, a town not located on the line of the through route, but reached over a lateral connecting road, has a disadvantage of situation entailing some additional expense, and a reasonably higher rate to such town than the forced competitive rate to the more distant terminus of the through route is not unjust discrimination. Lehmann, Higginson & Co. v. Southern Pacific Co., 3 I. C. R. 80.

(d) Charges for transportation service should have reasonable relation to cost of production and to the value of the service to the producer and shipper, but should not be so low on any as to impose a burden on other traffic. Re Rates and Charges on Food Products (Com.), 3 I. C. R. 93.

(e) In the carriage of great staples, rates yielding only moderate profit to the carrier are both necessary and justifiable. Re Rates & Charges on Food Products (Com.), 3 I. C. R. 93.

(ea) It is not the province of the Commission, by the fixing of rates, to overcome the advantages which one producer or dealer may derive from his geographical location. Squire & Co. v. M. C. R. Co., 3 I. C. C. 515, 522.

(f) On complaints of relatively unreasonable and discriminating rates on salt from Kansas fields to various points as compared with rates to the same points from the salt fields of Michigan, HELD, That any advantages which inure to Michigan salt manufacturers in rates to points in Iowa, Illinois, Missouri and Nebraska are advantages arising from natural situation, and that the low rate to Missouri river points is influenced by conditions which are beyond the defendant's control and existed before Kansas salt was discovered. HELD, further, That rates on salt to points south and southwest of Hutchinson, Kansas, and St. Louis, Missouri, do constitute undue preference in favor of Michigan as against Kansas salt, and that they should be readjusted by the Santa Fe company so that, while observing the law as to the long and short haul, the advantages of distance belonging to Kansas salt fields shall be given to them in any territory supplied by its lines which lies as near or nearer to Hutchinson than St. Louis. Anthony Salt Co. v. Missouri Pacific R. Co., 4 I. C. R. 33.

(g) Any advantages which inure to Michigan salt manufacturers as against those of Kansas, in rates to points in Iowa, Illinois, Missouri, and Nebraska, are advantages arising from natural situation; and a low rate to Missouri River points is influenced by water competition and also by the heavy preponderance of east-bound freight over west-

bound freight. Anthony Salt Co. v. Missouri P. R. Co. (Com.), 4 I. C. R. 33.

(h) The advantages of distance belonging to Kansas salt fields as against those of Michigan should be given to them by a carrier in any territory supplied by its lines, which lies as near, or nearer to Hutchinson as to St. Louis. Anthony Salt Co. v. Missouri P. R. Co., (Com.), 4 I. C. R. 33.

(i) That rates should be fixed in inverse proportion to the natural advantages of competing towns with the view of equalizing "commercial conditions," as they are sometimes described, is a proposition unsupported by law and quite at variance with every consideration of justice. Each community is entitled to the benefits arising from its location and natural conditions, and the exaction of charges unreasonable in themselves or relatively unjust, by which those benefits are neutralized or impaired, contravenes alike the provisions and the policy of the statute. Eau Claire Board of Trade v. Chicago, M. & St. P. R. Co., 4 I. C. R. 65.

(jk) An advantage, resulting from just rates coupled with the enterprise and outlay necessary to utilize them, is legitimate, and carriers should not undertake to deprive a shipper of this advantage by a change of such rates. Patter Manufacturing Co. v. Chicago & G. T. R. Co., 4 I. C. R. 223.

(l) A milling town possessing great natural, acquired and improved advantages for the carrying on of that industry, and favorably situated in point of distance to a large grain producing region, is entitled to the benefits arising from its location and carriers of grain to that point and to a competing town considerably more remote from points of production, and in other particulars less advantageously located, are not justified in making rates on grain to the competing towns which destroy the advantage the former is entitled to enjoy. Chamber of Commerce of Minneapolis v. Great Northern R. Co., 4 I. C. R. 230.

(m) A town favorably situated with respect to one through route, but competing in a common market with another town more favorably located on another through route, should not have a reduction of the local rate over roads connecting the two through routes for the purpose of overcoming the natural advantage which the latter competing town enjoys. Minneapolis Chamber of Commerce v. Great Northern R. Co., (Com.), 4 I. C. R. 230.

(n) Manufacturing industries should not be deprived, through a carrier's adjustment of relative rates, of advantages resulting from their favorable location in respect of cost of raw material supplied from a common source, or of distance to the common market for the finished product. James v. Canadian P. R. Co. (Com.), 4 I. C. R. 274.

(o) The advantageous position of one trader in having his works so placed that he has two competing routes is as much a circumstance to be taken into consideration as the geographical position of another trader who, though he has not the advantage of competition, is situated at a point on the line geographically nearer the market. Interstate Commerce Commission v. L. & N. R. Co., 5 I. C. R. 656.

(p) The same rate over a district so extensive denies to the producer nearer the market the advantages of his location, for which he receives no compensation in the fact that such rate was established to enable a railroad company to sell its lands more distant from markets at better prices. A. S. Newland v. Northern Pacific R. R. Co., et al., 6 I. C. C. 131.

(q) Carriers have no right to disregard distance and natural advantages for the purpose of bringing about commercial equality. Commercial Club of Omaha v. Chicago, R. I. & P. Ry. Co., 6 I. C. C. 647.

(r) Council Bluffs, on the east bank of the Missouri River, is more favorably situated than Omaha, on the west side of that river, in regard to traffic with points in Iowa, and the defendant carriers are not to be condemned for recognizing such natural advantage of location in adjusting their charges; nor does it follow that rates should be the same from Omaha and Council Bluffs into Iowa because they are the same from those cities into Nebraska. Commercial Club of Omaha v. Chicago & N. R. Co., 7 I. C. C. 386.

(s) A carrier has no right to deprive a community of the competitive advantages which the enterprise of its citizens has secured, and upon the strength

of which business conditions have grown up. Danville v. Southern R. Co., 8 I. C. C. 409.

(t) Government should not attempt to make commercial advantages of places equal.—Government should not undertake the impossible but injurious task of making the commercial advantages of one place equal to those of another. It might as well attempt to equalize the intellectual powers of its people. Interstate Commerce Commission v. Western & Atlantic R. R. Co., 8 I. C. C. App. XIII.

(u) No attempt should be made to deprive a place of its natural advantages —There should be no attempt to deprive a community of its natural advantages, or those legitimate rewards which flow from large investments, business industries, and competing systems of transportation to facilitate and increase commerce. The Act to Regulate Commerce has no such purpose. Citing: Brewer v. Central of Georgia R. Co., 84 Fed. Rep. 258. Interstate Commerce Commission v. Western & Atlantic R. R. Co., 8 I. C. C. App. XIII.

(v) Carriers may recognize natural advantages but ordinarily they must not create artificial advantages. Holdzkum v. M. C. R. Co., 9 I. C. C. 42, 54.

(w) The favorable location of Cannon Falls with reference to Minneapolis and Duluth, and the competitive advantage to which the Cannon Falls dealer is entitled by reason of the route via Duluth, are neutralized to an extent by manipulation of billing at Minneapolis, whereby Cannon Falls grain sold in Minneapolis can be reconsigned to Duluth under a substituted billing and the balance of a through rate, resulting in a less total charge on a through shipment from Cannon Falls to Duluth than the charge on a through shipment from Cannon Falls to Duluth. Cannon Falls Farmers' Elevator Co. v. Chicago G. W. R. Co., 10 I. C. C. 650.

(x) Moultrie, Ga., entitled to be considered as a trade center. Southern Grocery Co. v. Northern Ry. Co., 12 I. C. C. 229.

(y) Railroad has no right to destroy advantages of location. Howard Mills Co. v. Mo. Pac. Ry. Co., 12 I. C. C. 258.

(z) Trade centers grown up with Texas system. Dallas Freight Bureau v. M. K. & T. Ry. Co., 12 I. C. C. 427.

(aa) Natural advantages of location are neither to be enlarged nor minimized by the Commission, whose duty and purpose is to secure just and reasonable transportation rates, as nearly equal as possible for all localities and individuals, having due regard to differences in circumstances and conditions. Enterprise Manufacturing Co. et al. v. Ga. R. R. Co., 12 I. C. C. 451.

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(bb) Carriers are not required by law to equalize natural advantages, such as location, cost of production, and the like. Black Mountain Coal Land Co. v. S. Ry. Co., 15 I. C. C. 286, 293.

(cc) Every city is entitled to the commercial advantages of its location. Quimby v. Maine Central R. R. Co., 13 I. C. C. 246, 248; Burnham, Hanna, Munger Co. v. C. R. I. & P. Ry. Co., 14 I. C. C. 299, 303; Kindel v. N. Y. N. H. & H. R. R. Co., 15 I. C. C. 555, 561; Kansas City Transportation Bureau v. A. T. & S. F. Ry. Co., 15 I C. C. 491,498; City of Spokane v. N. P. Ry. Co., 15 I. C. C. 376, 419; Black Mountain Coal Land Co. v. So. Ry. Co., 15 I. C. C. 286, 293; Hafey v. St. L. & S. F. R. R. Co., 15 I. C. C. 245, 246; Chicago Lumber & Coal Co. v. T. S. Ry. Co., 16 I. C. C. 323, 331; Board of Trade of Winston-Salem v. N. & W. Ry. Co., 16 I. C. C. 12, 16; Florida Fruit & Vegetable Assn. v. A. C. L. R. R. Co., 17 I. C. C. 552, 561; Saginaw Board of Trade v. Grand Trunk Ry. Co., 17 I. C. C. 128, 135; Acme Cement Plaster Co. v. L. S. & M. Ry. Co., 17 I. C. C. 30 ,33; Colorado Coal Traffic Assn. v. C. & S. Ry. Co., 18 I. C. C. 572, 576; Ponchatoula Farmers' Assn. v. I. C. R. R. Co., 19 I. C. C. 513, 516; Corporation Commission of North Carolina v. N. & W. Ry. Co., 19 I. C. C. 303, 309; National Refining Co. v. C. C. C. & St. L. Ry. Co., 20 I. C. C. 649; Truck Growers Assn. v. A. C. L. R. R. Co., 20 I. C. C. 190; East St. Louis Cotton Oil Co. v. St. L. & S. F. R. R. Co., 20 I. C. C. 37, 41; Sinclair & Co. v. C. M. & St. P. Ry. Co., 21 I. C. C. 490, 507, 508; Boileau v. P. & L. E. R. R. Co., 22 I. C. C. 640, 654; In Re Advances on Coal to Lake Ports, 22 I. C. C. 604, 613; In Re Investigation of Rates on Meats, 22 I. C. C. 160, 163; Elk Cement and Lime Co. v. B. & O. R. R. Co., 22 I. C. C. 84, 88; Carstens Packing Co. v. O. & W.

R. R. Co., 22 I. C. C. 77, 81; Sioux City Term. El. Co. v. C. M. & St. P. Ry. Co., 23 I. C. C. 98,107; Blodgett Milling Co. v. C. M. & St. P. Ry. Co., 23 I. C. C. 448, 451; Red River Oil Co. v. T. & P. Ry. Co., 23 I. C. C. 438, 442; Bituminous Coal Operators v. P. R. R. Co., 23 I. C. C. 385, 391; Chamber of Commerce of Ashburn v. G. S. & F. Ry. Co., 23 I. C. C. 140, 145; Massee & Felton Lumber Co. v. S. Ry. Co., 23 I. C. C. 110, 111, 113; Meredith v. St. L. S. W. Ry. Co., 23 I. C. C. 31, 34.

(dd) Every locality competing in a common market is entitled to rates which are relatively reasonable and just in comparison with rates from other localities served by the same carrier. Black Mountain Coal Land Co. v. S. Ry. Co., 15 I. C. C. 286, 294.

(ee) There is no small force in the general proposition that just at this period of our commercial development, increased facilities, a more extensive equipment, and a better service are more important to the general shipping public than a reduction in freight charges. But this view necessarily cannot appeal strongly to communities that are directly competing with other communities and wish to grow and extend and enlarge their trade, but find the door to opportunity partly closed and their favorable geographic location substantially discounted by effective discriminations in their rates. And the objections and protest against such a rate structure becomes still more aggressive when it more or less effects the commerce of an entire state. The Mississippi River Case, 28 I. C. C. 47, 58.

(ff) Difference of cities in population, wealth, bank clearings, capitalization, deposits, industrial and manufacturing operations including the capitalization of plants, the value of materials used, value of products, number and compensation of employes, extent of wholesale and jobbing business, and geographical position, can carry weight only to the extent to which a definite relation between them and freight rates can be shown. Atlanta Freight Bureau v. N. C. & St. L. Ry., 29 I. C. C. 476, 480.

(gg) Shippers should not be deprived of the advantage of their location upon navigable waters. Chattanooga Packet Co. v. I. C. R. R. Co., 33 I. C. C. 384, 392.

(hh) Fact that a city is a thriving jobbing center, and in spite of rate differences does business in a territory in competition with other cities, does not deprive it of the right to have rates that are not unduly prejudicial in favor of those competing cities. Meridian Traffic Bureau v. S. Ry. Co., 60 I. C. C. 5, 11.

(ii) Railroad charges can not lawfully be based on the relative desirability of locations. Boston Wool Trade Association v. Director General, 69 I. C. C. 282, 292.

(jj) The Commission has never held that it is necessary, in order to preserve advantages of location, that rates should be based rigidly on mileage or on cost of service. A road is built and operated as a complete unit. The cost of maintenance and operation of any particular portion is charged against no specific traffic with respect to point of origin or destination but is represented in the general cost of moving all traffic. While difficulties in operating and traffic conditions are considerations of importance a certain degree of flexibility is permitted in adjusting rates if commercial and competitive conditions warrant. Klamath County Chamber of Commerce v. S. P. Co., 74 I. C. C. 207, 213.

(kk) An industry selecting a disadvantageous location for reasons justifiable to itself has no right to call on carriers to overcome such disadvantage at their expense. Pennsylvania R. Co. v. United States 295 Fed. 523.

ALL OTHER CITATIONS

Big Blackfoot Milling Co. v. N. P. Ry. Co., 16 I. C. C. 173, 175; Corporation Commission of North Carolina v. N. & W. Ry. Co., 19 I. C. C. 303, 309; City of Spokane v. N. P. Ry. Co., 19 I. C. C. 162, 168; Globe Milling Co. v. C. M. & St. P. Ry. Co., 24 I. C. C. 594, 597; Southwestern Shippers Traffic Assn. v. A. T. & S. F. Ry. Co., 24 I. C. C. 570, 576; Southwestern Millers League v. A. T. & S. F. Ry. Co., 24 I. C. C. 552; National Refining Co. v. M. P. Ry., 24 I. C. C. 315, 317; Bowling Green Business Men v. L. & N. R. R., 24 I. C. C. 228, 239; Lumbermen's Exchange of St. Louis v. A. & S. R. R. Co., 24 I. C. C. 220, 223, 224; Consolidated Fuel Co. v. A. T. & S. F. Ry. Co., 24 I. C. C. 213, 215; Commercial Club of Superior v. G. N. Ry. Co., 24 I. C. C. 96, 102, 106, 109; Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co., 24 I. C. C. 55, 70; In Re Wharfage Charges, 26

I. C. C. 695, 703; National Refrigerator & Butchers Supply Co. v. St. L. I. M. & S. Ry. Co., 26 I. C. C. 524, 526; Rates on Linseed Oil, 26 I. C. C. 265, 270; Davis Bros. Lumber Co., Ltd., v. C. R. I. & P. Ry. Co., 26 I. C. C. 257, 263; Rates on Newsprint Paper from Sault Ste. Marie, 26 I. C. C. 13, 17; Rates on Clay Products from Brickland, N. Mex., 26 I. C. C. 8, 10; Commercial Club of Duluth v. B. & O. R. R. Co., 27 I. C. C. 639, 648, 652, 657; Toledo Produce Exchange v. A. A. R. R. Co., 27 I. C. C. 536, 542; Western Fruit Jobbers Assn. v. C. R. I. & P. Ry. Co., 27 I. C. C. 417, 420; Trans-Continental Rates from Group F, 28 I. C. C. 1, 4; Board of Trade of Carrollton v. C. of G. Ry. Company, 28 I. C. C. 154, 168; Lebanon Commercial Club v. L. & N. R. R. Co., 28 I. C. C. 301, 303; Town of Pelham v. A. C. L. R. R. Co., 28 I. C. C. 433, 437; Mayor and Council of Douglas v. A. B. & A. R. R. Co., 28 I. C. C. 445, 450; Traffic Assn. of St. Louis Coffee Importers v. I. C. R. R. Co., 28 I. C. C. 484, 486; Springfield Commercial Assn. v. P. R. R. Co., 28 I. C. C. 511, 514; Memphis Freight Bureau v. B. & O. R. R. Co., 28 I. C. C. 543, 547; Bryant Co. v. Ft. W. & D. C. Ry. Co., 28 I. C. C. 594, 596; Heileman Brewing Co. v. C. B. & Q. R. R. Co., Unrep. Op. A233; Rates to North Carolina Points, 29 I. C. C. 550, 557; Royster Guano Co. v. A. C. L. R. R. Co., 31 I. C. C. 458, 461; Rates on Bananas from Gulf Ports, 30 I. C. C. 510, 515; Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co., 30 I. C. C. 597, 601; Chattanooga Sewer Pipe & Fire Brick Co. v. S. Ry. Co., Unrep. Op. A-676; Merchants' & Manufacturers' Asso. of Birmingham v. L. & N. R. R. Co., Unrep. Op. A-680; Nebraska State Railway Comm. v. C. V. Ry. Co., 32 I. C. C. 41, 46; Inman, Akers & Inman v. A. C. L. R. R. Co., 32 I. C. C. 146, 147; Chamber of Commerce, Houston, Tex., v. I. G. N. Ry. Co., 32 I. C. C. 247, 251; Transcontinental Commodity Rates, 32 I. C. C. 449, 455; Milburn Wagon Co. v. A. A. R. R. Co., 32 I. C. C. 582, 587; Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 625, 632; Illinois Coal Cases, 32 I. C. C. 659, 667, 673, 674; Northern Pine Mfrs. Asso. v. C. & N. W. Ry. Co., 33 I. C. C. 360, 363; Grain Rates from Milwaukee, 33 I. C. C. 417, 425; Lum. v. G. N. Ry. Co., 33 I. C. C. 541, 556; El Paso, Tex., Corp. Com. of New Mexico v. A. T. & S. F. Ry. Co., 34 I. C. C. 292, 296; Goldfield Cases, 34 I. C. C. 360, 363; Alpha Portland Cement Co. v. B. & O. R. R. Co., 34 I. C. C. 414, 421; Spartanburg Chamber of Commerce v. S. Ry. Co., 34 I. C. C. 484, 498; Oklahoma Traffic Assn. v. A. & S. Ry. Co., 36 I. C. C. 329, 347; Hamilton Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 2170; Lumber to Wisconsin Points, 37 I. C. C. 198, 202; Cottonseed Products to Port Arthur, Tex., 38 I. C. C. 378, 386; Import and Domestic Rates—Clay, 39 I. C. C. 132, 135; Black Mountain Corp. v. L. & N. R. R. Co., 39 I. C. C. 153, 161; Memphis Freight Bureau v. St. L. I. M. & S. Ry. Co., 39 I. C. C. 303, 309; Goldcamp Mill Co. v. N. & W. Ry. Co., 39 I. C. C. 433, 444; Concordia Commercial Club v. A. T. & S. F. Ry. Co., 39 I. C. C. 675, 684; Wyeth Hdwe. & Mfg. Co. v. A. T. & S. F. Ry. Co., 39 I. C. C. 697, 700; Connor Lumber & Land Co. v. A. C. & Y. Ry. Co., 40 I. C. C. 111, 114; Hutchinson Traffic Bureau v. A. T. & S. F. Ry. Co., 40 I. C. C. 160, 164; The Missouri River-Nebraska Cases, 40 I. C. C. 201, 212, 213, 222, 260; Milling Logs in Transit on Tap Lines, 40 I. C. C. 597, 600; Dallas Chamber of Commerce v. A. T. & S. F. Ry. Co., 40 I. C. C. 619, 644; New England Milk Case, 40 I. C. C. 699, 730; Iron Ore Rate Cases, 41 I. C. C. 181, 214; Oil Barrels to Oklahoma, 41 I. C. C. 557, 559; American Beet Sugar Co. v. S. P. Co., 41 I. C. C. 631, 637, 638; Kornfalfa Feed Milling Co. v. A. T. & S. F. Ry. Co., 41 I. C. C. 668, 670; Greater Des Moines Committee v. C. St. P. M. & O. Ry. Co., 42 I. C. C. 65, 70, 73; Inman-Poulsen Lumber Co. v. S. P. Co., 42 I. C. C. 275, 278; Rice from California, 42 I. C. C. 437, 439; Orange Commercial Club v. T. & Ft. S. Ry. Co., 42 I. C. C. 587, 588; Utah-Idaho Millers & Grain Dealers Assn. v. R. R. Co., 42 I. C. C. 648, 649, 650; Lachman & Co. v. S. P. Co., 42 I. C. C. 440, 443; Horeml & Co. v. C. G. W. R. R. Co., 43 I. C. C. 23, 25; Barytes from Tennessee, 43 I. C. C. 334, 337; Utah-Idaho Millers and Grain Dealers Asso. v. D. & R. G. R. R., 44 I. C. C. 714, 718, 720, 721; Rates from New Orleans and Galveston, 44 I. C. C. 727, 739; Bituminous Coal to C. F. A. Territory, 46 I. C. C. 66, 101; Milk and Cream to New York City, 45 I. C. C. 412, 424; Lake Cargo Coal Rates 46 I. C. C. 159, 165; Minneapolis Traffic Asso. v. C. M. & St. P. Ry., 46 I. C. C. 685, 691; Western Cement Rates, 48 I. C. C. 201, 234; R. R. Commission of La. v. A. T. Ry., 48 I.

C. C. 312, 371; Scalvini, Trustee, v. N. C. & St. L. Ry., 49 I. C. C. 119; Newport News Shipbuilding & Dry Docks Co. v. P. R. R., 49 I. C. C. 622, 625; Natchez Chamber of Commerce v. L. & A. Ry., 52 I. C. C. 105, 128 Johnston v. A. T. & S. F. Ry., 51 I. C. C. 356, 359; Pacific Lumber Co. v. N. W. P. R. R., 51 I. C. C. 738, 742; Ohio Valley Coal Operators Asso. v. I. C. R. R. Co., 53 I. C. C. 148, 158; Virginia Iron, Coal & Coke Co. v. Director General, 53 I. C. C. 583, 588; Memphis Southwestern Investigation, 55 I. C. C. 515, 546, 547; Northern Coal Co. v. M. & O. R. R., 55 I. C. C. 502, 509; Cornell v. L. V. R. R. Co., 57 I. C. C. 157, 161; Ft. Dodge Commercial Club v. Director General, 57 I. C. C. 343, 345; Anaconda Copper Mining Co. v. Director General, 57 I. C. C. 723, 732; Michigan Paper Mills Traffic Asso. v. A. T. & S. F., 59 I. C. C. 649, 654; Inland Empire Shippers League v. Director General, 59 I. C. C. 321, 341; Substitution for Increases in Rates, 61 I. C. C. 518, 525; Clam and Mussel Shells from Kentucky Points, 62 I. C. C. 366; Boston Chamber of Commerce v. O. S. S. Co. of S., 73 I. C. C. 233, 239; Transcontinental Cases of 1922, 74 I. C. C. 48, 56; Anson, Gilkey & Hurd Co. v. S. P. Co., 78 I. C. C. 495, 519, 520; Cairo Board of Trade v. A. G. S. R. R. Co., 83 I. C. C. 761.

§2½. Additional Service.

See Additional Services.

IMPORTANT CASES SINCE 1908

(a) In determining whether rates are unreasonable and discriminatory against one city and in favor of another, the Commission may take into consideration the fact that in shipments to the former a transfer or rehandling is involved, which is not involved in the haul of the latter. The Mississippi River Case, 28 I. C. C. 47, 59.

§3. Agreed Facts, Admissions and Agreements.

See Reparation §17.

IMPORTANT CASES SINCE 1908

(a) While a stipulation is ordinarily accepted by the Commission as conclusive, inasmuch as the Commission is charged with the enforcement of lawful rates, it cannot at all times accept the views of the parties as to what in fact is the lawful rate between given points on a specified commodity. Germain Co. v. N. O. & N. E. R. R. Co., 17 I. C. C. 22, 24.

(b) Assumption of burden of proof by complainant regarded as an admission that statute does not apply. Corp. Comm. of Okla. v. A. T. & S. F. Ry. Co., 31 I. C. C. 532, 536.

(c) The fact that a 2-cent arbitrary over the junction rate was agreed to by complainant is not determinative of the justice, reasonableness and nondiscriminatory character of the rate, Ladd & Co. v. Gould S. W. Ry. Co., 36 I. C. C. 179, 181.

(d) The proponent of a change in lawfully existing rates must be prepared to justify the change, if called in question. The Interstate Commerce Act provides for prevention as well as for cure. Undue prejudice and preference may be brought about as readily by reducing one as by increasing the other of two related rates. Sublimed lead to Trunk Line Points, 68 I. C. C. 343, 345.

(e) Unlawful discrimination against interstate commerce can not be found upon the mere assertion or admission of its existence by a carrier. Whether any undue, unreasonable, or unjust discrimination or other violation of the act exists is for the commission to decide upon the record. Klamath County Chamber of Commerce v. S. P. Co., 74 I. C. C. 207, 212.

ALL OTHER CITATIONS

Chaffin Coal Co. v. C. M. & St. P. Ry. Co., 24 I. C. C. 321, 322; New England Investigation, 27 I. C. C. 560, 609; International Agricultural Corporation v. L. & N. R. R. Co., 29 I. C. C. 391, 396; Erickson Co. v. C. & N. W. Ry. Co., Unrep. Op. A272; Straw Rates from Stations in Missouri, 29 I. C. C. 562, 563; Alexandria Lumber Co., Ltd., v. L. R. & N. Co., Unrep. Op. A-710; Straw Rates from St. Louis to Anderson, Ind., 36 I. C. C. 30 ,33; Zimmerman v. C. R. I. & P. Ry. Co., 38 I. C. C. 118, 119; Cavers Sturtevant Co. v. C. & N. W. Ry. Co., 41 I. C. C. 378, 379; Boston Potato Receivers' Assn. v. B. & A. R. R., 42 I. C. C. 454, 456; Oklahoma Cottonseed Crushers' Asso. v. A. T. & S. F. Ry. Co., 42 I. C. C. 571, 573; Crown Willamette Paper Co. v. W. T. & T. Co., 56 I. C. C. 415; Haammann Vinegar & Pickle Co. v. Director General, as Agent, 58 I. C. C. 266; R. G. Gillespie v. C. R. I. & P. Ry., 77 I. C. C. 96.

§4. Averages.

IMPORTANT CASES SINCE 1908

(a) Other conditions being equal, the

rate per ton-mile from ice traffic ought not to equal the average from all sources. Mountain Ice. Co. v. D. L. & W. R. R. Co., 15 I. C. C. 305, 320.

(b) Averages are often helpful in determining the proper relationship of rates or the proper basis for their construction, but dissimilarity of conditions may affect the force of these factors. Victor Mfg. Co. v. S. Ry. Co., 21 I. C. C. 222, 229.

(c) In considering rate comparisons great caution should be used in drawing inferences from averages based upon a limited number of selected points. National Baggage Com. v. A. T. & S. F. Ry. Co., 32 I. C. C. 152, 154.

(d) Average system earnings are said not to afford a proper measure of earnings on a particular commodity between specific points. Moore & Thompson Paper Co. v. B. & M. R. R., 34 I. C. C. 323, 325.

(e) In comparing average rates on all commodities with a particular commodity the relative volume of low grade traffic must always be allowed for. Watson Co. v. Director General, as Agent, 61 I. C. C. 719, 723.

(f) If the Commission were to accept the theory that rates on all low grade commodities should be reduced solely if and because they produced a higher revenue than the average of all freight, such a reduction would result in a lowering of the average, which, in turn, would require a further reduction in the rates on the low grade commodities. National Paving Brick Mfrs. Asso. v. A. & V. Ry., 68 I. C. C. 213, 231.

(g) It is impracticable to use the revenue on all freight as an exact yardstick for measuring the rates on a particular commodity, even though it be low grade traffic. National Association of Sand & Gravel Producers v. P. R. R. Co., 74 I. C. C. 615, 617.

(h) The fact that the rates upon a certain commodity yield earnings higher than the average upon all traffic can not be accepted as persuasive of the unreasonableness of such rates. If it were so accepted, the ultimate result would be to bring all rates to a common level. Boher & Hosfeld v. B. & M. R. R., 88 I. C. C. 449, 451.

ALL OTHER CITATIONS

Public Utilities Commission of Idaho v. O. S. L. R. R. Co., 33 I. C. C. 103, 104; National Asso. of Ice Cream Mfrs. v. Adam's Express Co., 33 I. C. C. 411, 412; Rock Spring Distilling Co. v. L. H. & St. L. Ry. Co., 36 I. C. C. 35, 41; Kentucky Distilleries & Warehouse Co. v. L. & N. R. R. Co., 36 I. C. C. 293, 301; Oklahoma Traffic Assn. v. A. & S. Ry. Co., 36 I. C. C. 329, 335, 336; 1915 Western Rate Advance Case—Part II, 37 I. C. C. 114, 127; Rates on Tin Cans and Other Commodities, 37 I. C. C. 360, 361; Pierce Oil Corp. v. M. K. & T. Ry., 44 I. C. C. 279, 282; California Citrus League v. Director General, 58 I. C. C. 373, 391; City of New Albany v. L. & N. Ry., 64 I. C. C. 468, 473; Division of Joint Rates and Fares of M. & N. A. R. R. Co., 68 I. C. C. 47, 52, 53, 57; National Paving Brick Mfrs. Asso. v. A. & V. Ry., 68 I. C. C. 213, 230; Lake Charles Rice Milling Co. v. L. W. R. R. Co., 69 I. C. C. 509, 510.

§5. Basing-Point System.

See Basing Points and Lines.

IMPORTANT CASES SINCE 1908

(a) Where a rate adjustment is built and maintained upon the basing-point system it should be applied alike to all places where dissimilarity of circumstances or controlling competition does not exist. Columbia Grocery Co. v. L. & N. R. R. Co., 18 I. C. C. 502, 505.

(b) A rapid increase of rates as the point of production is moved from base points presents an anomaly in rate making which calls for explanation. Florida Fruit & Vegetable Shippers' Protective Ass'n. v. A. C. L. R. R. Co., 22 I. C. C. 11, 17.

(c) The fact that no traffic moves on a basing rate does not disprove that it is the essential groundwork on which other rates are built. Wisconsin Steel Co. v. P. & L. E. R. R. Co., 27 I. C. C. 152, 157.

(d) A point directly intermediate to the base point, upon which the lowest combination makes a rate no higher than such combination, must be maintained, and it is not necessary in such cases to haul the shipment to the base point and back again to destination. Tusten Seed & Produce Co. v. V. S. & P. Ry. Co., Unrep. Op. A442.

ALL OTHER CITATIONS

Lehigh Portland Cement Co. v. B. & O. S. W. R. R., 35 I. C. C. 14, 17.

§5½. Back Haul.

See Back Haul.

IMPORTANT CASES SINCE 1908

(a) The practice of making rates to points in back-haul territory by taking the rates to coast terminals and adding thereto the local rate from the terminal to destination, cannot be claimed to rest upon any just principle of rate making. It is merely an expedient for arriving at a rate. Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 631.

(b) The back-haul charge may be looked upon in some respects as similar to a proportional rate applicable to the movement of traffic between two points when coming from or destined to a more distant point. A proportional rate is ordinarily less than the local rate in the recognition of the fact that the traffic has already paid or will subsequently pay a further transportation charge. Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 632.

(c) Out-of-line and back hauls allowed in some cases to meet competition of direct lines. Globe Grain & Milling Co. v. A. T. & S. F. Ry. Co., 36 I. C. C. 662, 663.

(d) The movement of flat cotton should be restricted to a minimum and wasteful back hauls to transit points should not be encouraged, these considerations may not be ignored in some instances and enforced in others if undue prejudice would result. Memphis Freight Bureau v. M. P. R. R. Co., 80 I. C. C. 88, 97.

ALL OTHER CITATIONS

Sanguinetti v. I. C. R. R. Co. 22 I. C. C. 185, 186; Lumber Rates, Oregon and Washington to Eastern points, 29 I. C. C. 609, 619; Miller & Co. v. C. St. P. M. & O. Ry. Co., Unrep. Op. A462; Rea-Patterson Milling Co. v. M. K. & T. Ry. Co., Unrep. Op. A-653; Corporation Commission of Oklahoma v. W. F. & N. W. Ry. Co., Unrep. Op. A-828; Wilson Produce Co. v. N. W. Ry. Co., Unrep. Op. A-905; Marshall Car Wheel and Foundry Co. v. T. & P. Ry. Co., Unrep. Op. A-929; City of Memphis v. C. R. I. & P. Ry. Co., 39 I. C. C. 256, 272; Red Cedar Shingle Mfrs. Asso. v. C. B. & Q. R. R. Co., 41 I. C. C. 422; Young v. P. C. C. & St. L. Ry. Co., 42 I. C. C. 183, 184; Valley City Mil. Co. v. G. R. & R. Ry., 43 I. C. C. 75; Sunderland Bros. Co. v. C. B. & Q. R. R., 45 I. C. C. 209, 210; Randolph Fruit Co. v. S. P. Co., 49 I. C. C. 707; Cardwell v. C. R. I. & P. Ry., 51 I. C. C. 390; Transit Privileges on Grain and Grain Products, 77 I. C. C. 1.

§6. Bona-Fide Investment.

See Advanced Rates §6.

IMPORTANT CASES SINCE 1908

(a) Were it possible to determine the exact amount of money which has been put into the railroad properties in Official Classification territory, the amount of return which has been paid to the present time, the degree of prudence with which the property has been constructed and operated, investment would furnish a very satisfactory basis in arriving at an equitable return. Advance in Rates —Eastern Case, 20 I. C. C. 243, 258.

(b) The nearest approximation to the fair standard of rate regulation is that of bona-fide investment—the sacrifice made by the owners of the property—considering as part of the investment any shortage of return that there may be in the early years of the enterprise. Upon this, taking a life history of the road through a number of years, its promoters are entitled to a reasonable return. This, however, is limited for a return should not be given upon wastefulness, mismanagement, or poor judgment, and always there is present the restriction that no more than a reasonable rate shall be charged. Advances in Rates—Western Case, 20 I. C. C. 307, 347.

(c) In determining the charge to be made on account of capital, where there is a normal increase in traffic discernible beneath the annual fluctuations, with a growth in investment necessitated by expanding traffic, it is not fair to take the investment at the end of a five-year period as representative of the period as a whole. Lum. v. G. N. Ry., 23 I. C. C. 541, 556.

(d) When the original investment has been returned several times and property greatly improved out of the earnings can it be held that the element of risk should be considered for the future? Lum. v. G. N. Ry. Co., 33 I. C. C. 541, 556.

(e) Present-day rates should not be expected to earn a return on property costs inflated by inclusion of items not actually representing expenditures for road and equipment. Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 268.

(f) Property investment accounts as now standing on books of carriers can not be accepted as reliable. Rates for

Transportation of Anthracite Coal, 35 I. C. C. 220, 269.

(g) If experience demonstrates that increased investment fails, over a term of years, to yield an increased return, the inference is either that it was ill judged and not calculated to serve the public, or that the price of the service has not been sufficient to allow an adequate return. 1915 Western Rate Advance Case, 35 I. C. C. 497, 520, 521.

(h) Subject, as book cost of property is, to limitations, the basis of book cost, in default of the completion of an official valuation, may be employed, as it has been in the past, as a usable basis for a study of the course and tendency of the returns. 1915 Western Rate Advance Case, 35 I. C. C. 497, 523.

(i) Railway company not only has a recognized right to earn a fair return on the value of its property, but the interest of the public demands that carriers shall receive revenues which will enable them to keep their equipment in good repair and maintain efficient service. St. Louis Mo.-Illinois Passenger Fares, 41 I. C. C. 584, 591.

(j) Money thrown away, dishonestly or with wanton recklessness, or foolishly lost in nonrailroad enterprises, is not money put to public use upon which the rate payers are bound in law and in conscience to make a return. Proposed Increases in New England, 49 I. C. C. 421, 433.

(k) Theory that expenses afford fair measure of investment would call for reapportionment of total investment every time there was a variation in expense ratios of different services; and if by improved methods a reduction could be brought about in expenses of one service, other things remaining the same, effect would be to shift larger burden of investment to other services, irrespective of whether there was an actual change therein or not. Obviously such method of apportioning investment is not safe. Express Rates, 1922, 83 I. C. C. 606, 634.

ALL OTHER CITATIONS

Five Per Cent Case, 32 I. C. C. 325, 328; Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 621; Lum v. G. N. Ry. Co., 33 I. C. C. 541, 549, 550, 551, 552, 553, 554, 555; Goldfield Cases, 34 I. C. C. 360, 373; Pulp & Paper Mfrs. Asso. v. C. M. & St. P. Ry. Co., 34 I. C. C. 500, 510; Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 267, 283; New York-Jersey City Ferry Rates 37 I. C. C. 103, 111; Class Rates from Chestnut Ridge Ry. Stations, 41 I. C. C. 61, 65; Allowances to Kanawha, Glen Jean & Eastern, 41 I. C. C. 53, 59; Wabash Pittsburgh Terminal Investigation, 48 I. C. C. 96, 144; Proposed Increases in New England, 49 I. C. C. 421, 434, 436; Camp Bowie, Tex., Rates, 49 I. C. C. 528, 529; City of East Liverpool, Ohio, v. S. E. L. & B. V. T. Ry. 51 I. C. C. 563, 568; Lowry Lumber Co. v. Director General, as Agent, 58 I. C. C. 113, 116.

§6½. Bridge Mileage.

IMPORTANT CASES SINCE 1908

(a) The argument that a bridge a mile long ought to be regarded as simply a mile of the carriers track and ought not to be the foundation of any separate or higher charge is not the generally accepted view. By reason of the great cost of such structures a bridge has been regarded more or less generally as adding a constructive mileage to the carrier's line, for which an additional charge may be exacted. Moreover, bridges are ordinarily built and operated by separate companies, although not infrequently the bridge companies are owned by the carrier or carriers that use the bridge. As a rule, the accounts of the bridge company are kept separately, and the rights of the owning carrier or carriers to use the bridge and the compensation therefor, are established and controlled by formal contract. The compensation is ordinarily fixed in the form of a definite toll per passenger, and sometimes a more or less definite charge is assessed on freight. The carriers usually lay the burden upon the traveling and shipping public by adding the tolls to their regular fares and rates, and these additional charges have been recognized as valid by the Commission. Railroad Commissioners of Iowa v. I. C. R. R. Co., 20 I. C. C. 181, 188.

(b) Bridge investments involve special risks, and owners of bridges may properly be entitled to higher returns than can be expected from less precarious investments. Bridge tolls across the Mississippi River between Memphis and Arkansas held not unreasonable. City of Memphis v. C. R. I & P. Ry. Co., 39 I. C. C. 256, 273, 274.

(c) The Commission has frequently recognized the cost of bridges across

such rivers as the Ohio and the Mississippi in connection with the movement of both freight and passenger traffic. Cases cited where such costs were given consideration. Bituminous Coal to C. F. A. Territory, 46 I. C. C. 66, 129.

(d) Charges for a bridge service may be determined upon a basis somewhat different from that employed in the construction of charges at a crossing where the transfer is effected by barges or other floating equipment. In the former case the investment is relatively large and the fixed charges thereon usually constitute the chief item of expense, whereas in the latter case, the investment is usually small and the principal expenses incurred are those in operating the facility. Memphis Southwestern Investigation, 55 I. C. C. 515, 552.

(e) If the cost of constructing and maintaining a bridge is 100 times greater than that of a mile of track, it does not follow that 100 consecutive miles should be allowed for the movement over the bridge in computing distance, upon which to base rates for transportation. Constructive Mileage over Poughkeepsie Bridge, 66 I. C. C. 230, 233.

§7. Capitalization.

See Express Companies §24; Financial Operation; Interstate Commerce Commission §7; Reasonableness of Rates §5.

CASES 1887-1908

(a) The capitalization of a railroad, to have consideration in cases involving the readjustment of rates, should be accompanied by a history of the capital account, the value of the stock and various securities, and the actual cost and value of the property itself. To make the capital account of railroads the measure of legitimate earnings would place, as a rule, the corporation which has been honestly managed from the outset under enormous disadvantages. Grain Shippers' Asso. of Northwest Iowa v. I. C. R Co., 8 I. C. C. 158, 182.

(b) The development of the Southern Railway into a great system, through consolidation and improvement of worthless properties, is a legitimate enterprise which has benefited the whole territory affected thereby; and while those who conceived and executed it have no right to exact a return upon an extravagant capitalization, whatever has honestly and in good faith gone into the enterprise should be protected. But the people living in such territory are also entitled to protection, and the Southern Railway, by virtue of the fact that it has obtained possession of and now controls the avenues of communication by rail between the city of Danville and the outside world, has no right to deprive that community of the competitive advantages which the enterprise of its citizens in one way or another has secured, and upon the strength of which business conditions have grown up; it must recognize the geographical position and the commercial importance of the city of Danville. Danville v. Southern R. Co., 8 I. C. C. 409.

IMPORTANT CASES SINCE 1908

(c) The fact that a carrier has issued watered stock cannot be urged on a question of reasonableness of rates to deny the right of present holders of said stock to receive reasonable dividends thereon. City of Spokane v. N. P. Ry. Co., 15 I. C. C. 376, 410.

(d) The fact that a carrier's stock originally sold at less than par cannot be urged on a question of reasonableness of rates to deny the present holders thereof fair dividends therefrom. City of Spokane v. N. P. Ry. Co., 15 I. C. C. 376, 411.

(e) The market value of stock should be considered in fixing rates, but such rates cannot be allowed as will guarantee the prices at which the stock was bought. In Re Advances in Rates—Eastern Case, 20 I. C. C. 243, 260.

(f) It is almost axiomatic that the investment in an American railroad is not represented by its capitalization. The Commission cannot accept capitalization as representing either investment or value. Advances in Rates—Western Case, 20 I. C. C. 307, 320.

(g) There is no relation between capital and value and there is no relation between stocks representing value and bonds representing value. In Re Advances in Rates—Western Case, 20 I. C. C. 307, 335.

(h) Increasing percentage of bonds to total capital obligations indicate a growing unwillingness to accept prospect of dividends as a sufficient incentive to assume risks of railroad proprietorship. 1915 Western Rate Advance Case, 35 I. C. C. 497, 540.

ALL OTHER CITATIONS

In Re Express Rates, 24 I. C. C. 380, 421; 1915 Western Rate Advance Case, 35 I. C. C. 497, 540.

§8. Car Mile or Train Mile Revenue.

See Reasonableness of Rates §6.

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(a) The most satisfactory comparison to ascertain whether relative injustice is being done one section against another is through the earnings per car. Ozark Fruit Growers' Ass'n. v. St. L. & S. F. R. R. Co., 16 I. C. C. 106, 114.

(b) There are, of course, greater car earnings under a lower rate with a higher minimum than under a higher rate with a lower minimum. In Re Transportation of Wool, Hides, and Pelts, 23 I. C. C. 151, 167.

(c) Where the carload minimums on two commodities differ, the revenues per car-mile afford a fairer basis of comparison than the ton-mile revenues. Rice from Texas and Louisiana, 40 I. C. C. 285, 289.

(d) Car-foot mileage is the number of square feet in the cars multiplied by the mileage which each car made. Milk and Cream Rates to Philadelphia, Pa., 45 I. C. C. 371, 382.

(e) But in order to determine correctly the earnings per car-mile of a particular carrier it is necessary to use the actual haul and loading, including all carload movements. Live Poultry & D. S. Assn. v. A. T. & S. F. Ry., 49 I. C. C. 228, 233.

(f) The Commission in proper cases has recognized the value of comparisons of car-mile revenues, particularly when the rates under comparison apply on commodities whose transportation characteristics are such as to make them fairly comparable. State of Maryland v. B. C. & A. Ry., 49 I. C. C. 681, 685.

(g) While ton-mile and car-mile earnings generally decrease as distance increases, the fact that these earnings from the farther distant point are greater than from the nearer point does not of itself establish the unreasonableness of the rate from the farther distant point. Beaumont Chamber of Commerce v. Director General, 55 I. C. C. 428, 429.

(h) And it has frequently commented upon the value of the car-mile and ton-mile tests, and such comparisons have been found of much value in many cases but they must be considered in the light of all the circumstances and conditions and are of controlling force only when those circumstances and conditions are substantially similar. Phelps Dodge Corp. v. Director General, 57 I. C. C. 714, 717.

(i) Import rate on crude rubber from Pacific coast ports to Omaha, Nebr., and Barberton and Akron, Ohio, found not unreasonable as compared with import and domestic rates on various commodities and with lower rate subsequently established. Taking into consideration differences in transportation conditions, and particularly fact that car-mile earnings on commodities loading as heavily as crude rubber are necessarily high as compared with like earnings on commodities which load less heavily, comparisons presented do not show unreasonableness of rates assailed. Sprague Tire & Rubber Co. v. Director General, as Agent, 80 I. C. C. 285.

ALL OTHER CITATIONS

Pabst Brewing Co. v. C. M. & St. P. Ry. Co., 17 I. C. C. 359, 360; Rainey & Rodgers v. St. L. & S. F. R. R. Co., 18 I. C. C. 88, 90; National Hay Ass'n. v. M. C. R. R. Co., 19 I. C. C. 34, 47; In Re Advances on Coal to Lake Ports, 22 I. C. C. 604, 620; Merchants & Mfrs. Ass'n. v. A. C. L. R. R. Co., 22 I. C. C. 467, 469; Bahrenburg Bro. & Co. v. A. C. L. R. R. Co., 24 I. C. C. 560, 566; In Re Advances on Hops, 25 I. C. C. 16, 17; North Fork Cannel Coal Co. v. A. A. R. R. Co., 25 I. C. C. 241, 245; Evens & Howard Fire Brick Co. v. St. L. I. M. & S. Ry. Co., 25 I. C. C. 141, 151; Bartlesville Salvage Co. v. M. K. & T. Ry. Co., 25 I. C. C. 672, 674; In Re Advances on Hay, 25 I. C. C. 680, 683; In Re Advances on Furniture, 25 I. C. C. 299, 302. In Re Classification of Empty Barrels, 25 I. C. C. 641, 644; Standard Mirror Co. v. P. R. R. Co., 27 I. C. C. 200, 208; Wisconsin Steel Co v. P. & L. E. R. R. Co., 27 I. C. C. 152, 162; Coke Producers' Assn. of Connellsville v. B. & O. R. R. Co., 27 I. C. C. 125, 132; Carnegie Board of Trade v. P. Co., 28 I. C. C. 122, 128; Traffic Assn. of St. Louis Coffee Importers v. I. C. R. R. Co., 28 C. 533, 535; Pacific Creamery Co. v. Nashville v. L. & N. R. R. Co., 28 I. C. I. C. C. 484, 486; Traffic Bureau of S. P. Co., Unrep. Op., A-356; Crawford & Bunce v. P. C. C. & St. L. Ry. Co., 32 I. C. C. 12, 15; Brantley Co. v. A. C. L. R. R., 34 I. C. C. 21, 24; Boldt Co.

v. C. R. I. & P. Ry. Co., 33 I. C. C. 8, 12; Bituminous Coal Rates to Baltimore and other Points, 33 I. C. C. 307, 310; 1915 Western Rate Advance Case, 37 I. C. C. 114, 126; Dressed Beef from New York, 38 I. C. C. 51, 53; Minneapolis Mfg. Co. v. N. P. Ry. Co., 41 I. C. C. 400, 402; Eastern & Western Lumber Co. v. O. W. R. R. & N. Co., 41 I. C. C. 545, 549; Lachman & Co. v. S. P. Co., 42 I. C. C. 440, 444; Utah-Idaho Millers and Grain Dealers' Asso. v. D. & R. G. R. R., 44 I. C. C. 714, 725; Wichita Traffic Bureau v. A. T. & S. F. Ry., 45 I. C. C. 143, 144; Dimmitt-Caudle-Smith L. S. C. Co. v. C. B. & Q. R. R., 47 I. C. C. 287, 298; Car Float Service, New York Harbor, 49 I C. C. 259, 264; Mayfield & Graves County Commercial Club v. I. C. R. R., 49 I. C. C. 521, 523; Timmons v. B. C. & A. Ry., 55 I. C. C. 495; Railway-Mail Pay, 56 I C. C. 1, 60, 61; Anaconda Copper Mining Co. v. Director General, 57 I. C. C. 723, 730; Botany Worsted Mills v. Director General, as Agent, 66 I. C. C. 556, 558, 559.

§8½. Categorical Answers.

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(a) It is not sufficient for a carrier when called upon to justify a rate, the reasonableness of which is questioned, to assert that its rates generally are fair and just and that no change may properly be made in any particular rate because it would disturb the integrity of the system as a whole and produce inconsistencies. This proposition is too general and theoretical for acceptance by us in the application of the requirements of the law to a practical situation. The Commission has authority under the law to make an order only concerning the rates involved in a proceeding before it. It is not practicable in such a proceeding to investigate and pass upon the reasonableness of the entire system of rates maintained by a carrier. In dealing with a particular rate, it is of course the purpose of the Commission to consider such other rates as afford a basis for comparison, but where a given rate is found to be unreasonable the Commission will not hesitate to order such rate reduced, although the reduction might disarrange the relative adjustment existing between this and other rates. Reynolds v. Southern Express Co., 13 I. C. C. 536, 540.

(b) Something more than a generalization that the cost of transportation is less one way than another is needed to justify a difference of 50 per cent in the rates. Portland Traffic Ass'n. v. O. W. R. R. & N. Co., 56 I. C. C. 410, 413.

§9. Change in Conditions or Service.

See Advanced Rates §7; Reasonableness of Rates §7; Through Routes and Joint Rates §20.

CASES 1887-1908

(a) As rates on iron articles were formerly reduced on account of commercial conditions, the advances in those rates may have been proper, owing to subsequent changes in such conditions. In the Matter of Proposed Advances in Freight Rates, 9 I. C. C. 382.

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(b) Arbitrary and inflexible in the extreme would be the working of any law or rule of rate making which gave no consideration to the possibility of changing circumstances and conditions. The disposition of every case must depend upon its own particular facts and circumstances. A rate which is reasonable to-day may, tomorrow, by reason of changing circumstances and conditions, become unjust and unreasonable. Topeka Traffic Asso. v. A. & V. Ry. Co., 27 I. C. C. 428, 433.

(c) An unusual number of changes or fluctutations in a scale of commodity rates seems to suggest the propriety of establishing and maintaining the rates in question on a class basis, in order that class principles and relationships may render them more stable. Western Lake and Rail Knit Goods Commodity Rates, 32 I. C. C. 54, 55.

(d) Unquestionably it is true that carriers often encounter and should be expected to encounter the same ups and downs of financial fortune as affect industry at large. But there is force in the consideration that public service industries are under some disabilities from which private industries are exempt. The former may not discontinue operation even though net earnings decline or vanish; nor may they meet rising costs with as free a hand as other industries which advance their prices without the possibility of governmental restraint. Transportation, moreover, unlike many branches of manufacture or commerce, is a quasi public function, indispensable to industry generally. So long as the service is intrusted to corporate ad-

ministration and the funds supplied by private investors, revenues sufficient to afford a return which will adequately remunerate the investment and secure the facilities required by the community have a justification which does not equally attach to every branch of private undertaking. 1915 Western Rate Advance Case, 35 I. C. C. 497, 520.

(e) Therefore a charge, reasonable in inception many years ago, may become unreasonably low in consequence of the construction of more adequate facilities, or a change in the character of the service rendered. Space rental charges on Cotton, 66 I. C. C. 121, 125.

(f) A developing industrial region is bound to find certain long-established rate adjustments eventually outgrown and unsuitable, and permanent rigidity in rate structures is not to be anticipated. Atlas Portland Cement Co. v. C., B. & Q. R. R. Co. 81 I. C. C. 1, 10.

ALL OTHER CITATIONS

In Re Advances in Rates for the Transportation of Fluid Milk, 23 I. C. C. 500, 501, 502; In Re Advances on Barley, 24 I. C. C. 664, 670; Five Per Cent Case, 32 I. C. C. 325, 330; Public Utilities Commission of Idaho v. O. S. L. R. R. Co., 33 I. C. C. 103, 108; Phelps Dodge Corp. v. Director General, 57 I. C. C. 714, 718.

§10. Combinations to Fix Rates.

See Advanced Rates §9, §16; Anti-Trust Laws; Monopolies; Reasableness of Rates §8½.

CASES 1887-1908

(a) Whether railroad companies combine or act separately in making rates and charges is not so important; the essential requirement is that however made they shall be reasonable of themselves, and so fairly adjusted as to be reasonable in their relations to each other and in their results. New Orleans Cotton Exchange v. Cincinnati, N. & O. T. P. R. Co., 2 I. C. R. 289.

(b) Contracts betwen rival and competing railroad companies, which prevent unhealthy competition but do not raise rates of transportation above the standard of fair compensation or violate any duty that is owing to the public from non-competing roads, are not void as against public policy. Manchester & Lawrence R. Co. v. Concord R. Co., 3 I. C. R. 319.

(ba) An agreement by rival lines of railroad to prevent competition is not relieved from illegality by the fact that any company, party to the agreement, has the right of withdrawal, or that it cannot be punished for a failure to obey the regulations, or that it has not been shown that the companies have made charges in excess of the limits allowed by law. Gulf C. & S. F. R. Co., v. State (Tex.) 2 I. C. R. 335.

(c) Where two companies or railroad systems stipulated for a division of traffic and agreed that when one party carried traffic belonging to the other, but one-half of the charges should be retained for the transportation service. HELD, That in the light of this arrangement in connection with the other facts of the case some reduction was warranted. Newland v. Northern Pacific R. Co., 4 I. C. R. 474.

(d) The division of territory between the eastern and western lines provided for in the Southern Railway & Steamship Association Agreement is without warrant in law and appears to be made for the benefit of the carriers without regard to the interests of shippers in the territory so divided, to whom it is in effect a denial of the privilege of shipping their goods or produce to market by the line or route they may prefer. Freight Bureau v. Cincinnati, N. O. & T. P. R. Co., et al., 6 I. C. C. 197.

(e) Where rates are established by concert of action and previous understanding between the carriers, it is manifest whether or not thereby a binding agreement to maintain such rates, that the element of competition is eliminated. Concert of action is wholly inconsistent with competition and, during the time the rates fixed by concert of action are maintained, the effect, so far as competition is concerned, is the same as if there was a binding agreement to maintain such rates. Tift v. Southern R. Co., 10 I. C. C. 548, 580.

(f) A rate which is advanced as the result of an agreement among carriers, even if such agreement be with color of violation of the Anti-trust Act, will not on that ground alone be declared unreasonable; evidence of such violation is pertinent and must be considered, but the existence of such an unlawful agreement, even when proved, is not conclusive of the unreasonableness of the rates so advanced. Enterprise Mfg. Co. et

al. v. Georgia R. R. Co., et al, 12 I. C. C. 452.

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(g) While the action of carriers in fixing rates by agreement leads the Commission to scrutinize more carefully such rates, with a view to ascertaining whether or not such action has resulted in the maintenance of unreasonable transportation charges, and evidence thereof is admissible for that purpose, that fact alone is not conclusive of the unreasonableness of said rates. Railroad Commission of Kentucky v. L. & N. R. R. Co., 13 I. C. C. 300, 309.

(h) While evidence of an unlawful combination of carriers in fixing rates is admissible as a part of the history of the rate of which complaint is made and may often throw light upon the question of its reasonableness, the unlawful combination, standing by itself without proof also of the unreasonableness of the rate, is not a sufficient ground for an order to reduce the rate. Board of Bristol, Tenn., v. V. & S. W. Ry. Co., 15 I. C. C. 453, 454.

(i) The fact that a rate becomes effective by the concerted action of competing carriers, even though such action be illegal, does not in itself prove that it was unreasonable, and does not relieve the complainants of the necessity of showing that it was unreasonable. New Pittsburgh Coal Co. v. H. V. Ry., 26 I. C. C. 121, 122.

(j) The allegation that respondents have restricted competition by agreements for a territorial division of routes and traffic would constitiute violations of laws prohibiting combinations and conspiracies in restraint of trade which are not within the province of this Commission to administer or enforce; record is barren of facts tending to sustain the allegation. The Alaska Investigation, 44 I. C. C. 680, 702.

(k) The fact that rates were raised as a result of concerted action among carriers does not eliminate the presence of competition in the final fixing of the adjustment. Bituminous Coal to C. F. A. Territory, 46 I. C. C. 66, 83.

(l) A railroad rate is not necessarily illegal because it is the result of a conspiracy in restraint of trade, in violation of the Anti-Trust Act (Comp. St. 8820-8823, 8827-8830), as the legality of rates is determined by the Interstate Commerce Act. Keogh v. Chicago & N. W. Ry. Co. (1922), 43 Sup. Ct. 47.

ALL OTHER CITATIONS

Maritime Exchange v. P. R. R. Co., 21 I. C. C. 81, 84; Lumber Rates, Oregon and Washington to Eastern Points, 29 I. C. C. 609, 618; State v. Arkansas Lumber Co. (Mo. 1914), 169 S. W. 145, 171; Financial relations, etc., L. & N. R. R. Co., 33 I. C. C. 168, 180, 230; Lake Line Applications Under Panama Canal Act, 33 I. C. C. 699, 706, 707, 715; Excelsior from St. Paul, Minn., 36 I. C. C. 349, 362; Ownership of Little Kanawha R. R. Co., 36 I. C. C. 560, 594.

§11. Comparison of Classifications.

See Comparative Rates.

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(a) A comparison of the ratings in the different classifications is not a guide to the relative transportation charges thereunder, unless the class rates under the several classifications are also considered. Milburn Wagon Co. v. L. S. & M. S. Ry. Co., 22 I. C. C. 93, 102.

§12. Comparison of Character of Commodity.

(1) In General.

See Advanced Rates §5 (3); Classification §3½, §17, §18; Comparative Rates; Reasonableness of Rates §7½.

CASES 1887-1908

(a) The fact that the rate on live hogs from Missouri River points and points in the interior of Iowa to the packing-house at Sioux City, added to the rate on packing-house products from Sioux City to Chicago, is but a trifle more than the rate on live hogs from the first point of shipment to Chicago, constitutes no ground for discriminating rates on live hogs against Chicago in favor of Sioux City. Chicago Bd. of Trade v. Chicago & A. R. Co. (Com.), 3 I. C. R. 233.

(b) Violation by one carrier of principles governing relative rates on competitive articles does not justify similar violations by its competitors. Squire v. Michigan C. R. Co. (Com.), 3 I. C. R. 515.

(c) Disadvantage to the shipper of one product can hardly be predicated upon charges for transporting another product differing essentially in character from the former and widely dissimilar in the demands which it supplies. In such

cases the rates themselves are insufficient to convict the carrier of unlawful discrimination; but the amount actually charged on one commodity may be of great importance in determining whether the charge on another commodity is reasonable or otherwise, especially when both have numerous points of resemblance in respect to the cost and hazard of transportation. Rice v. C. W. & B. R. Co., 3 I. C. C. 841, 849.

(d) Comparison of wheat rates charged by defendants from Nicholasville, Ky., with higher rates to the same points from St. Louis, Chicago or Milwaukee, much more distant points of shipment, or with a lower wheat rate in force from Louisville, Ky., to Newport News, Va., while tending to support complainant's case, not found to fairly establish the fact that the rates complained of were unreasonable or that they discriminated against Nicholasville. Board of Railroad Comrs. v. Cincinnati, N. O. & T. P. R. Co., 7 I. C. C. 380.

(e) Rates for the transportation of melons in carloads from shipping points in South Carolina to New York and other points in northern and northeastern states are not unjust and unreasonable, where they are lower than those in force between the same points on cotton and general merchandise, although greater speed and some other exceptional facilities are involved in the transportation of melons, and the rates per mile accruing to the railroads are less than the average receipts per ton mile from all freight. Board of Railroad Comrs. of South Carolina v. Florence R. Co., 8 I. C. C. 1.

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(f) The difference in the value of two commodities, in the volume of the traffic, in the conditions under which they move, and in the risk and cost of handling them ordinarily results in a substantial difference in the rates under which they are carried, and therefore a comparison of the rates on cement with the rates on potatoes is of little value in support of an allegation that there is a discrimination in rates in favor of cement as against potatoes, the two commodities being wholly non-competitive. Anthony v. P. & R. Ry. Co., 14 I. C. C. 581.

(g) The contention that the rate on one commodity should not exceed the rate on an analogous one may have force, but in the absence of a showing of the unreasonableness of the rates on the analogous one the Commission would not be justified in requiring a reduction of the rate on the other. By merely showing that the articles are similar the order would be limited to prescribe rates on one commodity not in excess of rates on the other, which might be obeyed by increasing the lower rate. Paducah Copperage Co. v. N. C. & St. L. Ry. Co., 22 I. C. C. 226, 232.

(h) Fixing rates by comparison with an article not similar in character, use, value or mode of shipment is not proper. Barnard Co. v. C. M. & St. P. Ry Co., 26 I. C. C. 91, 92.

(i) Rates should not be fixed for a commodity by the addition of an arbitrary over the rates of another commodity having no commercial relation to the former and being wholly different in character. Barnard Co. v. C. M. & St. P. Ry. Co., 26 I. C. C. 91, 93.

(j) Where the unreasonableness of rates on manufactured commodities are in question, the rates on the raw material out of which said commodities are manufactured cannot be used as a criterion, unless it is shown that the rates on raw material are unreasonable. Rates on Sash, Doors and Blinds into Texas, 26 I. C. C. 116, 118.

(k) A test of reasonableness of rates which is often of real and controlling value is a comparison of the rates in question with rates on the same commodities from other markets. Edgar & Son v. L. & N. R. R., 26 I. C. C. 181, 184.

(l) The Commission may compare rates on a commodity from and to various points for the purpose of determining reasonableness of rates, but it may not for this purpose inquire into rates to the various points on raw material out of which the particular commodity is manufactured. Rates on Linseed Oil, 26 I. C. C. 265, 270.

(m) The fact that one commodity may be used in place of another does not necessarily render comparisons of this nature of great value. Fairmont Creamery Co. v. A. T. & S. F. Ry. Co., 28 I. C. C. 661, 662.

(n) The rates on commodities which do not move are not subject o the revision which active use is likely to make necessary, and they are therefore of little or no value as standards of comparison. Northern Pine Mfrs. Asso. v. C. & N. W. Ry. Co., 33 I. C. C. 360, 366.

(o) It does not follow from the fact that because the rate on a commodity is reduced, due to competitive conditions, that the carrier is compelled simultaneously to place similar commodities, not competitive, upon the same basis, or that a violation of the Act necessarily results from the failure so to do. Carnation Milk Products Co. v. Director General, 55 I. C. C. 665, 668.

(p) Comparisons were submitted of the rate attacked, with other rates on oil, including rates fixed or approved by the Commission in various territories and with rates on other commodities of heavy weight and movement. The value of these comparisons is impaired by want of information in regard to traffic and transportation conditions. Barnett Oil & Gas Co. v. Director General, 59 I. C. C. 689, 691.

(q) In comparing average rates on all commodities with a particular commodity the relative volume of low-grade traffic must always be allowed for. Watson Co. v. Director General, as Agent, 61 I. C. C. 719, 723.

(r) In initiation of rates, and until they are proven unduly prejudicial in an appropriate proceeding, there is nothing in the regulating statute to prevent a carrier from carrying nut coal between points on its own line on slack coal basis, or to require it to make same screen regulations as obtained at mines served by different carriers. Slack Coal from Arkansas-Oklahoma Mines, 80 I. C. C. 194, 203, 204.

(s) Transportation characteristics of canned milk and other canned goods are similar and ordinary rates should be the same. Armour & Co. v. Director General, as Agent, 80 I. C. C. 210, 211.

(t) It does not follow that because the same rate is carried on crude oil as on refined oil that the rate on crude oil is thereby unreasonable, for it may be that the rate as applied on refined oil is low. Atlantic Refining Co. v. A. B. & A. Ry., 89 I. C. C. 279, 280.

ALL OTHER CITATIONS

Yawman & Erbe Manufacturing Co. v. A. T. & S. F. Ry. Co., 15 I. C. C. 260; Commercial Club of Omaha v. B. & O. R. R. Co., 19 I. C. C. 397, 402; Partridge Lumber Co. v. G. N. Ry. Co., 17 I. C. C. 276, 278; Merle Co. v. N. Y. C. & H. R. R. R. Co., 17 I. C. C. 475, 477; Oregon & Washington Lumber Mfrs. Assn. v. S. P. Co., 21 I. C. C. 389, 395; In Re Rates on Hard- ternational Agricultural Corporation v. L. & N. R. R. Co., 22 I. C. C. 488, 493; In Re Transportation of Wool, Hides and Pelts, 23 I. C. C. 151, 160, 161; In Re Transportation of Wool, Hides and Pelts, 23 I. C. C. 151, 159, 168; Chamber of Commerce of Milwaukee v. C. R. I. & P. Ry. Co., 15 I. C. C. 460; Ford Co. v. M. C. R. R. Co., 19 I. C. C. 507, 511. Meeker & Co. v. Lehigh Valley R. R. Co., 21 I. C. C. 129, 150; Fort Dodge Commercial Club v. I. C. R. R. Co., 16 I. C. C. 572, 582; Pacific Stationery & Printing Co. v. O. W. R. R. & N. Co., wood Lumber, 21 I. C. C. 397, 399; In- 24 I. C. C. 299, 300; Davis Sewing Machine Co. v. P. C. C. & St. L. Ry. Co., 22 I. C. C. 291; Bahrenburg Bro. & Co. v. A. C. L. R. R. Co., 24 I. C. C. 560, 564; Sligo Iron Store Co. v. A. T. & S. F. Ry. Co., 17 I. C. C. 139, 142; Casey-Hedges Mfg. Co. v. C. of G. Ry. Co., 26 I. C. C. 63, 64; Chaffin Coal Co. v. C. M. & St. P. Ry. Co., 24 I. C. C. 321; Asbury Smith Logsdon v. I. C. R. R. Co., 24 I. C. C. 624; Metropolitan Paving Brick Co. v. A. A. R. R. Co., 17 I. C. C. 197, 205, 207; James & Abbot Co. v. B. & M. R. R., 17 I. C. C. 273, 274; East St. Louis Cotton Oil Co. v. St. L. & S. F. R. R. Co., 24 I. C. C. 588, 591; Anthony v. P. & R. Ry. Co., 14 I. C. C. 581; In Re Rates for Transportation of Flaxseed, 25 I. C. C. 337, 341; Oregon & Washington Lumber v. U. P. R. R. Co., 14 I. C. C. 1, 13; Keogh v. C. B. & Q. R. R., 24 I. C. C. 606; Florida Cotton Oil Co. v. C. of Ga. Ry. Co., 19 I. C. C. 336, 339; In Re Hop Rates, 25 I. C. C. 16, 18; Switzer Lumber Co. v. A. & M. R. R. Co., 22 I. C. C. 471, 475; Continental Lumber & Tie Co. v. T. & P. Ry. Co., 18 I. C. C. 129, 131; Hardie Mfg. Co. v. O. R. & N. Co., 24 I. C. C. 545, 546; Commercial Club of Omaha v. B. & O. R. R. Co., 19 I. C. C. 397, 402; Virginia-Carolina Chemical Co. v. St. L. S. W. Ry. Co., 16 I. C. C. 49, 52; Montgomery Freight Bureau v. W. Ry. of Ala., 14 I. C. C. 150, 152; Lumber Rates from Memphis and Other Points to New Orleans, 27 I. C. C. 471, 480; Memphis Freight Bureau v. I. C. R. R. Co., 27 I. C. C. 507, 518; California Pole & Piling Co. v. S. P. Co., 27 I. C. C. 669, 672; Eastern Wheel Mfrs. Assn. v. A. & V. Ry. Co., 27 I. C. C. 370, 380, 381; Sheip Mfg. Co. v. A. C. L. R. R. Co., 26 I. C. C. 178; Lumber from Louisiana to North Atlantic Points, 26 I. C. C. 186, 191; In Re Advances in Rates for the Transportation of Flaxseed in Carloads, 23 I.

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§13. Comparisons of Rates.

(1) In General.

See Infra §47; Advanced Rates §5 (3), §8½; Blanket Rates §18; Branch Lines §2; Classification IV, §17, §20; Comparative Rates; Discrimination §4; Rail-and-Water Rates; Reasonableness of Rates §7½, §28; Relative Rates; Through Routes and Joint Rates §13½, §15.

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(a) When the reasonableness of rates is in question the charges made on long through lines cannot form a just basis for comparison with local rates for relatively short distances. Crews v. R. & D. R. R. Co., 1 I. C. R. 703.

(b) Comparisons of rates charged by railroad companies under circumstances and conditions substantially dissimilar really prove nothing, and cannot be adopted as standards in arriving at the reasonableness and justness of rates Business Men's Asso. of Minnesota v. C. & N. W. Ry., 2 I. C. C. 48, 52.

(c) Low rates to one place may not be just and fair if still lower rates are

given to another. Re Chicago St. Paul & Kansas City R. R. Co., 2 I. C. C. 137.

(d) On the question of what are just and fair rates to any particular locality, it is necessary to see what rates are given to other localities. They can not be considered by themselves. Re Chicago St. Paul & Kansas City R. R. Co., 2 I. C. C. 137, 149.

(e) The Commission desires to say plainly that when making a decision upon a question purely of fact in respect to traffic in one section of the country whereby it endeavors to do justice it does not understand that it is necessarily laying down a principle which must be applied in other sections of the country where the peculiarities of the traffic may be so altogether different as to require a different ruling in order to accomplish the like just result. Re Relative Tank and Barrel Rates on Oil, 2 I. C. C. 245, 247.

(f) Where the rate of freight charges over one line on similar freight carried from neighboring territory to the same market is considerably greater than over other lines for distances as long or longer, such greater rate is held to be excessive and should be reduced. James v. East Tennessee V. & G. R. Co., (Com.) 2 I. C. R. 609.

(g) A comparison of rates based upon the doctrine that the rates per ton per mile for each of the different services so performed should be the same is not applicable to cases of competition. New Orleans Cotton Exch. v. Illinois C. R. Co., (Com.) 2 I. C. R. 777.

(h) Comparison with rates in other localities where dissimilar conditions and modifying circumstances are found, is not sufficient to establish the unreasonableness of the charges attacked. Where no discrimination is alleged as between points of production tributary to the same market, or on account of disproportionate rates on different kinds of traffic similar in character and volume, it must affirmatively appear that these charges attacked are unreasonable and ought to be reduced. Lincoln Creamery v. U. P. R. Co., 3 I. C. C. 794, 796.

(i) On complaint of a relatively unreasonable rate on lumber from Eau Claire to various points on the Missouri river as compared with rates to the same points from La Crosse, Winona, and various other lumber shipping points: HELD, That the case must mainly be determined by comparing the rate in question with the rates from neighboring towns, similar in size, situation and volume of competing traffic, and at approximately the same distance from common markets; that the rate complained of subjects Eau Claire to undue prejudice and disadvantage, and is unlawful; and that such rate should not exceed the rate fom La Crosse and Winona by more than two cents per hundred pounds when, as at the time the complaint was filed, the rate from those points is not over 11 cents per hundred, nor by more than two and one half cents per hundred pounds above the present rate of 16 cents per hundred from La Crosse and Winona. Eau Claire Board of Trade v. Chicago, M. & St. P. R. Co., 4 I. C. R. 65.

(j) Rates maintained and which may be reasonable under the conditions existing in one section or part of the country afford no safe criterion by which to measure reasonable charges in other localities where the expense of operating a road and other conditions affecting transportation are widely different. C. O. Morrell v. Union Pacific Ry. Co., et al, 6 I. C. C. 121.

(k) A showing of substantial similarity in transportation conditions is necessary to make the rates of carriers in sections of the country other than that served by the defendant road proper standards of comparison in a case of alleged unjust and unreasonable charges. Evans v. U. P. R. Co., 6 I. C. C. 520, 543.

(l) It is competent to compare rates and distances on different roads in dealing with an alleged unreasonable rate, and these are to be considered in connection with the many other factors that enter into the adjustment of rates, but it does not necessarily follow that a rate is unreasonable because on the same or other road a particular kind of traffic is hauled a greater distance from a different point of origin at the same or a less rate. Cannon v. M. & O. R. R., 11 I. C. C. 537, 542.

(la) It may often happen that a single rate out of an entire system of rates may, when examined by itself, appear to be unreasonable, even though, when considered as a part of the whole system, it is justifiable. To reduce this single rate would perhaps disarrange the entire system of rates in effect, and in a case of this sort the Commission does not feel

that it should interfere until strong reasons for such interference are presented. Hastings Malting Co. v. Chicago M. & St. P. R. Co. 11 I. C. C. 675.

(m) Rates elsewhere not controlling Dallas Freight Bureau v. M. K. & T. Ry. Co., 12 I. C. C. 427.

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(n) The unreasonableness of a rate cannot be established by comparing it with the rate to a point situated at the farther edge of territory taking a blanket rate, when the purpose of the comparison is to show the rates charged with respect to distances involved. Bash Fertilizer Co. v. Wabash R. R. Co., 18 I. C. C. 522, 523.

(o) Traffic demanding special service in point of train speed cannot justly be compared with traffic which is not given such consideration. Waco Freight Bureau v. H. & T. C. R. R. Co., 19 I. C. C. 22, 26.

(p) Where comparative statements of mileage and per ton mile earnings are submitted by complainants as evidence of alleged discrimination in favor of competitive points the exhibits are a more potent argument if the defendants were the only ones serving the competitive points. Anadarko Cotton Oil Co. v. A. T. & S. F. R. R. Co., 20 I. C. C. 43, 45.

(q) When it appears that a carrier gives to one point substantially lower rates for substantially the same service than it accords to a competing point, those comparisons are forceful, and in the absence of modifying conditions might well be considered conclusive. Memphis Freight Bureau v. St. L. I. M. Ry. Co., 22 I. C. C. 548, 555.

(r) And comparisons of different kinds of rates are not proper in determining controversies under section 4 of the Act. Baltimore Chamber of Commerce v. B. & O. R. R. Co., 22 I. C. C. 596, 601.

(s) A competitive rate cannot be said to be voluntary, and ought not to be used as a standard of comparison. Southwestern Shippers' Traffic Assn. v. A. T. & S. F. Ry. Co., 24 I. C. C. 570, 587.

(t) The low coal figures carefully worked out by the Commission in the Lake Coal Case, 22 I. C. C. 604, resulted from conditions that tend to economy in operation, but they were not intended as a general basis for conclusions in all cases involving coal rates, and can be relied on as a rational guide in other cases only when substantially similar conditions exist. Taylor v. N. & W. Ry., 25 I. C. C. 613, 616.

(u) Where rates are taken from lawfully filed tariffs and references to such tariffs are given, such rates may properly be referred to at the hearing and conclusions based upon them, despite the fact that they have not been served upon the carriers. People's Fuel & Supply Co. v. G. T. W. Ry. Co., 27 I. C. C. 24, 29.

(v) The foregoing principles may be summed up as follows: Comparisons of rates, revenue per ton-mile, per car mile, per train mile, etc., are frequently illuminatory and helpful. The fact that rates upon certain commodities yield revenue per ton-mile higher than the average upon all traffic, cannot be accepted as conclusive of the unreasonableness of such rates. If it were so accepted, the result would be the continual reduction of rates that yield higher than the average revenue, until all rates were on a common level. Consideration must be given to the value of the service. If some commodities, and the industries that use them, can well stand rates that yield a liberal profit to the carrier, it can afford to transport at low rates other commodities that could move under low rates, and so the commercial welfare of the country is promoted, as it must be, by the widest possible general diffusion and exchange of the products of the mine, the forest, the farm, the mill, the furnace and the factory. Coke Producers' Assn. of Connelsville v. B. & O. R. R. Co., 27 I. C. C. 125, 132.

(w) On the general principle that the shorter route governs the rate, in making comparisons with other rates, the per ton-mile revenue based on such shorter route should be used. Pittsburgh Steel Co. v. L. S. & M. S. Ry. Co., 27 I. C. C. 173, 175.

(x) Rates may be compared, though no evidence of the various circumstances and conditions of transportation are submitted. Rates have been frequently justified or condemned upon records containing little else than mere rate and distance comparisons; under the condition, however, of a known general similarity of conditions, as, for example, where the movements compared are of the same commodity in the same territory. Wickwire Steel Co. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 415, 424.

(y) Comparisons of expense and per-

formance have long been made by carriers in cases before the Commission, but have nearly always rested on transient data. Those of the future should be based on permanent analyses and compilations. In re Separation of Operating Expenses, 30 I. C. C. 676, 680.

(z) A comparison of rates from one city to a second with those from a third city to the latter does not necessarily denote undue prejudice if the withdrawal of the carrier's concurrence in the rates from such third city would not affect the movement, rates, or practices respecting elevation, which are under attack. Elevation Allowances at St. Louis and E. St. Louis, 30 I. C. C. 696, 699.

(aa) Canadian rates can not be used as a fair measure of the reasonableness of rates in Montana. R. R. Comrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641, 650.

(bb) Transportation conditions of less value than a comparison of rates in same general territory. Underwood Veneer Co. v. A. A. R. R. Co., 32 I. C. C. 265, 269.

(cc) Rates not fixed by the Commission cannot be properly used as a basis of comparison with rates fixed by the Commission after long and exhaustive investigations. Class and Commodity Rates to Salt Lake City, Utah, 32 I. C. C. 551, 557.

(dd) Where the only discrimination alleged is based upon a comparison of the rates complained of with rates to competitive points from the same points of origin, the Commission cannot consider whether or not these rates are discriminatory as compared with rates from other points of origin. Lindsay & Co. v. N. P. Ry., 33 I. C. C. 150, 153.

(ee) Bare rate comparisons not supplemented by evidence as to the volume of the movements or other comparable conditions, are unconvincing. Lumber Rates from Points in Arkansas, 34 I. C. C., 102, 104.

(ff) The relation of the movement of a commodity to a certain point to the movement to intermediate points is obvious and invites rather than repels such comparisons as are afforded by the differences in average hauls. Lumber Rates from Points in Arkansas, 34 I. C. C. 102, 105.

(gg) When rate comparisons are offered in evidence in substantiation of a claim of unreasonableness, they should be accompanied by such testimony as is possible showing the transportation circumstances and conditions incident thereto. Lehigh Portland Cement Co. v. B. & O. S. W. R. R. Co., 35 I. C. C. 14, 20.

(hh) When rate comparisons, drawn from a different territory, are offered in evidence, it becomes important to know traffic and transportation conditions prevailing in that territory if they are to be of value in determining the reasonableness of rates in issue. Eastern Live Stock Case, 36 I. C. C. 675, 682.

(ii) The relatively high density of the particular traffic in the territory from which the comparisons are drawn would fairly indicate the propriety of rates on that traffic in that territory which are relatively low as compared with rates applicable to other commodities transported in the same territory. Likewise a relatively low density of the particular traffic in the territory here involved would indicate the propriety of relatively high rates on that traffic. Eastern Live Stock Case, 36 I. C. C. 675, 683.

(jj) Where items of terminal expenses show wide variations in maintenance costs applicable to the live stock traffic they should be explained and also comparison should be made with costs incurred in special facilities furnished for transportation of other commodities. Eastern Live Stock Case, 36 I. C. C. 675, 691.

(kk) Where there is no showing whatever either as to the movement of traffic under certain rates, or as to similarity of traffic or transportation conditions, such rates are of no value for purposes of comparison. 1915 Western Rate Advance Case, 37 I. C. C. 114, 146.

(ll) And a rate comparison is subject to criticism where the relative transportation conditions other than distance are not shown. Tennessee Copper Co. v. S. Ry. Co., 41 I. C. C. 336, 346.

(mm) A depressed rate at a recognized gateway will not serve as a fair index of rates justly applicable at Des Moines. Greater Des Moines Committee v. C., St. P., M. & O. Ry. Co., 42 I. C. C. 65, 71.

(nn) Comparisons between the rates to points 12 miles beyond river crossings and the rates to a certain point situated beyond a river are inapposite where the latter point is but 2 miles beyond the riv-

er and its companion city is 10 miles on this side the river, and where the latter is treated as a river crossing. They should be compared with opposite cities at crossings. Henderson Com. Club. v. I. C. C. R. R. Co., 42 I. C. C. 196, 198.

(oo) A showing that the commodity rate on a particular article is a less proportion of the corresponding class rate than that on certain other articles is no more justification for an increase in the commodity rate on that particular article than a showing that the commodity rate on another article is a greater proportion of the corresponding class rate is a justification for reducing the commodity rate on that article. When a commodity rate is established it is presumed to be the result of special circumstances and conditions surrounding the movement of the particular article between particular points—circumstances and conditions that do not inhere in or apply to the movement of the same articles or other articles between all points. The contention that a commodity rate should bear a fixed, different, or any relation whatever to the corresponding class rate overlooks the fact that the article on which the commodity rate applies has been removed from the classification and from its association with or relation to other articles, so far as the movement between certain points is concerned. Western Trunk Line Rate Increases, 43 I. C. C. 481, 489.

(pp) It is not fair to measure the rates between two points by the rates between points in a remote portion of the country. From the multitude of rates in this country, such tables may easily be prepared and they are not ordinarily of controlling influence. Board of Com., Lexington, Ky. v. N. O. & T. P. Ry., 44 I. C. C. 407, 414.

(qq) Published rates between specific points, fully representative of the situations in the respective territories, rather than the scales upon which the published rates are based, will generally afford a fair basis for comparison. C. F. A. Class Scale Case, 45 I. C. C. 254, 257.

(rr) But testimony as to comparative transportation conditions must of necescity be somewhat general, and to require a witness to have an intimate familiarity with the physical conditions existing on each of two roads before he can be permitted to testify that transportation conditions on the two roads are similar would ordinarily exclude as witnesses all persons who had not been actively employed in the operation of both roads. Old Vincennes Distillery Co. v. B. & O. S. W. R. R., 45 I. C. C. 447, 450.

(ss) Rates between two localities are not comparable with rates between two different localities merely because the traffic density of one destination locality is substantially the same as that of the other. The relative traffic density of the two localities of origin and of the intermediate territories must also be considered. Commercial Club of Mitchell, So. Dak. v. A. & W. Ry., 46 I. C. C. 1, 9.

(tt) State boundary lines sometimes may fairly define regions of different traffic density when the rates to all points in such regions are in issue, but rates to particular points in one region can not fairly be compared with rates to competing points in the same region or in other regions on the basis of the tonnage to and from such regions as a whole. The actual tonnage handled to and from the particular points is a fairer criterion. Commercial Club of Mitchell, So. Dak. v. A. & W. Ry., 46 I. C. C. 1, 10.

(uu) When there is no showing of the volume of movement of other commodities and as to whether they ever move in trainloads, comparison of live stock rates with the rates on such commodities are of little value. Dimmitt-Caudle-Smith L. S. C. Co. v. C. B. & Q. R. R., 47 I. C. C. 287, 304.

(vv) Exhibits showing instances of lower ton-mile and car-mile earnings for similar or shorter distances are not controlling, especially where rates are made on the group principle. West Virginia Rail Co. v. P. C. C. & St. L. Ry., 48 I. C. C. 675, 677.

(ww) Where the transportation conditions under rates cited are very dissimilar from those affecting the rate under attack, the comparisons are of no probative value: Moreno-Burkham Construction Co. v. I. C. R. R., 51 I. C. C. 138, 139.

(xx) The mere citation of rates for comparable distances without a showing of the condition under which such rates were established, or the volume of movement thereunder or that the transportation circumstances and conditions are substantially similar, are not very helpful. State of New York Commis-

sion of Highway v. Director General, 55 I. C. C. 619, 623.

(yy) But mere citation of rates for comparable distances without a showing of the conditions under which such rates were established, volume of movement thereunder or similarity of transportation circumstances and conditions, are not very helpful. New York Commission of Highways v. Director General, 55 I. C. C. 619, 623.

(zz) When the rate compared is clearly shown to be less than that which the carrier could reasonably be required to publish, the Commission can not use that subnormal rate as a measure of the reasonableness of the rates on commodities, although they possess similar transportation characteristics. Carnation Milk Products Co. v. Director General, 55 I. C. C. 665, 668.

(3a) Jobbers' rates made up of combinations of inbound and outbound rates are of little probative value where only the inbound or the outbound rates are under attack. Chamber of Commerce of Johnson City, Tenn. v. S. Ry. Co., 64 I. C. C. 709, 723.

(3b) Bunker coal as a practical matter is so closely associated with cargo coal and, by reason of this association, is so impressed with the character of the latter that distinction in rates between the two is impracticable. Rates on Bunker Coal, 73 I. C. C. 62, 76.

(3c) It is elementary both that refined rates are higher than crude rates and that water transportation is cheaper than rail transportation. Crude Oil Rates from Louisiana Points, 74 I. C. C. 623, 629.

(3d) Vast differences in transportation conditions can not be disregarded in comparing rates from two competitive fields. Western Coal Rates, 80 I. C. C. 383, 419.

(3da) Equation of 3 miles of water haul to 1 mile by rail adopted as measure of rail-and-water rates. Reduced Rates from New York Piers, 81 I. C. C. 312, 323, 324.

(3db) A mere showing that main line and branch line points are on a rate parity as to certain commodities does not justify the Commission in finding that a different adjustment on grain is unreasonable, in the absence of a showing that transportation conditions are the same. Phoenix Chamber of Commerce v. A. E. R. R. 88 I. C. C. 250, 253.

(3dc) Rate comparisons consisted solely of lower rates from other points with the differences in distances and ton mile earnings. Such comparisons are of little probative force in the absence of evidence showing similarity of transportation conditions. Universal Paper Bag Co. v. Me. Central R. R., 88 I. C. C. 593, 595.

(3dd) The mere stating of rates for the same or greater distances lower than the rate attacked without a showing of conditions under which the rates were established, the volume of movement thereunder, or that the transportation circumstances and conditions are substantially similar, are not very helpful. Atlantic Refining Co. v. A. B. & A. Ry., 89 I. C. C. 279, 280.

(3e) While some elements of value are fixed, the market price of property and work is affected by so many and such varying factors as to make it impossible to lay down a rule by which to determine what any article or service is worth. But one of the most common measures by which to value the property or service of A is to compare it with the amount charged for the same thing by B, C, and D. But this method, if made the sole basis for ascertaining values may often lead to improper results. For B, C, and D may charge too much, or they may have been forced to charge too little. The same is true of determining by comparison, the reasonableness of freight charges. Until some standard is adopted they may prove nothing—even where the two hauls are over the same mileage. For the rate attacked may tend to show that the others are too low—while they in turn might be relied on to prove that the first is too high. Both may be unreasonably high, or too low, because compelled by conditions over which the carrier had no control. Water competition, rail competition, and competition of markets, enter so largely into the establishment of rates that mere distance is not necessarily a determining factor; indeed, the statute itself recognizes that there may be circumstances under which it is lawful to charge less for a long haul than for a short haul over the same road. But while all this be true, it is, nevertheless, a fact that a comparison of rates between two points on the same road, or with the charges on other roads, may furnish evidence of probative value. L. & N. R. R. v. U. S. 35 Sup. Ct. 696, 698; 238 U. S. 1, 59 L. ed.

(3f) Giving the widest possible effect to the fact that mere comparison between rates does not necessarily tend to establish the reasonableness of either, it is still true that, when one of many rates is found to be higher than all others, there may arise a presumption that the single rate is high. And when to that is added the fact that some of the comparative and lower rates had been prescribed by the Commission, there is at least a prima facie standard, which, after allowing for dissimilarity in conditions, might be used along with all the other evidence in order to test the reasonableness of an attacked rate. No one of those facts was conclusive, for the character of the country through which the two roads had been built might differ. One might run through a level, thickly populated territory,—the other might have steep grades,, long tunnels and a roadway expensive to maintain. The capital invested, the traffic hauled, the cost of operation and the earnings might differ but nevertheless what was shown to be a reasonable rate on one, might, after allowing for the dissimilarity in conditions, earnings, and cost, be a factor in determining the reasonableness of the rate on the other. L. & N. R. Co. v. U. S. 35 Sup. Ct. 696, 700; 238 U. S. 1, 59 L. ed.

ALL OTHER CITATIONS

Bovaird Supply Co. v. A. T. & S. F. Ry. Co., 13 I. C. C. 633, 634, 637; Crutchfield & Woolfolk v. L. & N. R. R. Co., 14 I. C. C. 558, 559; Kansas City Cotton Mills Co. v. C. R. I. & P. Ry. Co., 14 I. C. C. 468, 473; Chamber of Commerce of Milwaukee v. C. R. I. & P. Ry. Co., 15 I. C. C. 460, 466; Darling & Co. v. B. & O. R. R. Co., 15 I. C. C. 79, 83; Sunnyside Coal Mining Co. v. D. & R. G. R. R. Co., 17 I. C. C. 540; Acme Cement Plaster Co. v. L. S. & M. S. Ry. Co., 17 I. C. C. 30, 34; Spreckels Brothers Commercial Co. v. Monongahela R. R. Co., 18 I. C. C. 190, 191; Acme Cement Plaster Co. v. C. G. W. Ry. Co., 18 I. C. C. 19, 20; Webster Grocery Co. v. C. & N. W. Ry. Co., 19 I. C. C. 493, 495; Commercial Club of Omaha v. B. & O. R. R. Co., 19 I. C. C. 397, 402; Florida Cotton Oil Co. v. C. of G. Ry. Co., 19 I. C. C. 336, 339; Corporation Commission of North Carolina v. N. & W. Ry. Co., 19 I. C. C. 303, 308; Commercial Club of Salt Lake City v. A. T. & S. F. Ry. Co., 19 I. C. C. 218, 223; Victor Mfg. Co. v. S. Ry. Co., 21 I. C. C. 222, 228; Baltimore Chamber of Commerce v. B. & O. R. R. Co., 22 I. C. C. 596, 602; In Re Advances in Rates for the Transportation of Fluid Milk, 23 I. C. C. 500, 502, 503; Thropp v. P. R. R. Co., 23 I. C. C. 497, 499; Chamber of Commerce of Newport News v. S. Ry. Co., 23 I. C. C. 345, 352; Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 23 I. C. C. 195, 201; Dewey Bros. Co. v. L. & N. R. R. Co., Unrep. Op. A-89; In re Advances on Barley from California Points to Minneapolis, 24 I. C. C. 664, 666; Johnson & Hunt v. St. L. I. M. & S. Ry. Co., 24 I. C. C. 648, 649; Southwestern Shippers Traffic Assn. v. A. T. & S. F. Ry. Co., 24 I. C. C. 570, 576, 577; Bancroft-Whitney Co. v. C. N. O. & T. P. Ry. Co., 24 I. C. C. 557, 558; Rates on Hay from the Northwest, 25 I. C. C. 680, 681; North Fork Cannel Coal Co. v. A. A. R. R. Co., 25 I. C. C. 241; Evens & Howard Fire Brick Co. v. St. L. I. M. & S. Ry. Co., 25 I. C. C. 141, 148, 150; Goldfield Consolidated Milling & Transportation Co. v. A. T. & S. F. R. R. Co., 26 I. C. C. 567, 568; Board of Improvement, Waterworks Dist. No. 1, Ft. Smith, Ark., v. St. L. & S. F. R. R. Co., 26 I. C. C. 541, 542; Waukesha Lime & Stone Co. v. C. M. & St. P. Ry. Co., 26 I. C. C. 515, 517; R. R. Com. of Montana v. N. P. Ry. Co., 26 I. C. C. 407, 409; Hormel & Co. v. C. M. & St. P. Ry. Co., 26 I. C. C. 112, 114; American National Live Stock Assn. v. S. P. Co., 26 I. C. C. 37, 39; State of Kansas v. A. T. & S. F. Ry. Co., 27 I. C. C. 673, 689; New England Investigation, 27 I. C. C. 560, 574, 577; Board of R. R. Com'rs. of Montana v. D. & R. G. R. R. Co., 27 I. C. C. 522, 525; Port Arthur Board of Trade v. A. & S. Ry. Co., 27 I. C. C. 457, 463; Terminal Elevator Co. v. C. M. & St. P. Ry. Co., 21 I. C. C. 457, 463; Omaha-Oklahoma Fresh Meat Rates, 28 I. C. C. 454, 457; Rates on Grain and Grain Products to Texarkana, Ark., 29 I. C. C. 35; Straw Rates from Stations in Missouri to Alton, Ill., 29 I. C. C. 562, 563; Interior Iowa Cities Case, 28 I. C. C. 64, 69; Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co., 28 I. C. C. 193, 196; Grain Rates in C. F. A. Territory, 28 I. C. C. 549, 551; Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 577; Omaha Grain Exchange v. C. R. I. & P. Ry. Co., 28 I. C. C. 680, 686; Major Co. v. D. L. & W. R. R. Co., Unrep. Op. A-165; Lombard Brick & Tile Co. v. C. & N. W. Ry. Co., 30 I. C. C. 84, 87;

Fourth Section Violations in the Southeast, 30 I. C. C. 153, 186; Kindel v. C. & S. Ry. Co., (Colo. 1914), 139, Pac. 1105, 1108; Bowling Green Protec. Asso. v. E. & B. G. P. Co., 31 I. C. C. 301, 305; The Five Per Cent Case, 31 I. C. C. 351, 353, 401; Seattle Shingle Co. v. C. M. & St. P. Ry. Co., 30 I. C. C. 364, 370; Lake Superior Paper Co., Ltd., v. D. S. S. & A. Ry. Co., 30 I. C. C. 403, 412; American Coal & Supply Co. v. C. & N. W. Ry. Co., 30 I. C. C. 492, 493; Norton Co. v. N. P. Ry. Co., Unrep. Op. A-637; Aetna Powder Co. v. Wabash R. R. Co., Unrep. Op. A-681; Railroad Commission of California v. A. G. S. R. R. Co., 32 I. C. C. 17, 37; Worn v. B. & L. R. R. Co., 32 I. C. C. 58, 59; National Baggage Com. v. A. T. & S. F. Ry. Co., 32 I. C. C. 152, 154; Underwood Veneer Co. v. A. A. R. R. Co., 32 I. C. C. 265, 268; Salt Lake Mattress & Mfg. Co. v. A. T. & S. F. Ry. Co., 32 I. C. C. 417, 426; Northbound Rates on Hardwood, 32 I. C. C. 521, 529; Reshipping Rates on Grain from Omaha, 32 I. C. C. 590, 593; Beatrice Commercial Club v. C. B. & Q. R. R. Co., 31 I. C. C. 173, 181; Douglas & Co. v. I. C. R. R. Co., 31 I. C. C. 587, 600; Railroad Comrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641, 647; Traffic Bureau of Knoxville v. C. N. O. & T. P. Ry. Co., Unrep. Op. A-695; Massie & Pierce Lumber Co. v. N. & W. Ry. Co., 33 I. C. C. 14, 22; Pub. Utilities Comm. of Idaho v. O. S. L. R. R., 33 I. C. C. 103, 104; Northern Pine Mfrs. Asso. v. C. & N. W. Ry., 33 I. C. C. 360, 364; Reynolds Corp. v. N. & W. Ry. Co., Unrep. Op. A-803; Newport Mining Co. v. C. & N. W. Ry., 33 I. C. C. 645, 649; Lumber v. G. N. Ry. Co., 33 I. C. C. 541, 544; Lighterage and Storage Regulations at New York, 35 I. C. C. 47, 62, 63; Cape Girardeau Portland Cement Co. v. St. L. & S. F. R. R. Co., 35 I. C. C. 109, 113; Imperial Valley Cotton Co. v. S. P. Co., 35 I. C. C. 215, 217; 1915 Western Rate Advance Case, 35 I. C. C. 497, 573, 600, 624; Kentucky Distilleries & Warehouse Co. v. L. & N. R. R., 36 I. C. C. 298, 300; Mutual Oil Co. v. C. B. & Q. R. R., 38 I. C. C. 221, 222; Lindsay-Walker Co. v. C. B. & Q. R. R. Co., Unrep. Op. 2127; Crook, Son & Co. v. N. Y. C. & St. L. R. R. Co., Unrep. Op. 2217; Peaches from Missouri Points, 37 I. C. C. 89, 91; Holmes & Hallowell Co. v. G. N. Ry. Co., 37 I. C. C. 627, 634; Traffic Bureau of Knoxville, Tenn. v. C. N. O. & T. P. Ry. Co., 37 I. C. C. 687, 691, 692, 693; Class and Commodity Rates between St. Louis, East St. Louis, and Ohio River Points, 38 I. C. C. 411, 430; National Dock & Storage Warehouse Co. v. B. & M. R. R., 38 I. C. C. 643, 655; Capital City Oil Co. v. Y. & M. V. R. R. Co., 39 I. C. C. 141, 143; Major Stave Co., v. M. D. & G. R. R. Co., 39 I. C. C. 573, 575; Duffney Brick Co. v. B. & M. R. R., 39 I. C. C. 118, 121, 122; Memphis Freight Bureau v. St. L. I. M. & S. Ry. Co., 39 I. C. C. 224, 231; Pillsbury Flour Mills Co. v. G. N. Ry. Co., 39 I. C. C. 353, 358; Bituminous Coal to Mississippi Valley Territory, 39 I. C. C. 378; Major Stave Co. v. M. D. & G. R. R. Co., 39 I. C. C. 573, 575; Rice from Texas and Louisiana, 40 I. C. C. 285, 288; Nashville Switching, 40 I. C. C. 474, 482; New England Milk Case, 40 I. C. C. 699, 719; Railroad Commission of Louisiana v. A. H. T. Ry. Co., 41 I. C. C. 83, 94; Tennessee Copper Co. v. S. Ry. Co., 41 I. C. C. 336, 356; Kentucky and Tennessee Clay, 41 I. C. C. 498, 502; Eastern & Western Lumber Co. v. O. W. R. R. & N. Co., 41 I. C. C. 545, 548, 549; Greater Des Moines Committee v. C., St. P., M. & O. Ry. Co., 42 I. C. C. 65, 66,70; Hammond, Standish & Co. v. M. C. R. R. Co., 42 I. C. C. 102, 105; Lake Superior Paper Co. (Ltd.) v. M., St. P. & S. S. M. Ry. Co., 42 I. C. C. 109, 112; Export Grain from Colorado, 42 I. C. C. 114, 119, 120; Sulphuric Acid from New Orleans, La., 42 I. C. C. 200, 205; Northern Mercantile Co. v. A. E. R. R. Co., 42 I. C. C. 290, 293; Swift & Co. v. A. C. R. R. Co., 42 I. C. C. 294, 296; Fish from Virginia, 42 I. C. C. 415, 419; Southeastern Lumber, 42 I. C. C. 548, 557; Utah-Idaho Millers & Grain Dealers Asso. v. D. & R. R. Co., 42 I. C. C. 648, 651, 655; Brick from Michigan City, Ind., 42 I. C. C. 509, 512; Molasses from Texas and Louisiana, 43 I. C. C. 85, 88; Traffic Bureau of Nashville v. L. & N. R. R. Co., 43 I. C. C. 366, 368, 369, 371; Platts v. N. Y., N. H. & H. R. R. Co., 43 I. C. C. 504, 507; La Crosse Shippers' Asso. v. C. I. & L. Ry., 43 I. C. C. 520, 522; Scully Syrup Co. v. A. G. S. R. R., 43 I. C. C. 567, 570, 572; La Crosse Shippers' Ass'n. v. C. M. & St. P. Ry., 43 I. C. C. 605, 612; Cadillac Lumber Co. v. A. A. R. R., 43 I. C. C. 636, 640; Green v. A. & V. Ry. Co., 43 I. C. C. 662, 669, 674; Coal and Coke from New Mexico Points, 43 I. C. C. 681, 685; Rates on Dairy Products, 43 I. C. C. 700; Board of Com., Lexington, Ky. v. N. O.

& T. P. Ry., 44 I. C. C. 407, 415; Northern Potato Traffic Association v. C. & A. R. R., 44 I. C. C. 426, 429; R. R. Commissioners of Florida v. Southern Express Co., 44 I. C. C. 645, 650; Utah-Idaho Millers and Grain Dealers Assn. v. D. & R. G. R. R., 44 I. C. C. 714, 723; The Northwest Salt Cases, 45 I. C. C. 12, 19; Williston Mill Co. v. G. N. Ry., 45 I. C. C. 137, 138; The Alaska Investigation, 44 I. C. C. 680, 691; Utah-Idaho Millers and Grain Dealers Asso. v. D. & R. G. R. R., 44 I. C. C. 714, 722, 723; Hamilton v. Pa. R. R., 45 I. C. C. 191, 192; Milk and Cream Rates to Philadelphia, Pa., 45 I. C. C. 371, 388; Old Vincennes Dist. Co. v. B. & O. S. W. R. R., 45 I. C. C. 447, 450; Graves Bros. v. A. N. R. R., 45 I. C. C. 470, 472; Commercial Club of Mitchell, So. Dak., v. A. & W. Ry., 46 I. C. C. 1, 9, 10; Chamber of Commerce of Johnson City v. S. Ry., 46 I. C. C. 527, 531; Allentown Portland Cement Co. v. M. & M. T. Co., 46 I. C. C. 492, 494; Dimmitt-Caudle-Smith Live Stock Comm. Co. v. C. B. & Q. R. R., 47 I. C. C. 287, 303, 311, 312; Natl. Utilization Corp. v. B. & A. R. R., 47 I. C. C. 467, 469; Fidelity Cotton Oil Co. v. A. & V. Ry. Co., 47 I. C. C. 542, 545, 546; Arkansas Rice Shippers' Traffic Bur. v. A. A. R. R., 47 I. C. C. 566, 572; New York Harbor Case, 47 I. C. C. 643, 712; Western Cement Rates, 48 I. C. C. 201, 238; Southwestern Class Case, 48 I. C. C. 379, 394; The Southeastern Sugar Cases, 48 I. C. C. 739, 755; Meeds Lumber Co. v. A. G. S. R. R., 49 I. C. C. 87, 90; Dawson Produce Co. v. A. C. L. R. R., 49 I. C. C. 291, 295; Live Poultry & Dairy Shippers' Traffic Asso. v. A. T. & S. F. Ry., 49 I. C. C. 228, 236; Proposed Increases in New England, 49 I. C. C. 421, 452; Proposed Increases in New England, 49 I. C. C. 421, 449; Crown Williamette Paper Co. v. S. P. & S. Ry., 49 I. C. C. 635, 636; Indian Refining Co. v. B. & O. S. W. R. R., 50 I. C. C. 250; Moreno-Burkham Construction Co. v. I. C. R. R., 51 I. C. C. 138, 139; Dow Chemical Co. v. P. M. R. R., 51 I. C. C. 1, 2; Pac. Lumber Co. v. N. W. P. R. R., 51 I. C. C. 738, 754; Commercial Club of Greeley v. C. & S. Ry. Co., 53 I. C. C. 66, 76; Railroad Commissioners of North Dakota v. N. P., 53 I. C. C. 437, 441; Memphis Southwestern Investigation, 55 I. C. C. 515, 524, 537, 541, 542, 544, 553, 558, 559, 560, 571; Commercial Club of Carrollton v. Director General, 55 I. C. C. 697; Compton Coal Co. v. D. & R. G. Ry., 55 I. C. C. 718, 720; Southport Mill (Ltd.) v. Director General, 55 I. C. C. 154, 161; New York Commission of Highways v. Director General, 55 I. C. C. 619, 623; Carnation Milk Products Co v. Director General, 55 I. C. C. 665, 667, 668; Hormel & Co. v. C. G. W. R. R., 56 I. C. C. 419, 424; Wheeler Lumber, Bridge & Supply Co. v. Director General, 59 I. C. C. 6, 9; Michigan Paper Mills Traffic Asso. v. A. T. & S. F., 59 I. C. C. 649, 652; Acid from Hillsboro to Ohio River Points, 60 I. C. C. 583, 585; Hirth Krause Co. v. Director General, 61 I. C. C. 350, 353; Watson Co. v. Director General, as Agent, 61 I. C. C. 719, 723; Nebraska Seed Co. v. Director General, 64 I. C. C. 75, 77; Lassen Lumber & Box Co. v. Director General, as Agent, 73 I. C. C. 212; Auto Gas & Oil Co. v. Director General, as Agent, 73 I. C. C. 268, 269; Arizona Packing Co. v. Director General, as Agent, 73 I. C. C. 713; North Packing and Provision Co., 73 I. C. C. 749; Harding Cream Co. v. A. T. & S. F. Ry., 74 I. C. C. 651; Tidewater Paper Mills Co. v. B. T. R. R. Co., 80 I. C. C. 493; Afterthought Copper Co. v. Director General, 89 I. C. C. 346, 347.

§13. (1½) Commodity and Class Rates.

See Class Rates; Commodity Rates

CASES 1887-1908

(a) The fact which is made to appear in these cases, that rates on traffic of the numbered classes from Chicago and Cincinnati to Southern territory are made higher than they otherwise would be, for the purpose of securing to the lines from northeastern cities the transportation of that traffic from the territory set apart to them under the Southern Railway & Steamship Association Agreement, itself raises a prima facie presumption of the unreasonableness of those rates. Freight Bureau v. Cincinnati, N. O. & T. P. R. Co., 4 I. C. R. 592.

IMPORTANT CASES SINCE 1908

(b) Commodity rates are ordinarily lower than class rates, and class rates therefore afford a reasonable test for measuring the general level of commodity rates. The Five Per Cent Case, 31 I. C. C. 351, 401.

ALL OTHER CITATIONS

Macon Merc. Co. v. M. & O. R. R. Co., Unrep. Op. A-693; 1915 Western Rate Advance Case, 35 I. C. C. 497, 573, 614; Rock Spring Distilling Co. v. L. H. & St. L. Ry. Co., 36 I. C. C. 35, 40; Utah-Idaho Millers & Grain Dealers Assn. v.

R. R. Co., 42 I. C. C. 648, 651; Western Trunk Line Rate Increases, 43 I. C. C. 481, 489; Western Pine Mfrs. Asso. v. C. I. & W. R. R., 46 I. C. C. 650, 653; Western Trunk Line Potatoes, 50 I. C. C. 407, 411; Midland Refining Co. v. Director General, as Agent, 60 I. C. C. 125; United Iron Works Co. v. Director General, as Agent, 61 I. C. C. 33, 41, 42; American Manganese Steel Co. v. Director General, as Agent, 68 I. C. C. 149; Southern Carbon Co. v. M. P. R. R. Co., 73 I. C. C. 123, 124; Evans Dairy Co. v. Director General, as Agent, 73 I. C. C. 581; Bilrowe-Alloys Co. v. N. P. Ry. Co., 73 I. C. C. 625; Wilckes, Martin & Wilckes Co. v. Director General, as Agent, 74 I. C. C. 13; Jones & Laughlin Steel Co. v. P. C., C. & St. L. R. R. Co., 74 I. C. C. 687; Lexington Granite Co. v. Director General, as Agent, 74 I. C. C. 487.

§13 (2) Divisions and Joint Rates.

See Divisions §7; Through Routes and Joint Rates §14.

IMPORTANT CASES SINCE 1908

(a) Ordinarily, in considering the reasonableness of a through rate the divisions received by different lines are not considered, but where the question is upon the inherent reasonableness of the charge and where a considerable portion of the whole service is in a territory not affected by competitive conditions, the Commission may properly inquire what division each line receives and whether these divisions can properly be reduced. Florida Fruit & Vegetable Shippers' Protective Ass'n. v. A. C. L. R. R. Co., 14 I. C. C. 476, 487.

(b) And the mere fact that one road is willing to accept a given division is not sufficient reason for establishing a given rate. Bott Bros. Mfg. Co. v. C. B. & Q. R. R. Co., 19 I. C. C. 136, 137.

(c) But ordinarily it affords little basis upon which to determine the reasonableness of the joint rates. Stiritz v. N. O. M. & C. R. R. Co., 22 I. C. C. 578, 581.

(d) The division of a joint rate is a matter for agreement among the participating carriers, and is not subject to review by the Commission upon complaint by a shipper. It may be considered as evidence bearing upon the reasonableness of a rate, however. Reno Grocery Co. v. S. P. Co., 23 I. C. C. 400, 401.

ALL OTHER CITATIONS

New Albany Furniture Co. v. M. J. & K. C. R. R. Co., 13 I. C. C. 594, 599; Brunham, Hanna, Munger Co. v. C. R. I. & P. Ry. Co., 14 I. C. C. 299, 310; Board of Mayor & Aldermen v. V. & S. W. Ry. Co., 15 I. C. C. 453, 458; Bulte Milling Co. v. C. & A. R. R. Co., 15 I. C. C. 351, 362; Manahan v. N. P. Ry. Co., 17 I. C. C. 95, 97; Copper Queen Consolidated Mining Co. v. B. & O. R. R. Co., 18 I. C. C. 154, 157; Jennison Co. v. G. N. Ry. Co., 18 I. C. C. 113, 121, 124; Railroad Commission of Nevada v. S. P. Co., 19 I. C. C. 238, 252; In Re Advance of Rates on Live Stock, 21 I. C. C. 119, 122; Lindsay Bros. v. L. S. & M. S. Ry. Co., 22 I. C. C. 516, 517; West Virginia Rail Co. v. B. & O. R. R. Co., 26 I. C. C. 622, 625; Business Men's League of Albert Lea v. B. & O. R. R. Co., 24 I. C. C. 125, 128.

§13. (3) Divisions and Local Rates.

See Divisions §7; Local Rates; Through Routes and Joint Rates.

CASES 1887-1908

(a) Comparison of the local freight rate from a terminal to an intermediate point on a carrier's line, with the share which it receives of a joint through rate established with a connecting carrier for hauling freight received from the latter between such points is not a proper method of determining whether or not the local rate is within the provisions of section 3 of the Interstate Commerce Act which prohibit undue and unreasonable preference or advantages. Tozer v. United States of America, 4 I. C. R. 245.

IMPORTANT CASES SINCE 1908

(b) The division of a joint rate which a carrier accepts is not a fair measure of its local rate. Jennison Co. v. G. N. Ry. Co., 18 I. C. C. 113, 119.

(c) However local rates are of value in determining proper divisions of a joint rate over the same route. Laona & Northern R. R. Co. v. M. St. P. & S. Ste. M. Ry., 52 I. C. C. 7, 8.

(d) A line participating in a joint rate does not prove that it is entitled to a division equal to its local rate by showing that the service which it performs in connection with the joint haul is no less expensive than its local service. U. S. War Department v. A. & S. Ry., 77 I. C. C. 317, 356.

ALL OTHER CITATIONS

Southern Illinois Millers' Ass'n. v. L. & N. R. R. Co., 23 I. C. C. 672, 674; Acme Cement Plaster Co. v. L. S. & M.

S. Ry. Co., 17 I. C. C. 30, 34; Manahan v. N. P. Ry. Co., 17 I. C. C. 95, 97; Board of Trade of Winston-Salem v. N. & W. Ry. Co., 16 I. C. C. 12, 16; In Re Through Passenger Routes, 16 I. C. C. 300, 310; Moise Bros. Co. v. C. R. I. & P. Ry. Co., 16 I. C. C. 550, 554; Williston Mill Co. v. G. N. Ry., 45 I. C. C. 137, 138.

§13. (4) Import and Domestic Rates.

CASES 1887-1908

(a) A charge of $3.70 per hundred pounds upon domestic traffic from New Orleans to San Francisco, when only 80 cents per hundred between the two points is charged under substantial equality of conditions upon similar goods coming to the port of New Orleans from Liverpool, is not justified by the fact that there is competition with water routes in carrying between Liverpool and San Francisco, since the gross inequality shows that the carrier is either injuring itself by carrying without profit, or is receiving an unwarranted return from the domestic traffic for the service rendered. Interstate Commerce Commission v. Texas & P. R. Co. (C. C. App. 2d C.) 4 I. C. R. 408.

IMPORTANT CASES SINCE 1908

(b) Comparisons are of little value when the rate on one article is compared with articles of a much lower grade and the rates on which latter articles are generally import rates made under the stress of acute competition. In Re Transportation of Wool, Hides and Pelts, 23 I. C. C. 151, 161.

ALL OTHER CITATIONS

Furnace Run Saw Mill & Lumber Co. v. B. & M. R. R., 20 I. C. C. 586; Philadelphia Veneer & Lumber Co. v. C. R. R. of N. J., 25 I. C. C. 653, 654, 655.

§13. (5) Proportional and Local Rates.

See Divisions; Local Rates; Proportional Rates IV; Through Routes and Joint Rates; Supra §13 (3).

CASES 1887-1908

(a) In determining rate questions, a comparison of proportional and local rates based upon the doctrine that the rate per ton per mile for each of the different services so performed should be the same is not applicable. New Orleans Cotton Exchange v. Illinois Central R. Co., 2 I. C. R. 777.

IMPORTANT CASES SINCE 1908

(aa) The reasonableness of a through rate cannot be determined by a comparison with a local intrastate rate, plus an independent interstate rate. Marble Falls Insulator Pin Co. v. H. & T. C. R. R. Co., 15 I. C. C. 167.

(b) While local and proportional rates are not ordinarily comparable, comparisons of such rates may be considered in connection with other evidence in determining the reasonableness of a particular rate. Lindsay Bros. v. L. S. & M. S. Ry. Co., 22 I. C. C. 516, 517.

(c) In determining fourth section violations rates of the same character should be compared with one another, and proportional rates should not be compared with local rates. Rates on Grain and Grain Products to Texarkana, Ark., 29 I. C. C. 35, 36.

(d) And earnings derived in part from local traffic on which the ton-mile average is always high, hardly affords a fair comparison with reshipping rates. Reshipping Rates on Grain from Omaha, 32 I. C. C. 590, 593.

(e) Proportional rates do not form a proper basis for measuring the reasonableness of local rates. Monroe Chamber of Commerce v. Director General, 57 I. C. C. 227, 228.

ALL OTHER CITATIONS

In Re Advance of Rates on Live Stock, 21 I. C. C. 119, 122; Baltimore Chamber of Commerce v. B. & O. R. R. Co., 22 I. C. C. 596, 602; Southern Lumber & Mfg. Co. v. Tennessee Ry., 47 I. C. C. 87, 89; Royal Milling Co. v. G. N. Ry., 47 I. C. C. 263, 269, 270; Alabama Packing Co. v. A. G. S. R. R., 48 I. C. C. 596, 598; Monroe Chamber of Commerce v. Director General, 57 I. C. C. 227, 228; Traffic Bureau of Aberdeen v. Director General, 69 I. C. C. 427, 432.

§13. (6) State and Interstate Rates.

See Advanced Rates §5, (7¼); Discrimination §8 (6); Equalization of Rates §5; Routing and Misrouting §4½; State Rates and Regulation.

CASES 1887-1908

(a) Rates fixed by state statute or Commission, while properly entitled to respectful consideration, will not be accepted where shown to be unjust either to a carrier or to a shipper, as a basis for fixing an interstate rate. Hope Cotton

Oil Co. v. T. & P. Ry. Co., 12 I. C. C. 265.

(b) State rates fixed by a statute or Commission, entitled to respectful consideration, but not to be accepted as a basis for fixing an interstate rate, where shown unjust either to a carrier or a shipper. Hope Cotton Oil Co. v. T. & P. Ry. Co., 12 I. C. C. 265.

(c) While a rate fixed by a state statute or a state Commission is naturally and properly entitled to respectful consideration, it has no greater sanctity, as applied to interstate traffic, than a rate established by a railroad company; and this Commission would not hesitate upon proper evidence that a rate so established would be unjust either to a carrier or to a shipper, to refuse to accept it as a basis for fixing an interstate rate. Hope Cotton Oil Co. v. T. & P. Ry., 12 I. C. C. 266, 269.

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(d) Therefore it may be stated that state rates afford standards of comparison of greater or less value, according as they appear reasonable, especially so when asquiesced in by the carriers; but when a state rate is under protest and being contested, and appears unreasonably low, it is not valuable as a comparison. Willman & Co. v. St. L. I. M. & S. Ry. Co., 22 I. C. C. 405.

(e) The rates established by state laws or state authorities on intrastate transportation of persons and property are facts which the Commission will consider, and that it respects the authority establishing such rates, constitutes no valid reason relieving it from performing the federal constitution and laws. If any rate for transportation wholly within a state may be made the measure of the rates when transportation moves from one state through or into another, the interstate rate so resulting would not be regulation of interstate commerce by the authority prescribed by the constitution, but by the state. If the function of the Commission be to compute the sum of intrastate rates and prescribe the result as a measure of the interstate rates, actual and direct regulation of interstate commerce by the states would result. Corporation Com. Of Oklahoma v. A. T. & S. F. Ry., 31 I. C. C. 532, 540.

(f) Therefore intrastate rates are not controlling in gauging the reasonableness of interstate rates, but in connection with other facts and other rates, they are not without significance as a basis for comparison. Coulbourn v. N. Y. P. & N. R. R., 47 I. C. C. 54, 55.

(g) As the average haul interstate greatly exceeds the average haul intrastate, the assignment of expenses on state and interstate freight traffic upon the basis of the number of tons hauled 1 mile is without justification. R. R. Comm. of La. v. A. H. T. Ry., 48 I. C. C. 312, 325.

(h) Fact that a lower rate was applicable on intrastate shipments over lines not under Federal control for corresponding distances does not establish unreasonableness of rates over lines under Federal control. Empire Refineries (Inc.) v. Director General, as Agent, 74 I. C. C. 691, 692.

(i) Intrastate rates are not controlling in gauging the reasonableness of interstate rates, but, in connection with other facts, they are not without significance as a basis for comparison. East Coast Potato Distributors v. N. Y. P. & N. R. R., 77 I. C. C. 607.

(j) Intrastate rates on grain, grain products, and hay within State of Arkansas found not unduly prejudicial to persons or localities in interstate commerce. Evidence does not show that there is any actual competition with commodities moving on lower intrastate rates, and competition encountered by Oklahoma shippers found not to come from shippers within Arkansas but from shippers in Kansas and Missouri. Oklahoma Corp. Comm. v. A. R. R., 80 I. C. C. 607, 617, 618.

ALL OTHER CITATIONS

Corn Belt Meat Producers' Ass'n. v. C. B. & Q. Ry. Co., 14 I. C. C. 376, 385; Marshall Oil Co. v. C. & N. W. Ry. Co., 14 I. C. C. 210, 213; Board of Mayor and Aldermen v. V. & S. W. Ry. Co., 15 I. C. C. 453, 459; Hafey v. St. L. & S. F. R. R. Co 15 I. C. C. 245, 246; Marble Falls Insulator Pin Co. v. H. & T. C. R. R. Co., 15 I. C. C. 167; Paola Refining Co. v. M. K. & T. Ry. Co., 15 I. C. C. 29, 31, 32; Fort Dodge Commercial Club v. I. C. R. R. Co., 16 I. C. C. 572, 579; Railroad Commission of Wisconsin v. C. & N. W. Ry. Co., 16 I. C. C. 85, 89, 91; Bartles Oil Co. v. C. M. & St. P. Ry. Co., 17 I. C. C. 146, 148; Saunders & Co. v. S. P. Co., 18 I. C. C. 415, 421; Waco Freight Bureau v. H. & T. C. R. R. Co., 19 I. C. C. 22, 26; Cobb v. N. P. Ry. Co., 20 I. C. C. 100, 103; Baxter & Co. v. G. S. & F. Ry. Co., 21 I. C. C. 647, 648; In Re In-

vestigation of Rates on Meats, 22 I. C. C. 160, 164; Salina Produce Co. v. M. P. Ry. Co., Unrep. Op. A-452; King Collie & Co. v. A. & S. Ry. Co., Unrep. Op. A-519; Corporation Com. of Oklahoma v. A. T. & S. F. Ry., 31 I. C. C. 532, 541; Weatherford Cham. of Com. v. M. K. & T. Ry. Co., 31 I. C. C. 665, 667; Minneapolis Civic & Commerce Asso. v. M. C. & St. P. Ry. Co., 30 I. C. C. 663, 665; In re Separation of Operating Expenses, 30 I. C. C. 676, 681; Trier Ry. v. C. St. P. M. & O. Ry. Co., 30 I. C. C. 707, 709; Kansas Wholesale Grocery Co. v. A. & W. Ry. Co., 32 I. C. C. 139, 145; Freight Rates from Minnesota Points, 32 I. C. C. 361, 363; Baltimore Switching Charges, 32 I. C. C. 376, 379; Rates on Beer and Other Malt Products, 31 I. C. C. 544, 545; Rhinelander Paper Co. v. M. St. P. & S. S. M. Ry. Co., 31 I. C. C. 555, 558; Colonial Salt Co. v. C. B. & Q. R. R. Co., 31 I. C. C. 559, 567, 570; Underwood Veneer Co. v. A. A. R. R. Co., 32 I. C. C. 265, 268; General Construction Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-812; Elba Mfg. Co. v. S. Ry. Co., Unrep. Op. A-830; Beaumont Iron Works Co. v. G. C. & S. F. Ry. Co., Unrep. Op. A-853; Class Rates Between Stations in Louisiana, 33 I. C. C. 302, 304; Merchants Exchange of St. Louis v. B. & O. R. R. Co., 34 I. C. C. 341, 353; Jacksonville Machine Works v. C. of Ga. Ry. Co., Unrep. Op. 1833; Holland Blow Stave Co. v. I. C. R. R. Co., Unrep. Op. 1938; LaCrosse Shippers' Asso. v. C. & N. W. Ry., 38 I. C. C. 453, 458; Royster Guano Co. v. A. C. L. R. R. Co., 38 I. C. C. 190, 192; Iowa-Dakota Grain Co. v. I.C.R.R., 40 I. C. C. 73; Duffney Brick Co. v. B. & M. R. R., 39 I. C. C. 118, 121, 122; Beekman Sawmill Co. v. St. L. I. M. & S. Ry. Co., 39 I. C. C. 215, 216; City of Memphis v. C. R. I. & P. Ry. Co., 39 I. C. C. 256, 263, 265, 267; Bagdad Land & Lumber Co. v. L. & N. R. R. Co., 39 I. C. C. 473; Stonega Coke & Coal Co. v. L. & N. R. R. Co., 39 I. C. C. 523, 541; Virginia-Carolina Chemical Co. v. S. A. L. Ry., 39 I. C. C. 660; Malone v. New York Telephone Co., 40 I. C. C. 185, 188; The Missouri River-Nebraska Cases, 40 I. C. C. 201, 253, 256; Railroad Commission of La. v. A. H. T. Ry. Co., 41 I. C. C. 83, 122; Chattanooga Sewer Pipe & Fire Brick Co. v. S. Ry. Co., 41 I. C. C. 406, 407; Minneapolis Mfg. Co. v. N. P. Ry., 41 I. C. C. 400, 402; St. Louis, Mo.-Illinois Passenger Fares, 41 I. C. C. 584, 591; Greater Des Moines Committee v. C. St. P. M. & O. Ry. Co., 42 I. C. C. 65, 72; Sandusky Portland Cement Co. v. C. & N. W. Ry. Co., 42 I. C. C. 165, 166; Bradbury Marble Co. v. L. & N. R. R. Co., 42 I. C. C. 329; Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 43 I. C. C. 224, 226; Board of Commerce, Lexington, Ky., v. C., N. O. & T. P. Ry., 44 I. C. C. 407, 412; Harrison Bros. & Co. v. B. & O. R. R., 45 I. C. C. 85, 86; Dimmitt-Caudle-Smith Live Stock Comm Co. v. C. B. & Q. R. R., 47 I. C. C. 287, 302; R. R. Commission of La. v. A. H. T. Ry., 48 I. C. C. 312, 325, 334, 335; Flanley Grain Co. v. C. St. P. M. & O. Ry., 48 I. C. C. 505; McCaull-Dinsmore Co. v. C. B. & Q. R. R., 48 I. C. C. 507, 509; Chattanooga Sewer Pipe & Fire Brick Co. v. S. Ry., 48 I. C. C. 642, 646; Lambert Co. v. St. L. I. M. & S. Ry., 49 I. C. C. 157; Iola Cement Mills Traffic Asso. v. A. T. & S. F. Ry., 49 I. C. C. 609; Royster Guano Co. v. A. C. L. R. R., 50 I. C. C. 34, 41; Mesilla Valley Produce Exchange v. A. T. & S. F. Ry., 50 I. C. C. 483, 485, 486; Memphis-Southwestern Investigation, 55 I. C. C. 515, 541, 544, 555, 574, 576; Minnesota By-Products Coke Co. v. Director General, as Agent, 66 I. C. C. 480, 488, 489; Coal from Wyoming Mines, 68 I. C. C. 254; Rosenberg Bros. & Co. v. Director General, as Agent, 69 I. C. C. 103, 104; Portland Traffic & Transportation Asso. v. Director General, 69 I. C. C. 165.

§13. (6½) Switching and Other Rates.

See Switch Tracks and Switching.

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(a) While the Commission is not bound to accept state-made rates applicable to intrastate traffic as a fair measure or interstate rates, yet the fact that certain switching rates are fixed by a state commission after full hearing, and sustained by the state courts, is entitled to weight in determining the reasonableness of the same rates as applied to interstate traffic. Baltimore Switching Charges, 32 I. C. C. 376, 379.

(b) A contention that the Commission should confine itself to a comparison of a rate from a point within a switching district to a point outside such district with the industrial and interchange switching rates in effect within the district and the through rates accorded complainant's competitors, and that comparisons with rates for rural hauls of equal distance are improper, not sustained, as competitive and other conditions have served to bring about very low switching

charges at industrial centers. Forsythe Leather Co. v. Director General, as Agent, 64 I. C. C. 17, 19.

(c) It has been held that the contention that the Commission should confine itself to a comparison of a rate from a point within a switching district to a point outside such district, with the industrial and interchange switching rates in effect within the district and the through rates accorded complainant's competitors, and that comparisons with rates for rural hauls of equal distance are improper will not be sustained, as competitive and other conditions have served to bring about very low switching charges at industrial centers. Forsythe Leather Co. v. Director General, as Agent, 64 I. C. C. 17, 19.

§14. Competition.

(1) In General.

See Advanced Rates §5 (7); Competition; Discrimination §8 (3).

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(a) Elaborate tariffs of rates, the result of competition, made by one of several great railway systems, all competing for the business of a large extent of territory, are examined and considered in connection with those of its competitors, and with a view not to break down the legitimate competition thus existing, whereby rates are cheapened to the public generally and these railways are correspondingly benefited in performing the work for which they were chartered and constructed. Business Men's Asso. v. C. St. P. M. & O. R. Co., 2 I. C. R. 41.

(b) If a carrier is in good faith acting under a compulsion of circumstances and conditions beyond his control, and, to avoid large loss, adopts exceptional rates on a portion of his line, not unreasonable in themselves, and forced upon him by some action of an independent state railroad, which is not subject to the Act to Regulate Commerce, and which is operating a slightly shorter and competing line with his own,—these are circumstances and conditions which justify him in adopting such exceptional rates thus forced upon him on this portion of his line. Business Men's Asso. v. Chicago St. P. M. & O. R. Co., (Com.) 2 I. C. R. 41.

(c) When a carrier, acting in good faith, has adopted an exceptional rate, not unreasonable in itself, on a portion of its line, because that rate has been forced upon it by an independent state railroad company in direct competition with it and not subject to the Act, the reasonableness and justness of rates on other portions of the carriers line, extending to a far interior region of the country where no such conditions exist, cannot be measured, alone, by the standard thus furnished, but must be governed by considerations which fairly and justly apply to them. Business Men's Asso. of Minnesota v. C. St. P. M. & O. Ry., 2 I. C. C. 42, 46.

(d) Rates cannot be arbitrarily charged at the mere discretion of a carrier. They are to be equitably adjusted with regard to the public interests as well as the carrier's. Reduced rates at points where competitive influences are controlling must not fall below some revenue from the traffic in excess of cost, and higher rates at other points, required for the necessary revenue of a carrier, must be reasonable in themselves, and also relatively reasonable in comparison with the competitive rates. Lehmann Higginson & Co. v. Southern Pacific Co. 3 I. C. R. 80.

(e) The transportation of traffic under circumstances and conditions that force a low rate for its carriage or an abandonment of the business, but which affords some revenue above the cost of its movement, and works no material injustice to other patrons of a carrier, is to be deemed legitimate competition. When, however, its carriage is at a loss, and imposes a burden on like traffic at other points on other traffic, it is to be deemed destructive and illegitimate competition. Lehmann, Higginson & Co. v. Southern Pacific Co., 3 I. C. R. 80.

(f) When a carrier voluntarily enters a field of competition where, by reason of a disadvantageous route, or the rigor of the competitive conditions, remunerative rates can not be charged, and its service to a portion of its patrons is unprofitable, it accepts the legal obligation that its service shall be impartial to all who sustain similar relations to the traffic, and for whom the service itself is not substantially dissimilar. Manufacturers & Jobbers Union of Mankato, Minn., v. M. & St. L. R. Co., 3 I. C. C. 115, 117.

(g) The principle of relative justice applied is that when a carrier, by reason of competitive conditions, or for other reasons, serves other localities at very low rates, the concessions made

must not subject other localities or other patrons dependent on the same carrier to undue and unreasonable prejudice or disadvantage, but there must be an equitable adjustment of rates so that there is no unjust discrimination between competitors in like pursuits. Manufacturers & Jobbers Union v. M. & St. L. R. Co., 3 I. C. C. 115, 117.

(h) If the carrier claims to act under a compulsion of circumstances and conditions of his own creation or connivance in the making of an exceptional rate, then these will not avail him. If the carrier claims to act under a compulsion of circumstances and conditions which he could obviate by reasonable, fair and just exertion on his part, in the making of an exceptional rate, then they will not avail him. Board of Trade of Chicago v. C. & A. R. R. Co., 3 I. C. C. 233, 244.

(i) When great disparity exists between charges which are lower to competitive than to intermediate points much less remote, the inference is irresistible that the lower rate must be unremunerative upon any theory, or else the larger rate gives an unwarranted return for the service rendered. Chattanooga Bd. of Trade v. East Tennessee, V. & G. R. Co., (Com.) 4 I. C. R. 213.

(j) Competition with carriers not subject to the statute is based upon natural causes and plain conditions, but the legitimate force of competition with carriers subject to the Act depends upon compliance with the law by each of the competitors and the special circumstances and primarily indefinite conditions in each particular case. Trammel et al, Georgia Railroad Com. v. Clyde S. S. Co. 4 Inters. Com. Rep. 120, 5, I. C. C. Rep. 324, cited and affirmed. Gerke Brewing Co. v. Louisville & N. R. Co., 4 I. C. R. 267.

(k) The competition of the railway lines is not stifled, but is fully recognized intelligently and honestly controlled and regulated by the traffic association in its schedule of rates. Interstate Commerce Commission v. Alabama M. R. Co., 5 I. C. R. 685.

(l) Competition, or a division of business as the result of building a second road where previously one existed, should justify lower rather than higher charges. Morrell v. U. P. R. Co., 4 I. C. C. 469, 473.

(m) Competition or a division of business as a result of building a second road where previously but one existed should justify lower rather than higher charges. Evans v. U. P. R. Co., 6 I. C. C. 520, 547.

(n) Investigation of freight rates charged by carriers to southern points during a rate war in June and July, 1894 (report of which was duly made and published—Eighth Ann. Rep. Int. Com. Com., 20-24), discontinued on supplemental report and opinion stating the restoration on August 1, 1894, of rates in force prior to June of that year, and citing decisions of Commission awarding reparation to injured merchants and dealers at Lynchburg, Va., (6 I. C. C. Rep., 632). In the Matter of Tariffs and Classifications of Pa. R. Co., v. 7 I. C. C. 177.

(o) The Act does not aim to fetter competition, nor interfere with the natural flow of trade and commerce. One cardinal object of that act was to secure perfect freedom of competition among the carriers themselves. It is only when that competition becomes tyrannical, so to speak, when in the competitive struggle localities, commodities, individuals are in danger of being crushed that the law steps in. New York Produce Exchange v. B. & O. R. Co., 7 I. C. C. 612, 682.

(p) Competition cannot be excluded in fixing rates when necessary.—Although the bare naked fact of competition in an open field may not be available to justify discrimination of rates on the ground of dissimilar conditions, it is not to be excluded as a forceful element when it results in annihilation of the business of a carrier on its line because of a physical or mechanical disadvantage which it may overcome by the use of an appliance which it has long used for that purpose, the use of which is complained of as unlawful discrimination where such use is not a mere colorable device to evade the act. Detroit Grand Haven & Milwaukee Ry. Co. v. Interstate Commerce Commission, 7 I. C. C. App. LXXIV.

(q) That rates to competitive points are remunerative does not show higher rates for noncompetitive shorter distances are unreasonable.—That rates to a longer-distance competitive point are reasonably remunerative does not conclusively show that higher rates to noncompetitive shorter-distance points are unreasonably high. I. C. C. v. Western & Atlantic R. R. Co., 8 I. C. C. App. LXXVII.

(r) The mere fact of competition, no natter what its character or extent, does not necessarily relieve carriers from the restraints of the 3d and 4th sections of the Act to Regulate Commerce. Phillips, Bailey & Co. v. Louisville & N. R. Co., 8 I. C. C. 93.

(s) If a carrier can profitably make a low rate for the purpose of obtaining traffic in existence which would otherwise pass over a competing line, then it may profitably, under some circumstances, make a low rate for the purpose of bringing into existence traffic which would not pass over any line. Grain Shippers' Asso. v. Illinois C. R. Co., 8 I. C. C. 158.

(tu) The nature, extent and effect of competition must be shown where it is sought to justify rates on that ground. Grain Shippers' Asso. v. Illinois C. R. Co., 8 I. C. C. 158.

(v) It is not enough for defendant carriers to say, in a case involving the relation of rates, that competition justifies or requires the thing which is done; something must be known of the nature and extent and effect of that competition. Grain Shippers' Asso. v. Illinois Central R. Co., 8 I. C. C. 158.

(w) To allow one carrier to meet the rates of its competitors until it is found to have done something more than meet such rates does not constitute a workable basis, for the causes which lead to rate fluctuations are so intangible, often resting upon mere suspicion, that any attempt to determine in an individual case what those causes were would ordinarily be futile, and to enforce such a rule would stifle that competition which the Act to Regulate Commerce was intended to secure. George Tileston Milling Co. v. Northern P. R. Co., 8 I. C. C. 346.

(x) While the location of Palatka on the St. Johns River, and the fact that there is more competition by rail at Palatka than at Hampton, may justify rates to Palatka somewhat lower than to Hampton, the Hampton rates should not be higher than the Palatka rates by locals from Palatka to Hampton; but rates to the latter point may properly be made higher than the rates to the former by the differential now existing between the Palatka and Jacksonville rates. Board of Trade of Hampton v. Nashville, C. & St. L. R. Co., 8 I. C. C. 503.

(y) Full compensatory rates cannot be required to competitive points.—Since no more than a full compensatory rate for the carriage of freight should be applied and enforced under the most favorable circumstances and conditions, such rate cannot be applied to traffic that is subject to severe competitive conditions. I. C. C. v. Western & Atlantic R. R. Co., 8 I. C. C. App. LXXVII.

(z) Neither the absence nor presence of competition by carriers alone, nor the extent of its operation measured solely by their financial interests can be relied on to adjust rates reasonable and just to all. Mayor and Council of Tifton, Ga. v. L. & N. R. R., 9 I. C. C. 160, 178.

(aa) If the competitive rates are something more than the additional cost of the movement of the traffic it is to the interest of the carrier and to the interest of the public that the carrier shall be allowed to compete for the traffic. The profit, however small, to the extent that it inures, increases the revenues of the carrier and has a tendency to reduce local rates and to improve the local service. There may be a wide difference between a rate or amount of compensation that would give full remuneration for the service in carrying competitive traffic, and that remuneration therefor which the competition will allow the carrier to receive. Johnson v. C. St. P. M. & O. R. Co., 9 I. C. C. 221, 239.

(bb) The transportation of traffic under circumstances and conditions that force a low rate for its carriage, or abandonment of its business, but which affords some revenue above the cost of its movement, and works no material injustice to other patrons of the carrier, is to be deemed legitimate competition. When, however, its carriage is at a low, rate, and imposes a burden on like traffic at other points, and on through traffic, it is to be deemed destructive and illegitimate competition. Johnson v. C. St. P. M. & O. R. Co., 9 I. C. C. 221, 240.

(cc) Defendant carries coal to Baltimore destined finally to "points outside the Capes" (largely to New England seaboard points), and shipments of the same coal may also be made to Norfolk, an Atlantic seaport. The rate to Baltimore on coal reshipped to "outside the Capes" points is forced by the competition of lines from other mines, and under such rate defendant secures a

large annual tonnage via its line to the port of Baltimore. The rate to Baltimore on coal for Norfolk is the local rate to Baltimore. If the shipments to Norfolk and points outside the Capes be regarded as through shipments, on what are in essence through rates, the competition stated might justify a higher rate to Baltimore when the final destination is Norfolk than when it is a point outside the Capes; but if this coal is all purely local to Baltimore, there is much doubt whether, as a matter of law, defendant can charge for the haul to Baltimore more in one case than in the other. City Gas Company v. Baltimore & O. R. Co., 11 I. C. C. 371.

(dd) No competition in movement of government troops. Re Party Rate Tickets, 12 I. C. C. 95.

(ee) Competition at Kansas City which does not exist at Wichita. Johnston-Larimer Dry Goods Co. v. A. T. & S. F. Ry. Co., 12 I. C. C. 188.

(ff) Competition may make a new basing point. Southern Grocery Co. v. Ga. Northern Ry. Co., 12 I. C. C. 229.

(gg) Threat of compress company to divert its cotton traffic to another railroad, not competition that relieves from the operation of the statute. Muskogee Commercial Club v. M. K. & T. R. Co., 12 I. C. C. 312.

(hh) Grain rates to Galveston not standard for other rates. Farmers', Merchants' & Shippers' Club v. A. T. & S. F. Ry. Co., 12 I. C. C. 351.

(ii) Competition is to be considered, Quimby v. Clyde S. S. Co., 12 I. C. C. 392.

(jj) Three great competitors for Asiatic Traffic Suez route and Transcontinental Lines from eastern and from southern mills. Enterprise Manufacturing Co. v. Ga. R. R. Co., 12 I. C. C. 451.

(kk) Competition makes low rate. Morgan v. M. K. & T. Ry. Co., 12 I. C. C. 525.

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(ll) A less-distant junction point served by an additional carrier seems entitled to a lower rate. Gamble-Robinson Commission Co. v. St. L. & S. F. R. R. Co., 19 I. C. C. 114, 115.

(mm) Competition is an important element in determining reasonableness of rate. Corporation Commission of N. C. v. N. & W. Ry. Co., 19 I. C. C. 303, 309.

(nn) If carriers attempt to rely upon competition as a justification for a discriminatory adjustment of rates they must show not only the fact but the reason for it. If there is no reason outside the mere whim of their traffic managers then the roads must bear the burden of the poor company in which they find themselves at competitive points. Suffern Grain Co. v. I. C. R. R. Co., 22 I. C. C. 178, 181.

(oo) And where a railroad relies on competition to justify a rate it must show that such competition is justified by circumstances other than the mere whim of a traffic manager. Suffern Grain Co. v. I. C. R. R. Co., 22 I. C. C. 178, 181.

(pp) Competition of controlling force cannot be ignored by the Commission in determining whether an advantage in rate at the competitive point is undue or is one not chargeable to the carriers defendant because involuntarily made. Sioux City Terminal Elevator Co. v. C. M. & St. P. Ry. Co., 23 I. C. C. 98, 107.

(qq) While a carrier may voluntarily accept rates lower than it can be required to accept and whether or not a carrier will meet competitive conditions at a particular point rests primarily with it. But this principle does not relieve the carrier from the obligation to remove unjust discrimination created by meeting competitive conditions at one point and refusing to meet them at a neighboring point. Chamber of Commerce, Ashburn, Ga., v. G. S. & F. Ry. Co., 23 I. C. C. 140, 149.

(rr) Where carriers, through discriminatory rates, produce competitive conditions at one point they cannot set up such conditions as a reason for maintaining discriminatory rates at a neighboring point. Chamber of Commerce, Ashburn, Ga., v. G. S. & F. Ry. Co., 23 I. C. C. 140, 150.

(ss) The public interest may demand that a carrier shall not avail itself of competitive conditions to produce discrimination. Chamber of Commerce, Ashburn, Ga., v. G. S. & F. Ry. Co., 23 I. C. C. 140, 150.

(tt) When competitive conditions are sufficiently potent to compel lower rates to one locality than are maintained by the same carriers to another locality similarly situated such competition may be accepted in justification of a resulting preference to the favored locality, which,

but for such competition, might be condemned as undue or unreasonable. But the mere fact of competition, regardless of its character, will not relieve carriers from the limitations of section 3 Chamber of Commerce of Newport News v. S. Ry. Co., 23 I. C. C. 345, 353.

(uu) Competition is to be considered in determining the proper classification of an article. Western Classification Case, 25 I. C. C. 442, 473.

(vv) Competition is not to be considered in determining a question of discrimination, under section 2. In re Advances on Manganese Ore, 25 I. C. C. 663, 668.

(ww) Rails of a common carrier form a public highway, over which the commerce of any community should be able freely to move on reasonable rates, regardless of consequences of its competition upon any other community. Indianapolis Freight Bureau v. C. C. C. & W. R. Ry. Co., 26 I. C. C. 53, 59.

(xx) The extent to which a carrier shall lower its rate to meet anticipated competition is a matter primarily for its decision, and should it later raise the rate, the sole question for the determination of the Commission is whether that increased rate is just and reasonable for the service performed, and not whether the carrier should be compelled to keep its rates on a probable unremunerative basis, upon which it voluntarily put itself to meet special conditions. Scrap-iron Rates between Duluth, Chicago, etc., 28 I. C. C. 467, 470.

(yy) Competition cannot be said to have compelled an unreasonably low rate when such rate is not lower than that charged for like or greater distances in other parts of the country, where transportation conditions are similar or more difficult. Maier & Co. v. S. P. Co., 29 I. C. C. 103, 104, 105.

(zz) Where two railroads are joined by branch lines, each cannot justify violations at the junction points on the ground of competition by the others. Fourth Section Violations in the Southeast, 30 I. C. C. 153, 196.

(3a) To a certain extent carriers are justified in placing competitive markets upon an equal basis. Minneapolis Civic & Commerce Asso. v. C. M. & St. P. Ry. Co., 30 I. C. C. 663, 672.

(3b) Competitive conditions are exceptions which necessitate use of commodity rates. Rates on Coffee, 32 I. C. C. 90, 91.

(3c) Where lines of railroad are closely interlaced, the territory of a given line is more restricted than where lines are not so close together; and it follows that in such case traffic cannot be considered competitive as between two carriers where its place of origin is closer to one line than to another by even a relatively small distance, or by a distance that would not be considered where the lines of railroad are further apart. Iowa & S. W. R. R. Co. v. C. B. & Q. R. R. Co., 32 I. C. C. 172, 173.

(3d) While carriers may take competition into consideration and make rates to meet it, the Commission has never held that it could compel them to do so. The question of policy or expediency in fixing a rate that is lower than a maximum reasonable rate under the law is left to the judgment and discretion of the carrier. N. Y. Produce Exchange v. N. Y. C. & H. R. R. R. Co., 32 I. C. C. 212, 215.

(3e) Where certain producers have entered and gained control of a particular market, although it appears that their output is carried at substantially higher transportation costs than their competitors, the natural inferences are that the rates themselves are not the primary cause of the difficulties encountered by the unsuccessful competitors and that their market has been lost by reason of conditions unconnected with those rates. Northern Pine Mfrs. Asso. v. C. & N. W. Ry., 33 I. C. C. 360, 363.

(3f) Jobbers are shippers. As such they are entitled, under the Act to rates which are just, reasonable, and not unjustly discriminatory. But the Act does not guarantee to any shipper, or to any city, an indefeasible lien upon any given territory. Rates are not proved unjust, unreasonable, or unjustly discriminatory by a mere showing that under the existing rate structure the shipper cannot successfully compete as a jobber in a certain territory. Lindsay & Co. v. Northern Exp. Co., 33 I. C. C. 394, 396.

(3g) Where the same carrier serves two districts, which, by their location, the character of their output and distance from markets where their product must be disposed of are under substantially similar circumstances and conditions, the serving carriers can not lawfully prefer one to the other in any other manner whatsoever. Proportional

Rates to Ohio River Crossings, 43 I. C. C. 458, 465.

(3h) While a carrier in recognition of competition may establish different rates between localities and kinds of traffic, it does not follow that the rates so established may be justified by any and all competition, regardless of character or extent. Drayage Absorption, 43 I. C. C. 472, 475.

(3i) Competition alone is not the only factor to be considered in the fixing of groups and rates. To take into consideration commercial and competitive conditions only would be to disregard distance and transportation conditions and to revert to the discarded equalization of cost theory; and to carry this theory to its logical conclusion would compel the consideration of the cost to the industry of manufacturing its products, which, of course, is clearly beyond the Commission's powers under the law. The Grouping of Monessen and Donora, 48 I. C. C. 650, 653.

(3j) Competition has often been the agency through which the public received reasonable rates. The Southeastern Sugar Cases, 48 I. C. C. 739, 742.

(3k) It is necessary to examine and compare the circumstances and conditions surrounding transportation to competing points wherever situated, provided the same carriers perform, or participate in, the transportation service and to determine if possible whether or not these differences are properly measured by the difference in rates. Traffic Bureau of Knoxville, Tenn., v. B. & O. R. R., 49 I. C. C. 205, 217.

(3l) The Commission has no hesitation in conceding that carriers may properly make rates to meet competitive conditions, so long as such rates are reasonably compensatory and so long as they do not give rise to undue prejudice or preference. Grain Rates from Minnesota and Wisconsin, 68 I. C. C. 665, 672.

(3m) If a carrier elects to discontinue a competitive rate, whether because competition no longer exists or because it does not care longer to compete, the commission would concern itself only with whether or not the resulting increased rates are just, reasonable, and proper. Tobacco from Ohio River Crossings, 73 I. C. C. 384, 387.

(3n) It is well settled that in fixing rates carriers may give consideration to competitive conditions as well as distance so long as no undue prejudice or undue preference results, and that the Commission may properly consider such conditions when the validity of a specific rate or general adjustment is in issue. Coal from Southwest to Omaha, 73 I. C. C. 536, 539.

(3o) Contention that independent steamship lines can not survive in competition with a steamship line "subsidized" by an industry. HELD, Whether or not an industry should be permitted to operate a steamship line is a question of public policy to be determined by the lawmaking body. Application of United States Steel Products Co., 77 I. C. C. 687, 688.

(3p) Destructive competition may afford a temporary benefit to the shippers particularly interested, but this does not compensate for its far reaching and serious adverse effect upon the interests of the carriers and of the shipping public as a whole. Import and Domestic Rates on Vegetable Oils, 78 I. C. C. 421, 427.

(3q) Vast differences in transportation conditions can not be disregarded in comparing rates from two competitive fields. Western Coal Rates, 80 I. C. C. 383, 419.

(3r) The Commission has no hesitation in conceding that carriers may properly make rates to meet competitive conditions, so long as such rates are reasonably compensatory and so long as they do not give rise to undue prejudice or preference. Vinegar Rates from Pacific Coast, 81 I. C. C. 666, 669.

(3ra) The Commission has recognized in many instances that there may be a marked difference in the measure of rates voluntarily established by one carrier to meet competition, and rates prescribed by the Commission as reasonable over the lines of other carriers for similiar distances. United Verde Extension Mining Co. v. A. T. & S. F. Ry., 89 I. C. C. 95, 100.

(3s) Competition is a fact which both the carrier and the shipper have a right to have estimated in the decision whether terminal charges and differences in them are reasonable. Whether competition is a fact of such practical importance in every instance as to justify terminal charges based on that alone is, of course, a question for the Interstate Commerce Commission. Interstate

Commerce Commission v. Alabama, etc., R. R. Co., 168 U. S. 144, 166, 18 Sup. Ct. 45, 42 L. ed, 414; Louisville & N. R. R. Co. v. United States, 238, U. S. 1, 35 Sup. Ct. 696, 59 L. ed 1177; Seaboard Air Line Ry. Co. v. United States, 249 Fed. 368, 374.

(3t) Where the rates applied are influenced by actual and forceful competition they are not always fair standards by which to determine the reasonableness of other charges. Seavey, Trustee v. G. H. Ry. Co., Unrep. Op. A-210.

(3u) Since transportation on a railroad switch to industries in a city located on other roads is carriage to a different destination, it follows that competition may be taken into consideration in fixing the charges. Seaboard Air Line Ry. Co. v. United States, 249 Fed. 368, 374.

ALL OTHER CITATIONS

Goodman Mfg. Co. v. P. R. R. Co., Unrep. Op. 570; Western States Portland Cement Co. v. M. P. Ry. Co., Unrep. Op. 363; Advance Thresher Co. v. M. C. R. R. Co., Unrep. Op. 283; Flint & Walling Mfg. Co. v. G. R. & I. Ry. Co., 14 I. C. C. 520; Indianapolis Freight Bureau v. Penn. R. R. Co., 15 I. C. C. 567, 576; Florida Fruit & Vegetable Ass'n. v. A. C. L. R. R. Co., 17 I. C. C. 552, 558; Memphis Cotton Oil Co. v. I. C. R. R. Co., 17 I. C. C. 313, 318; Receivers' & Shippers' Ass'n. of Cincinnati v. C. N. O. & T. P. Ry. Co., 18 I. C. C. 440, 464; Rainey & Rogers v. St. L. & S. F. R. R. Co., 18 I. C. C. 88, 89; Florida Cotton Oil Co. v. C. of G. Ry. Co., 19 I. C. C. 336, 339; Harbor City Wholesale Co. v. S. P. Co., 19 I. C. C. 323, 329; Georgetown Ry. & Light Co. v. N. & W. Ry. Co., 22 I. C. C. 144; Cohen & Co. v. Mallory S. S. Co., 23 I. C. C. 374, 377; Wisconsin State Millers' Ass'n. v. C. M. & St. P. Ry. Co., 23 I. C. C. 494, 495; Indianapolis Freight Bureau v. C. C. C. St. L. Ry. Co., 23 I. C. C. 195, 205; In Re Transportation of Wool, Hides and Pelts, 23 I. C. C. 151, 160; Commercial Club of Superior v. G. N. Ry. Co., 24 I. C. C. 96, 103, 107, 118; Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co., 24 I. C. C. 55, 76; In re Advances on Apples, 24 I. C. C. 38, 42; Escanaba Business Men's Assn. v. A. A. R. R. Co., 24 I. C. C. 11; Rates on Knitting Factory Products, 25 I. C. C. 634, 639; Evens & Howard Fire Brick Co. v. St. L. I. M. & S. Ry. Co., 25 I. C. C. 141, 150; McKnight Keaton Grocery Co. v. C. M. & St. P. Ry. Co., 26 I. C. C. 563, 564; Board of Trade of Chicago v. I. C. R. R. Co., 26 I. C. C. 545, 547, 549; Blakely Southern R. R. Co. v. A. C. L. R. R. Co., 26 I. C. C. 344, 350; May Bros. v. Y. & M. V. R. R. Co., 26 I. C. C. 323, 328; Edgar & Son v. L. & N. R. R. Co., 26 I. C. C. 181, 183; Hormel & Co. v. C. M. & St. P. Ry. Co., 26 I. C. C. 112, 115; State of Kansas v. A. T. & S. F. Ry. Co., 27 I. C. C. 673, 689; New England Investigation, 27 I. C. C. 560, 608, 614; Vulcan Iron Works v. A. T. & S. F. Ry. Co., 27 I. C. C. 468, 469; Sioux City Terminal Elevator Co. v. C. M. & St. P. Ry. Co., 27 I. C. C. 457, 463; Chamber of Commerce of N. Y. v. N. Y. C. & H. R. R. R. Co., 27 I. C. C. 238, 242; Omaha Grain Exchange v. C. M. & St. P. Ry., 24 I. C. C. 122, 123; R. R. Com. of Oregon v. S. P. Co., 24 I. C. C. 237, 277; Boileau v. P. & L. E. R. R. Co., 24 I. C. C. 129, 132; Lumbermen's Exchange of St. Louis v. A. & S. R. R. Co., 24 I. C. C. 220, 224; Slider v. S. Ry. Co., 24 I. C. C. 312, 313; Southwestern Shippers Traffic Assn. v. A. T. & S. F. Ry. Co., 24 I. C. C. 570, 579, 582, 587; Lumber Rates from Local Points to Chattanooga, Tenn., 29 I. C. C. 646, 648; Mayor and Council of Vienna v. G. S. & F. Ry. Co., 28 I. C. C. 173, 175; Boston Chamber of Commerce v. A. T. & S. F. Ry. Co., 28 I. C. C. 230, 233; Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 577; Thomas Iron Co. v. P. R. R. Co., 28 I. C. C. 608, 609; Omaha Grain Exchange v. C. R. I. & P. Ry. Co., 28 I. C. C. 680, 685; Dodd v. T. & P. Ry. Co., Unrep. Op. A-223; Fourth Section Violations in the Southeast, 30 I. C. C. 153, 291; Emlenton Petroleum Rates, 29 I. C. C. 519, 521; Springfield Traffic Bureau v. St. L. & S. F. R. R. Co., 29 I. C. C. 600, 606; Hughes Creek Coal Co. v. K. & M. Ry. Co., 29 I. C. C. 671, 672; Richmond Chamber of Commerce v. S. A. L. Ry., 30 I. C. C. 552, 558; Seattle Shingle Co. v. C. M. & St. P. Ry. Co., 30 I. C. C. 364, 369, Pacific Coast Gypsum Co. v. O. W. R. R. & N. Co., 30 I. C. C. 135, 138; Rates on Bananas from Gulf Ports, 30 I. C. C. 510, 520; Lake Superior Paper Company, Ltd. v. D. S. S. & A. Ry. Co., 30 I. C. C. 403, 406; Break-Bulk Rates on Grain, 30 I. C. C. 357, 360; Rates on Tropical Fruits from Gulf Ports, 30 I. C. C. 621, 630; Collier v. S. Ry. Co., Unrep. Op. A-554; Portland Chamber of Com-

merce v. C. M. & St. P. Ry. Co., 32 I. C. C. 188, 190; New Orleans Live Stock Exchange v. L. & N. R. R. Co., 31 I. C. C. 609, 611, 612; Mobile Chamber of Commerce v. M. & O. R. R. Co., 32 I. C. C. 272, 277; American Round Bale Press Co. v. A. T. & S. F. Ry. Co., 32 I. C. C. 458, 464; Reshipping Rates on Grain from Omaha, 32 I. C. C. 590, 593; Illinois Coal Cases, 32 I. C. C. 659, 670; Application S. P. Co., in re Operation S. S. Co., 32 I. C. C. 690, 694; Alpha Portland Cement Co. v. B. & O. R. R., 34 I. C. C. 414, 420; Rates in Chicago Switching District, 34 I. C. C. 234, 241; City of Nashville v. L. & N. R. R. Co., 33 I. C. C. 76, 77, 86; Financial Relations, Etc., L. & N. R. R. Co., 33 I. C. C. 168, 188, 197, 213; Cullman Commercial Club v. L. & N. R. R. Co., 33 I. C. C. 634, 636; Lake Line Applications Under Panama Canal Act, 33 I. C. C. 699, 712; Shands v. S. A. L. Ry., 34 I. C. C. 214, 215; Alpha Portland Cement Co. v. B. & O. R. R. Co., 34 I. C. C. 414, 421; Trap of Ferry Car Service Charges, 34 I. C. C. 516, 521; L. & N. R. Co., v. U. S. 35 Sup. Ct. 696, 699; 238 U. S. 1, 59 L. ed.; Through Rates from Buffalo-Pittsburgh Territory, 36 I. C. C. 325, 327; Peaches from Missouri Points, 37 I. C. C. 89, 91; Paducah Board of Trade v. I. C. R. R. Co., 37 I. C. C. 719, 723, 724; The Missouri River-Nebraska Cases, 40 I. C. C. 201, 256; Riegel Sack Co. v. C. R. R. Co. of N. J., 39 I. C. C. 222, 223; Henderson Cotton Mills v. L. & N. R. R. Co., 39 I. C. C. 399, 405; Heider Mfg. Co. v. C. G. W. R. R. Co., 39 I. C. C. 556, 558; Major Stave Co. v. M. D. & G. R. R. Co., 39 I. C. C. 573, 576; Corp. Comm. of Virginia v. C. & O. Ry. Co., 40 I. C. C. 24, 30; Connor Lumber & Land Co. v. A. C. & Y. Ry. Co., 40 I. C. C. 111, 114; Corp. Comm. of Virginia v. C. & O. Ry. Co., 40 I. C. C. 24, 30; The Missouri River-Nebraska Cases, 40 I. C. C. 201, 259; Eastern Shore of Virginia Produce Exchange v. N. Y. P. & N. R. R. Co., 40 I. C. C. 328, 334; Transit at Kansas Points, 40 I. C. C. 358, 366; Eastern Shore of Virginia Produce Exchange v. N. Y. P. & N. R. R. Co., 40 I. C. C. 328, 334; Iron Ore Rate Cases, 41 I. C. C. 181, 194; Tennessee Copper Co. v. S. Ry. Co., 41 I. C. C. 336, 340; Business Men's League of St. Louis v. A. T. & S. F. Ry. Co., 41 I. C. C. 13, 25; American Paper & Pulp Asso. v. B. & O. R. R. Co., 41 I. C. C. 506, 511; Sioux City Commercial Club v. C. B. & Q. R. R. Co., 41 I. C. C. 518, 520; Beaver Valley Milling Co. v. A. T. & S. F. Ry. Co., 41 I. C. C. 533, 536; Stacy v. S. Ry. Co., 41 I. C. C. 654, 655; Bradbury Marble Co. v. L. & N. R. R. Co., 42 I. C. C. 329, 331, 332; Alliance Coal & Coke Co. v. C. & S. Ry. Co., 42 I. C. C. 499, 501; St. Louis Southwestern Ry. Co. v. United States, 234 Fed. 668, 681; Lumber from Indiana Stations, 43 I. C. C. 117, 120; S. P. Co. Ownership of Atlantic S. S. Lines, 43 I. C. C. 168, 174; Evans Lumber Co. v. C. of G. Ry. Co., 43 I. C. C. 476, 480; Scully Syrup Co. v. A. G. S. R. R. Co., 43 I. C. C. 567, 576; New England Lumber Rates, 43 I. C. C. 641, 644; Richmond Cham. of Com. v. S. A. L. Ry., 44 I. C. C. 455, 478; Rates from New Orleans and Galveston, 44 I. C. C. 727, 741; Bituminous Coal to C. F. A. Territory, 46 I. C. C. 66, 106; Transcontinental Rates, 46 I. C. C. 236, 277; New Orleans Cotton Exchange v. L. & N. R. R., 46 I. C. C. 712, 741; Western Trunk Lines Iron & Steel, 47 I. C. C. 109, 113, 114; New York Harbor Case, 47 I. C. C. 643, 687, 738; Lamb-Fish Lumber Co. v. A. C. & Y. Ry., 49 I. C. C. 187, 192; Traffic Bureau of Knoxville, Tenn. v. B. & O. R. R., 49 I. C. C. 205, 216, 217; Newport News Shipbuilding & Dry Dock Co. v. P. R. R., 49 I. C. C. 622, 627; Crown Williamette Paper Co. v. A. T. & S. F. Ry., 49 I. C. C. 613, 614; California Canneries Co. v. S. P. R. R., 51 I. C. C. 501, 503; Pacific Lumber Co. v. N. W. P. R. R. 51 I. C. C. 738, 770; Portsmouth Asso. of Commerce v. S. A. L. Ry., 55 I. C. C. 377, 391; Murfreesboro Board of Trade v. L. & N. R. R., 55 I. C. C. 648, 652; Carnation Milk Products Co. v. Director General, 55 I. C. C. 665; National Council, Farmers' Ass'n v. Director General, 56 I. C. C. 399, 409; Intermediate Rate Asso. v. Director General, 61 I. C. C. 226, 235; Reduced Rates, 1922, 68 I. C. C. 676, 681; Coal from Southwest to Omaha, 73 I. C. C. 536, 539; Milwaukee Chamber of Commerce v. C. B. & Q. R. R. Co., 78 I. C. C. 110, 114; Southeastern Express Co. v. Amer. Ry. Exp. Co., 78 I. C. C. 126, 139, 140; Eric Corp. v. I. & G. N. Ry. Co., 83 I. C. C. 325, 327.

§14. (1½) Cross Country Competition.

See Cross Country Competition.

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(a) There is no obligation upon the carrier to recognize cross country competition if it does not choose to do so. Chicago-Duluth Grain Rates, 27 I. C. C. 216, 221.

(b) Where a carrier has voluntarily recognized cross-country competition, upon a subsequent increase being made, it becomes the duty of the Commission to determine whether such increased rates are reasonable for the service rendered. Lumber Rates from Local Points to Chattanooga, 29 I. C. C. 646, 648.

(c) A carrier operating two parallel lines of road serving the same territory, one a main line and the other a branch line, is justified in maintaining rates not shown to be unreasonable per se on the branch line while maintaining materially lower rates on the main line for like distances to meet the cross-country competition of an independent parallel line. Nebraska Ry. Comm. v. C. B. & Q. R. R., 36 I. C. C. 219, 221.

ALL OTHER CITATIONS

Omaha Grain Exchange v. N. P. Ry. Co., 30 I. C. C. 572, 578; R. R. Comrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641, 648; Eastern Fruit Growers' Asso. v. B. & O. R. R. Co., 33 I. C. C. 343, 344; Bekkedal v. C. St. P. M. & O. Ry., 37 I. C. C. 611; Traffic Bureau of Knoxville, Tenn. v. C. N. O. & T. P. Ry. Co., 37 I. C. C. 687, 690; Dewey Bros. Co. v. P. C. C. & St. L. Ry., 46 I. C. C. 388, 393; R. R. Com'rs. of North Dakota v. N. P. Ry. Co., 53 I. C. C. 437, 438, 440.

§14. (2) Potential Competition.

See Potential Competition; Water Competition.

IMPORTANT CASES SINCE 1908

(a) Potential competition is considered in fixing rates. Audley Hill & Co. v. S. Ry. Co., 20 I. C. C. 225, 226.

(b) Without a ship upon it the ocean has the power to restrain the upward tendency of rail rates. Railroad Commission of Nevada v. S. P. Co., 21 I. C. C. 329, 352.

(c) It is not the amount of the movement by water, but the ever-present possibility of that movement, that is significant. City of Spokane v. N. P. Ry. Co., 21 I. C. C. 400, 418.

(d) Potential competition serves always to insure better service and fairer treatment by other lines, and occasionally it has an influence upon rates. New England Investigation, 27 I. C. C. 561, 617.

(e) The extent to which a carrier shall lower its rates to meet anticipated competition is a matter primarily for its decision, and, should it later raise the rate, the sole question for determination is whether that increased rate is just and reasonable for the service performed. Scrap-Iron Rates Between Duluth and Chicago, 28 I. C. C. 467, 470.

(f) The fact that water competition leads to a low rate on one commodity does not require carriers to make similar reductions on other commodities subject to actual or potential water competition, irrespective of whether or not such commodities are competitive with each other. Traffic Ass'n. of St. Louis Coffee Importers v. I. C. R. R. Co., 28 I. C. C. 484, 488.

(g) It is not true that if water competition leads to a low rate on one commodity the carriers are required by law to make similar reduction on other commodities subject to actual or potential water competition, whether or not such commodities are competitive with each other. Traffic Asso. of St. Louis Coffee Importers v. I. C. R. R. Co., 28 I. C. C. 484, 488.

(h) Where it is threatened and not actual competition which induces a carrier to reduce the rates from a competitive point, no consideration may properly be given that circumstance. California Pine B. & L. Co. v. S. P. Co., 47 I. C. C. 372, 375.

ALL OTHER CITATIONS

Memphis Cotton Oil Co. v. I. C. R. R. Co., 17 I. C. C. 313, 320; Kentucky Wagon Mfg. Co. v. I. C. R. R. Co., 18 I. C. C. 360, 362; Board of Trade of Chicago v. A. C. R. R. Co., 20 I. C. C. 504, 507; Traffic Assn. of St. Louis Coffee Importers v. I. C. R. R. Co., 28 I. C. C. 484, 488; Memphis Freight Bureau v. B. & O. R. R. Co., 28 I. C. C. 543, 546; Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 573; Santa Rosa Traffic Assn. v. S. P. Co., 29 I. C. C. 65, 68; Lumber Rates from Lake Charles and West Lake, La., 31 I. C. C. 258, 259; Rates on Sugar, 31 I. C. C. 495, 506; Eastern Fruit Growers Asso. v. B. & O. R. R. Co., 33 I. C. C. 343, 347; G. T. W. Ry. Co. Operation of Car Ferry Co., 34 I. C. C. 54, 56; Memphis Freight Bureau v. St.

L. I. M. & S. Ry. Co., 39 I. C. C. 224, 242; Thompson, Ritchie & Co. v. V. S. & P. Ry. Co., 39 I. C. C. 287, 292; Nashville Tie Co. v. L. & N. R. R. Co., 40 I. C. C. 377, 378; Drewes Sugar Co. v. S. P. Co., 44 I. C. C. 533, 536; Rates from New Orleans and Galveston, 44 I. C. C. 727, 732; Transcontinental Rates, 46 I. C. C. 236, 246; Western Trunk Lines Iron and Steel, 47 I. C. C. 109, 111; Helena Traffic Bureau v. M. P. Ry., 48 I. C. C. 307, 310, 311; Pelican Lumber Co. v. V. S. P. R. R., 50 I. C. C. 540, 541; Chamber of Commerce, Houston, Tex. v. M. L. & T. R. R. & S. S. Co., 51 I. C. C. 653, 657; Murfreesboro Board of Trade v. L. & N. R. R., 55 I. C. C. 648, 655.

§14. (2½) Pipe Line Competition.

IMPORTANT CASES SINCE 1908

(a) The parcel-post law has deprived some short lines of a large part of their l. c. l. traffic. Railway-Mail Pay, 56 I. C. C. 1, 72.

(b) The commission may not require rail carriers to maintain rates merely in order that those who use them may better compete with others who are in a position to utilize the less costly service of pipe lines. Proportional Rates on Petroleum and its Products, 74 I. C. C. 349. 351.

§14. (3) Railroad Competition.

See Railroad Competition; Discrimination §8 (3) (4); Equalization of Rates §4 (2); Long and Short Hauls §9; Reasonableness of Rates §8 (2).

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(a) A long line met at a given point by a short line, and compelled to accept a scarcely remunerative rate, may, when that point is passed, increase its charges, with some consideration of the absolute distance by its own line from the originating point, in a ratio more rapid than if it had been able to grade its own rates continuously throughout its line. Lincoln Board of Trade v. Burlington & M. R. Co. (Com.) 2 I. C. R. 95.

(b) The fact that a low rate from St. Louis is forced upon the Missouri Pacific by competition at Omaha cannot be taken advantage of to compel a corresponding reduction upon its Lincoln branch. Lincoln Board of Trade v. Missouri P. R. Co. (Com.) 2 I. C. R. 98.

(c) No necessity or compulsion is created by a war of rates which justifies disobedience of the statute. Re Passenger Tariffs and Rate Wars v. 2 I. C. R. 341.

(d) One transportation line cannot be said to meet competition of another transportation line for the carrying trade of any particular locality, unless the latter line could and would perform the service alone if the former did not undertake it. Chattanooga Bd. of Trade v. East Tennessee, V & G. R. Co. (Com.) 4 I. C. C. 213.

(e) Competition with carriers not subject to the statute is based upon natural causes and plain conditions, but the legitimate force of competition with carriers subject to the act depends upon compliance with the law by each of the competitors and the special circumstances and primarily indefinite conditions in each particular case. Gerke Brewing Company v. L. & N. R. Co., 4 I. C. C. 267, 273.

(f) The active competition of rail carriers for the transportation of freight for which water carriers compete, thereby giving them the benefit of a participation in it and lowering the rates for the benefit of the producer and consumer, and furnishing many outlets to markets, is one of the results contemplated by the act and which it was intended to promote. New Orleans Cotton Exchange v. I. C. R. R. 2 I. C. C. 777, 789.

(g) One transportation line can not be said to meet the competition of another transportation line for the carriage of traffic from any particular locality, unless the latter line could and would perform the service alone if the former did not undertake it. Fewell v. R. & R. R. Co., 7 I. C. C. 354, 373.

(h) The circumstances and conditions governing the transportation of fertilizer from Charleston to Valdosta and other stations are rendered substantially dissimilar from those applying in the transportation to shorter distance localities by railway competition at Valdosta and such other stations which controls and affects the rate. Savannah Bureau of F. & T. v. Charleston & S. R. Co., 7 I. C. C. 458.

(i) Railway competition justifies defendant in making a lower rate to a more distant point. Railway competition may excuse the giving of a preference

to a particular locality or a particular commodity, provided the interests of the public are not unduly sacrificed to those of the carrier. New York Produce Exchange v. B. & O. R. Co., 7 I. C. C. 612, 660.

(j) The transportation of grain eastward from Kansas City and from Sioux City and other points in the territory adjacent to Sioux City is subject to competition between the carriers; but while reduced rates have resulted from the competition at Kansas City the competition in northwest Iowa has been more effectively restrained by an agreement formerly in effect, and, since such agreement was canceled, by continuance of rates without substantial reduction. The rate on corn to Chicago from most points in western Iowa is 17 cents per 100 pounds. Examination of the rates and rate changes for a period of years indicates that a rate of 15 cents on corn from Kansas City to Chicago should be applied at all Missouri River points, but the evidence is not sufficient to enable a definite conclusion. It does appear, however, that the rates on grain from Sioux City and other points in a limited section of northwest Iowa are too high. Grain Shippers' Asso. v. Illinois Central Co., 8 I. C. C. 158.

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(k) Rate wars were unreasonable and their results cannot be used as measure of reasonableness. Morgan Grain Co. v. A. C. L. R. R. Co., 19 I. C. C. 460, 463.

(l) The shortest line should generally fix the rate. Commercial Club of Superior v. G. N. Ry. Co., 24 I. C. C. 96, 101.

(m) The Commission has recognized the natural right of a carrier to establish low rates to meet competition over other routes. Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 26 I. C. C. 53, 58.

(n) Railroad competition will justify a difference in rates. Coke Producers' Asso. of Connellsville v. B. & O. R. R. Co., 27 I. C. C. 125.

(o) While there may be competition in service there can be none of much value in rates between steam railroads of similar character. New England Investigation, 27 I. C. C. 560, 608.

(p) Rather than meet rates of short line, carriers may desire to abandon business unless leave is obtained to disregard the fourth section. Iowa Grain Rates, 28 I. C. C. 354, 355.

(q) Competition of carriers serving other markets of supply does constitute a justification in some instances for making lower rates to more distant than to intermediate points. Fourth Section Violations in the Southeast, 30 I. C. C. 153, 279.

(r) The fundamental reason for granting relief to any line at a given point is the meeting at that point of the competition of other carriers, against which competition the petitioner is at a disadvantage. Fourth Section Violations in the Southeast, 30 I. C. C. 153, 304.

ALL OTHER CITATIONS

In Re Advances in Rates—Eastern Case, 20 I. C. C. 243, 259; Philadelphia Veneer Lumber Co. v. C. R. R. of N. J., 25 I. C. C. 653, 654; Bahrenburg Bros. & Co. v. A. C. L. R. R. Co., 24 I. C. C. 560, 565; Business Men's League of Albert Lea v. B. & O. R. R. Co., 24 I. C. C. 125, 127; Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co., 24 I. C. C. 55, 76; Texas Common Point Case, 26 I. C. C. 528, 531; Grain Rates in C. F. A. Territory, 28 I. C. C. 549, 555, 556; Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 577, 581; Fourth Section Violations in the Southeast, 30 I. C. C. 153, 208, 230; Memphis Freight Bureau v. I. C. R. R. Co., 30 I. C. C. 471, 475; Fourth Section Violations on Sugar, 31 I. C. C. 511, 522; Cunningham v. B. & O. S. W. R. R. Co., Unrep. Op. A-798; Chattanooga Packet Co. v. I. C. R. R. Co., 33 I. C. C. 384, 388; Massie & Pierce Lumber Co. v. N. & W. Ry. Co., 33 I. C. C. 14, 23; City of Nashville v. L. & N. R. R. Co., 33 I. C. C. 76, 77; Coffeyville Mercantile Co. v. M. K & T. Ry. Co., 33 I. C. C. 122, 124; Financial Relations, etc., L. & N. R. R. Co., 33 I. C. C. 168, 174, 179, 186, 196, 220; Bituminous Coal Rates to Baltimore and Other Points, 33 I. C. C. 307, 309; Lumber Rates to Central Freight Association and Trunk Line Territories, 33 I. C. C. 322, 323; Eastern Fruit Growers Asso. v. B. & O. R. R. Co., 33 I. C. C. 343, 348; Rates on Grain and Grain Products, 33 I. C. C. 374; 375; Grain Rates from Milwaukee, 33 I. C. C. 417, 418; Daly Coal Co. v. C. & A. R. R. Co., 33 I. C. C. 467, 468; Doran & Co. v. N. C. & St. L. Ry., 33 I. C. C. 523, 530; Cullman Commercial

Club v. L, & N. R. R., 33 I. C. C. 634, 636; Rates in Chicago Switching District, 34 I. C. C. 234, 241; Henderson Commercial Club v. I. C. R. R. Co., 36 I. C. C. 20, 28; The Iron and Steel Cases, 36 I. C. C. 86, 95; Mid-Continent Oil Rates, 36 I. C. C. 109, 117, 121; Rates on Bituminous Coal, 36 I. C. C. 401, 403, 420; Lumber to Wisconsin Points, 37 I. C. C. 198, 200; Bekkedal v. C. St. P. M. & O. Ry. Co., 37 I. C. C. 611, 613; Bituminous Coal Rates to the Southeast, 37 I. C. C. 652, 663; Paducah Board of Trade v. C. B. & Q. R. R. Co., 37 I. C. C. 743, 756; Gile & Co. v. S. P. Co., 39 I. C. C. 193, 197; Oklahoma Cottonseed Crushers' Asso. v. M. K. & T. Ry. Co., 39 I. C. C. 497, 502, 506; Casey-Hedges Co. v. C. N. O. & T. P. Ry. Co., 39 I. C. C. 569, 570, 571; Major Stave Co. v. M. D. & G. R. R. Co., 39 I. C. C. 573, 576; Tulsa Traffic Asso. v. A. T. & S. F. Ry. Co., 40 I. C. C. 9, 11; Nashville Lumbermen's Club v. L. & N. R. R. Co., 40 I. C. C. 59, 61; Eastern Shore of Virginia Produce Exchange v. N. Y. P. & N. R. R. Co., 40 I. C. C. 328, 334; Colorado Alfalfa Meal & Mfg. Co. v. M. P. Ry. Co., 41 I. C. C. 540, 542; Lumber Rates from Helena, Ark., and Other Points, 41 I. C. C. 565, 569; Swanson v. C. B. & Q. R. R. Co., 42 I. C. C. 285, 286; Memphis Exchange v. I. C. R. R. Co., 43 I. C. C. 378, 380; Drayage Absorption, 43 I. C. C. 472, 474; Northern Potato Traffic Asso. v. B. & O. R. R. Co., 43 I. C. C. 545, 547; Pierce Oil Corp. v. M. K. & T. Ry., 44 I. C. C. 279, 285; Richmond Chamber of Commerce v. S. A. L. Ry., 44 I. C. C. 455, 464; Wisconsin Rate Cases, 44 I. C. C. 602, 608; Rates from New Orleans and Galveston, 44 I. C. C. 727; 732, 734, 738; Abel & Roberts v. M. P. Ry., 46 I. C. C. 301; Louisiana Cotton, 46 I. C. C. 451, 455; Tidewater Demurrage, 46 I. C. C. 677, 680; Coulbourn v. N. Y. P. & N. R. R., 47 I. C. C. 54, 56; Western Trunk Lines Iron and Steel, 47 I. C. C. 109, 125; Handling of Heavy Articles, 47 I. C. C. 323, 332; Illinois Classification, 56 I. C. C. 202, 204; National Council Farmers Association v. Director General, 56 I. C. C. 399, 409; Murfreesboro Board of Trade v. L. & N. R. R., 55 I. C. C. 648, 652; Boston Chamber of Commerce v. O. S. S. Co. of S., 73 I. C. C. 233; Milwaukee Chamber of Commerce v. C. B. & Q. R. R. Co., 78 I. C. C. 110, 114; Import and Domestic Rates on Vegetable Oils, 78 I. C. C. 421, 427; Inland Crystal Salt Co. v. B., A. & P. Ry. Co., 78 I. C. C. 659, 663.

§14. (4) Rail-and-Water Competition.

See Equalization of Rates §4 (3); Rail-Water-Rates; Reasonableness of Rates §8 (3); Water Competition.

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(a) Where at one point water and rail competition exists to an extent not present at another point the conditions are so dissimilar that the rates to the former are not necessarily a measure of a reasonable rate to the latter. Georgetown Railway & Light Co. v. N. & W. Ry. Co., 22 I. C. C. 144.

(b) It is customary for rates via rail-and-water routes to be somewhat lower than the all-rail rates. Tampa Board of Trade v. L. & N. R. R. Co., 30 I. C. C. 377, 381.

ALL OTHER CITATIONS

In Re Advances in Rates for the Transportation of Flaxseed in Carloads, 23 I. C. C. 272, 275; Sugar Rates from New Orleans to Sterling, 27 I. C. C. 122, 124; Commercial Club of Duluth v. B. & O. R. R. Co., 27 I. C. C. 639, 651; Business Men's League of Albert Lea v. B. & O. R. R. Co., 24 I. C. C. 125, 127; Massie & Pierce Lumber Co. v. N. & W. Ry. Co., 33 I. C. C. 14, 18; Eastern Fruit Growers Asso. v. B. & O. R. R. Co., 33 I. C. C. 343, 351; Rates on Asphaltum, Barley, Beans and Canned Goods, 33 I. C. C. 480, 483, 485; Lake Line Applications Under Panama Canal Act, 33 I. C. C. 699, 714; Rates on Bituminous Coal, 36 I. C. C. 401, 406, 423; Ocean S. S. Co., of Savannah, 37 I. C. C. 422, 425; Peninsular & Occidental S. S. Co., 37 I. C. C. 432, 436; S. P. Co. Ownership of Oil Steamers, 37 I. C. C. 525, 536; Hessig-Ellis Drug Co. v. L. & N. R. R. Co., 39 I. C. C. 459, 463, 466; Crunden-Martin Mfg. Co. v. M. P. Ry. Co., 39 I. C. C. 631, 632; Steamer Lines Norfolk to Baltimore and Other Points, 41 I. C. C. 285, 294; Lake and Rail Cancellations (No. 2), 42 I. C. C. 513, 516, 518; Scranton-Williamsport Rail and Lake, 43 I. C. C. 182, 184; New England Lumber Rates No. 2, 43 I. C. C. 641, 644; C. F. A. Class Scale Case, 46 I. C. C. 475, 477; Western Trunk Lines Iron and Steel, 47 I. C. C. 109, 111; Traffic Bureau of Aberdeen v. Director General, 56 I. C. C. 147, 155; Rio Grande Chamber of Com-

merce v. St. L., B. & M. Ry. Co., 81 I. C. C. 703, 707.

§14. (5) Water Competition. .....

See Discrimination §8 (5); Equalization of Rates §4 (4); Long and Short Hauls §10; Potential Competition; Reasonableness of Rates §8 (4); Water Competition.

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(a) Exceptional conditions exist in respect to railroad transportation in proximity to the waterways of the Great Lakes, Michigan and Superior, and to rival competing railway lines operating between the ports on these lakes, as to the method of grouping stations, under the combined effect of the competition of these waterways and of the Act to Regulate Commerce, §4. Business Mens Assn. v. Chicago, St. P. M. & O. R. Co., 2 I. C. R. 41; Business Mens Asso. v. Chicago & N. W. R. Co. (Com.) 2 I. C. R. 48.

(b) A long line met at a given point by water competition, may grade up its rates from that point more rapidly than it otherwise might; and a situation upon a navigable river, although not at present affording active competition with the railroad, is to be considered. Lincoln Board of Trade v. Burlington & M. R. Co. (Com.) 2 I. C. R. 95.

(c) The Commission will look at and consider every fact, circumstance and condition surrounding the traffic and of the service performed in its transportation, and if the competition of water carriers at any point is such as to be large, active, and of controlling force, the all rail lines competing for the traffic at the same point may make rates that are reasonable and just, in view of such competition, and which will enable them to participate in the carriage of the traffic, and are not obliged to go out of the business and leave it as a monopoly to water carriers. New Orleans Cotton Exchange v. I. C. R. R. 2 I. C. C. 777, 788.

(d) If the competition of water carriers at any point is such as to be large ly active, and of controlling force, all rail lines competing for the traffic at the same point may make rates that are reasonable and just in view of such competition, and which will enable them to participate in the carriage of the traffic. New Orleans Cotton Exch. v. Illinois C. R. Co. (Com.) 2 I. C. R. 777.

(e) As to the other rail-carrier defendants in this proceeding, which are certain southern and southwestern railroads, it appears in a general way that there is water competition at Memphis, Vicksburg, New Orleans, Mobile and Galveston, but upon this point the evidence is not sufficiently clear to enable the Commission to determine the extent to which this competition at each of these points is actual and whether it involves traffic important in amount; and the Commission therefore retains the case as to these defendants, and will hereafter notify the parties to the time when and the place where all such further evidence will be heard upon these points that the parties may desire to offer. Rice v. Atchison, Topeka & Santa Fe R. Co., 3 I. C. R. 263.

(f) The competition between all-water lines and the all-rail lines in the carriage of petroleum and its products from the Port of New York to San Francisco, Oakland, Sacramento, Stockton, Marysville, San Jose, and San Diego, in the State of California, is actual and involves the transportation of traffic important in amount. The competition between the part-rail and part-water lines and the part-pipe lines and the part-water lines, on the one side, from the oil fields of Pennsylvania and Ohio, via Port of New York to San Francisco, Oakland, Sacramento, Stockton, Marysville, San Jose, San Diego and Los Angeles, in California, in the carriage of petroleum and its products, on the one hand, and the competition of the all-rail lines, on the other, in the carriage of the same kinds of property from and to the same points named, is a competition that is actual and involves the transportation of traffic important in amount. HELD, on these facts and upon the authority of numerous decisions cited in this opinion, a dissimilarity of circumstances and conditions is thus shown to exist at the California points named as compared to the circumstances and conditions which exist in the carriage of this traffic by the all-rail lines at intermediate points along such all-rail lines, and that it is such a dissimilarity of circumstances and conditions as is recognized by the Act to Regulate Commerce and warrants the all-rail lines in making such just and reasonable rates as will enable them to meet the low rates and competition of the competing all-water lines and of the competing part-water and part-rail lines at said California points

above named, and that in doing so the said all-rail lines are not obliged to make their rates at intermediate points along their lines as low as the rates forced upon them by the competition at said California points above named, viz: San Francisco, Oakland, Sacramento, Stockton, Marysville, San Jose, Los Angeles and San Diego. Rice v. Atchison, Topeka & Santa Fe R. Co., 3 I. C. R. 263.

(g) Transportation by rail from eastern points to the "Pacific Coast Terminals," Portland, Tacoma, and Seattle, is affected by the competition—of controlling force and in respect to traffic important in amount—of water carriers reaching the same terminals; but such competition does not affect like transportation from said points to the city of Spokane, Washington. Merchants' Union v. Northern P. R. Co. (Com.) 4 I. C. R. 183.

(h) When water competition is alleged to justify rates in any case under the statute the carrier must affirmatively show proof which does more than create a presumption, and which clearly establishes that such competition is a controlling factor in the transportation of traffic important in amount from the points in question. James & Abbott v. C. P. R. Co., 4 I. C. C. 274, 279.

(i) The rail rate on shingles from a Canadian mill to market being fixed with special reference to the effect of a log drive down a river to the mill, and water competition for shingle traffic from the seaport below, the rate from a Maine mill higher up on the same river should be made upon the same basis. James v. Canadian P. R. Co., (Com.) 4 I. C. R. 274.

(j) Water competition to justify rates must be clearly established, to be a controlling factor in the transportation of traffic important in amount from the point in question. James v. Canadian P. R. Co., (Com.) 4 I. C. R. 274.

(k) "A common carrier cannot be required to ignore or overcome existing differences in the transportation facilities of different localities created not by its own arbitrary action, but by nature, or by enterprise beyond its control. . . . Wherever, and whenever, actual competition exists, the question the carrier has to deal with is, not so much what is a fair rate for the service, or what the traffic will bear, but what rate can be got for the service, as against the rate offered by the competitor." Case Quoted: ante. P. 323, Interstate Commerce Com. v. Atchison, T. & S. F. R. Co., Interstate Commerce Commission v. Cincinnati N. O. & T. P. R. Co., 4 I. C. R. 332.

(l) "That competition, the life of trade, cuts an important figure in the conditions and circumstances attendant upon transportation of passengers and property, cannot be well overlooked nor denied. Nor can it be well denied that, as between the short and long haul, competition may exist to that extent, that what would otherwise be smaller circumstances, and conditions, will be dissimilar circumstances, and conditions." Case Quoted: 31 Fed. Rep. 862, Missouri Pac. R. Co. v. Texas & P. R. Co., Interstate Commerce Commission v. Cincinnati N. & T. P. R. Co., 4 I. C. R. 332.

(m) Several lines of railway compete for the business between Cincinnati and Augusta; and there is active and influential competition by Baltimore, and other eastern cities, against Cincinnati for the trade of Augusta. Interstate Commerce Commission v. Cincinnati N. O. & T. P. R. Co., 4 I. C. R. 332.

(n) A charge of $3.70 per hundred pounds upon domestic traffic from New Orleans to San Francisco when only 80 cents per hundred between the two points is charged under substantially equality of conditions upon similar goods coming to the port of New Orleans from Liverpool is not justified by the fact that there is competition with water routes in carrying between Liverpool and San Francisco, since the gross inequality shows that the carrier is either injuring itself by carrying without profit or is receiving unwarranted return from the domestic traffic for the service rendered. Interstate Commerce Commission v. Texas & Pacific Ry., 4 I. C. R. 408.

(o) The influence of water competition via the Atlantic on rail rates from northeastern cities to southern territory is not so great, as appears by the proof in these cases, as to account for or justify the difference between the mileage rates from those cities and the mileage rates from Chicago and Cincinnati to such territory under the rates complained of, and the fact of that influence on rates from the former cities cannot be invoked as a justification of rates from the latter, which, after due

allowance for such influence as a substantially dissimilar circumstance, still appear on comparison of the two sets of rates to be unduly preferential to the former and unjustly discriminatory against the latter. In rates from different territories to a common market, "relative equality is necessary in the degree of the similarity" of circumstances and conditions attending the transportation in the two cases. Freight Bureau v. Cincinnati, N. O. & T. P. R. Co., 4 I. C. R. 592.

(p) Ocean competition may constitute a dissimilar condition, and circumstances and conditions which exist beyond the seaboard of the United States can be legitimately regarded for the purpose of justifying a difference in rates charged by railroads between import and domestic traffic. Texas & P. R. Co., v. Interstate Commerce Commission, 5 I. C. R. 405.

(pa) When the rates to Montgomery were higher a few years ago than now, actual, active water-line competition by the Alabama river came in; the rates were reduced to the level of the lowest practical water rates; and the volume of carriage by the river is now comparatively small. But the controlling power of that water line remains in full force, and must ever remain in force as long as the river remains navigable to its present capacity. Interstate Commerce Commission v. Alabama M. R. Co., 5 I. C. R. 685.

(q) Water competition is altogether inadequate to account for the general relatively low rating of lumber, grain, and other staple or heavy goods to or between inland points, and that of a long list of commodities, including iron and steel, to San Francisco from Chicago and so-called Mississippi river and Missouri river points. Whatever may be the merits of the carriers' competition as a defense of lower rates for longer than shorter hauls, the former involving greater service and expense on the part of the carrier, better cause apparently exists for lower rates where, under higher ones, the traffic is subjected to such disadvantage or prejudice that it will not move at all. Colorado Fuel & Iron Co. v. Southern Pacific Co., 6 I. C. C. 488.

(r) The shipment of iron and steel from foreign countries to San Francisco at low rates by water affects the iron and steel industry at Pueblo as well as at eastern points in respect to participation in supplying that market. Colorado Fuel & Iron Co. v. Southern Pacific Co., 6 I. C. C. 488.

(s) Charging the same rate from Savannah and Charleston over all-rail lines to points in Florida, in competition with ocean and rail competition from Savannah and Charleston, is not unlawful. Savannah Bureau of F. & T. v. Charleston & S. R. Co., 7 I. C. C. 458.

(t) Competition with water route authorizes differences in rates.—Dissimilar circumstances exist authorizing a less rate to a terminal point reached by several routes of railroads of part rail and water and all-water routes than to a nearer point at which there is no competition. Proceeding to enforce order of the Interstate Commerce Commission. Behlmer v. Louisville & Nashville Ry. Co., et al, 7 I. C. C. App. XII.

(u) The competition of carriers by water from San Francisco to Gulf of Mexico and Atlantic seaports, and the competition of refineries on the Eastern seaboard with refineries on the Pacific Coast, operate, in connection with transportation rates in effect from the East and South to Omaha, to render the circumstances and conditions governing the carriage of sugar by defendants from San Francisco to Omaha, Neb., substantially dissimilar in comparison with those applying on the transportation for the shorter distance over the same line from San Francisco to Kearney, Neb., and to justify a rate of 65 cents per 100 lbs. to Kearney, while a rate of 50 cents per 100 lbs. is in force to Omaha; but such circumstances and conditions do not justify the present rate of 77 cents per 100 lbs. as compared with the rate of 50 cents in force to Omaha. Gustin v. Burlington & M. R. R. Co., 8 I. C. C. 481.

(v) The Santa Fe and Southern Pacific Systems reach Los Angeles, Cal., a point to which rates from the east are affected by water competition. Phoenix, Ariz., is not upon either of these through lines, but is connected therewith by two lateral lines, one on the north connecting with the Santa Fe at Ash Fork and one on the south connecting with the Southern Pacific at Maricopa. On complaint that freight rates between New York, Chicago, St. Louis and other eastern points and Phoenix are unjust and unreasonable in themselves and relatively as compared with rates on

like traffic between New York and such other eastern points and Los Angeles, HELD, (1) That when water competition permits the establishment of classifications and rates below the rates to non-competitive points, such lower rates, while possessing value as standards of comparison, are not always conclusive in fixing rates to shorter distance points not affected by such competition, and there is no evidence in this case upon the reasonableness of the rates to and from Phoenix except comparison with Pacific Coast rates. (2) That the evidence in this case is insufficient to constitute the basis of a decision requiring defendant carriers to modify their long-standing system of rate-making, which also applies over other transcontinental lines throughout a great belt of territory and affects numerous localities and interests which have not been heard in this proceeding, and this being so the relief sought by complainant is for the present denied, but the case is retained for further consideration pending the investigation and disposition of other cases involving the same general question. Shippers' Union of Phoenix v. Atchison, T. & S. F. R. Co., 9 I. C. C. 250.

(w) When water competition permits the establishment of classifications and rates below the rates to noncompetitive points, such lower rates, while posessing value as standards of comparison, are not always conclusive in fixing rates to shorter distance points not affected by such competition. Shippers' Union of Phoenix v. Atchison, Topeka & S. F. R. Co., 9 I. C. C. 250.

(xy) With water competition compelling low all-rail freight rates from New York to San Francisco and other Pacific Coast terminals, a showing that the distance is less, and that graded rates were formerly in force, is not sufficient to warrant an order requiring lower rates from St. Louis, Chicago and other interior points than from New York, on traffic carried by rail to Pacific Coast destinations. Business Men's League of St. Louis v. Atchison, T. & S. F. R. Co., 9 I. C. C. 318.

(z) Transcontinental rates from eastern points to San Francisco are made in competition with water rates, and are in no sense the measure of the value of the services; but that situation does not justify the carriage of goods to San Francisco at a loss, thereby placing additional burdens on other traffic. Kindel v. Boston & A. R. Co., 11 I. C. C. 495.

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(aa) A water port is entitled to whatever advantage it can obtain through transportation by water, but its location does not entitle it to lower rates by rail, and although such preference may lawfully be accorded by a carrier in the protection of its own interests, it should not be required, except in cases where manifest wrong would otherwise result. Darling & Co. v. B. & O. R. R. Co., 15 I. C. C. 79, 87.

(bb) Carriers may, for the purpose of meeting water competition, make rates lower than would otherwise be justifiable, even to the extent of charging a less rate to the more distant point. The carrier may determine for itself whether it will or will not meet such water competition. While, however, the carrier may in the first instance settle its policy in this respect, it must act under certain limitations. It cannot be permitted to compete at one point and decline to compete at another, where all conditions are the same; nor should it, ordinarily, be allowed to compete one day and decline to compete the next. The public has the right to require equal and uniform treatment within the bounds of reason. Cases might therefore arise where the Commission would require the continuance of a rate established to meet such competition. Darling & Co. v. B. & O. R. R. Co., 15 I. C. C. 79, 87.

(cc) A rule that whenever all-rail carriers establish rates to a given point they must take notice of the independent water rates from that point and of the territory that can be reached thereunder and must make such adjustment as will prevent the use of the water rates from that point to another point, resulting in discrimination against that other point by reason of its all-rail rate adjustment, has no support in law, in public policy or in sound transportation principles. Bainbridge Board of Trade v. L. H. & St. L. Ry. Co., 15 I. C. C. 586, 590.

(dd) There may be water competition at each of two points, and yet a difference in rates to those points may be justified. Bainbridge Board of Trade v. L. H. & St. L. Ry. Co., 15 I. C. C. 586, 594.

(ee) While water competition may be availed of by a carrier as its justification

and excuse for rates that are lower than would otherwise be lawful, the existence of such competition is not in itself a ground upon which a shipper may demand a lower rate. Lindsay Brothers v. B. & O. S. W. R. R. Co., 16 I. C. C. 6, 8.

(ff) That carriers may meet water competition at whatever point and to whatever extent they see fit cannot be admitted. City of Spokane v. N. P. Ry. Co., 19 I. C. C. 162, 168.

(gg) There has been little difficulty experienced from time to time by the rail carriers in raising rates to the Pacific coast; the only live water competitor on the Pacific to-day is a line which bases it rates on the rail tariffs, and the rates of both the rail and the water lines change simultaneously. Ways can be found, and have been found, by which the presence of the ocean as a controlling or even greatly meddlesome factor in the fixing of railroad rates can be nullified. There is no doubt but that rail rates have been influenced at times to all the Pacific ports by water carriers, and of course there is a possibility that at any time this water competition may become seriously aggressive and potent. The United States is not a maritime nation at present andher great coast line on the Pacific side is served in great part by such water carriers as the railroads permit to live. Railroad Commission of Nevada v. S. P. Co., 19 I. C. C. 238, 250.

(hh) A rate forced by water competition cannot be used as a standard of reasonableness. In Re Transportation of Wool, Hides and Pelts, 23 I. C. C. 151, 163.

(ii) Ocean competition, as well as circumstances and conditions beyond the seaboard, are to be considered in determining whether differences in rates as between foreign and domestic traffic are unreasonable or unduly discriminatory. Chamber of Commerce of Newport News v. S. Ry. Co., 23 I. C. C. 345, 355.

(jj) While water competition may be availed of by a carrier as a justification for rates that are lower than would otherwise be lawful, the existence of such competition is not in itself ground upon which shippers may demand a lower rate. Cohen & Co. v. Mallory S. S. Co., 23 I. C. C. 374, 376.

(kk) Water competition will only be recognized when it is actually present or reasonably apprehended, and then only in proportion to its degree. Transcontinental Commodity Rates, West Bound, 26 I. C. C. 456, 461.

(ll) It is not the duty of a carrier to meet possible water competition and the circumstances of such competition does not prevent it from advancing a non-compensatory rate made under the influence of such competition to a remunerative basis. Scrap-iron Rates Between Duluth, Chicago, etc., 28 I. C. C. 467, 470.

(mm) The fact that because of the likelihood of water competition a carrier makes a rate which may not be compensatory, does not of itself render unreasonable and unjust an increase to a remunerative basis. Scrap-iron Rates Between Duluth and Chicago, 28 I. C. C. 467, 470.

(nn) The policy of carriers is that they regard meeting water competition as the equivalent of annihilating the river traffic. Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 573.

(oo) Rail rates must be kept so low that river boats cannot live on them. Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 574.

(pp) While carriers may properly meet water competition, the maintenance of a lower rate to one point than to other points which are intermediate cannot be justified on the ground that it is necessary to suppress water competition. Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 583.

(qq) Rate originally made to meet water competition hardly a reasonable charge for service performed. Lumber Rates from Lake Charles and West Lake, La., 31 I. C. C. 258, 260.

(rr) Where there is nothing to prevent vessels from moving between the points of origin and destination, there is no elimination of water competition. Lumber Rates from Lake Charles and West Lake, La., 31 I. C. C. 258, 259.

(ss) Where it is shown that a certain scale of rates is water-competitive, and that points to which it is asked that the same rates be applied are not so situated as to be entitled to the advantages of water-compelled rates, complainant's request cannot be granted, unless special

reasons are advanced therefor. Chamber of Commerce, Houston, Tex., v. I. & G. N. Ry., 32 I. C. C. 247, 251.

(tt) And the amendment of 1910 applies only to rates therafter reduced to meet water competition. Transcontinental Commodity Rates, 32 I. C. C. 449, 453.

(uu) Therefore carriers cannot be compelled to meet water competition. New York Produce Exchange v. N. Y. C. & H. R. R. Co., 32 I. C. C. 212, 216.

(vv) Water competition can not be said to exist at intermediate stations not situated on river. St. Matthews Produce Exchange v. L. & N. R. R. Co., 32 I. C. C. 233, 235.

(ww) Necessarily, coincident with the lowering of rates via waterways, there is a rivalry in service which is equally a strong weapon of competition. Lake Line Applications Under Panama Canal Act, 33 I. C. C. 699, 712.

(xx) When rates to coast cities are lower than to intermediate points because of controlling water competition, every inland point should take rates higher than to port cities. Commodity Rates to Pacific Coast Terminals, 34 I. C. C. 13, 17.

(yy) Where two points are connected by both rail and water routes in a proceeding in which the rate on a commodity not affected by water competition is attacked, a comparison with rates on a commodity affected by water competition is not helpful. Furniture Mfrs', Asso. v. A. A. R. R., 34 I. C. C. 262, 265.

(zz) The principle observed in meeting rail competition with respect to factors making up aggregate of intermediate rates should apply to water competition by a rail line. Spartanburg Chamber of Commerce v. S. Ry. Co., 34 I. C. C. 484, 494.

(3a) Movement of coal by water limits to some extent the rates that can be charged by the rail lines from interior mines. Rates on Bituminous Coal, 36 I. C. C. 401, 407.

(3b) The Commission has uniformly held that it is for the carrier to determine whether or not it will meet water competition. If it elects to discontinue this practice at any point and increase its rates, the Commission is concerned only in the question of whether or not the increased rates are just, reasonable, and proper. Coal to Rhode Island Points, 37 I. C. C. 650, 651.

(3c) To concede that possibility of competition depends on volition of water carrier would defeat the evident purpose of the amendment to restore and maintain competition in instances where rail carriers had secured control of potentially competitive water line. Peninsular & Occidental S. S. Co., 37 I. C. C. 432, 436.

(3d) Competition means something more than an occasional movement via a rail line which parallels a water line. where the rail line operates at a serious disadvantage in that it does not and can not offer rates and service on anything like equal terms with water lines. Whether or not there would be a normal, active competition between rail line and water line if operating independently is the best practical test of competition. S. P. Co. Ownership of Oil Steamers, 37 I. C. C. 525, 536.

(3e) The Act contemplates encouragement of such competition by divorcing water line from rail carrier when it is found that water carrier is being used to stifle competition, or is not being operated in best interests of the public. S. P. Co. Ownership of Oil Steamers, 37 I. C. C. 525, 536.

(3f) One of the primary purposes of the Act was to preserve and promote and not to destroy competition between carriers; and this clause of section 4 was intended to act as a restraint against rail carriers reducing their rates between competitive points to such a level as to render water service between such points unremunerative. Reopening Fourth Section Applications, 40 I. C. C. 35, 40.

(3g) Keen competition exists in the southeast not only between various rail-and-water and all-rail routes from northern ports and interior eastern points but also between rail lines from the east and those from the west; and the measure of the present differentials apparently was fixed largely by competition. Steamer Lines Norfolk to Baltimore and Other Points, 41 I. C. C. 285. 294.

(3h) In the natural and orderly course of procedure, several months may elapse between the time when the water competition manifests itself and the time when the rail carriers can make effective such rail rates as are necessary to meet

this competition. Transcontinental Rates 46 I. C. C. 236, 244.

(3i) A water service which for one cause or another has been established may have been effective at some period in the past in reducing rail rates to a level lower than they otherwise would have been, but there may not be at present any likelihood of the restoration of that service although some of the facilities for the service are still in existence. Transcontinental Rates, 46 I. C. C. 236, 246.

(3j) Rail carriers, under ordinary circumstances, can not maintain a level of rates between the Atlantic and Pacific coasts, between the north Atlantic ports and ports on the south Atlantic or Gulf coast or between points on the Pacific coast that will be successful in securing any considerable amount of traffic in competition with the water carriers without fourth section relief. Transcontinental Rates. 46 I. C. C. 236, 268.

(3k) The enormous amount of shipping that nas been destroyed and the great demand for ships on account of the internment of some and the use of many others for purposes connected with the prosecution of the war have created an actual present world shortage of ocean-going steamships. Transcontinental Rates, 46 I. C. C. 236, 267.

(3l) The degree of competition as to water-borne traffic lies in the rates of the water carriers rather than in the continuity of the water service or the volume of water-borne tonnage. Nor can it be denied that points having direct single-line routes to and from river crossings, gateways, and ports and the service of a larger number of carriers having diverse connecting routes, possess the advantage of competitive forces which are lacking or are found in less degree at a point which has no direct single-line routes to or from the ports and is served by fewer rail lines. Tuscaloosa Board of Trade v. A. G. S. R. R., 47 I. C. C. 483, 501.

(3m) A rate originally established to meet water competition, was advanced under fourth section permission of the Commission. Complainant contended the last paragraph of section 4 of the Act to Regulate Commerce was violated in that the rates were increased without a specific hearing before the Commission and because no showing was made that the increase was published for reasons other than the elimination of water competition. The permission given by the Commission to the carriers to increase by 10c per 100 pounds on carload freight, the rates to the coast terminal points was based upon the showing made in 40 I. C. C. 35. It can not therefore fairly be said that these rates were published without a hearing. There is no requirement in the clause of the fourth section quoted that the hearing therein required shall follow rather than precede the filing of the tariff. Moreover, the permission given by the Commission to increase these rates was not more, in effect, than a modification of its previous orders under the fourth section in the series of cases cited, a procedure which is specifically provided for by the Act, with or without a further hearing. The Commission was still acting in this general proceeding when it declined in its best judgment upon the whole situation, to suspend these increased rates. Again, the fourth section itself specifically gives the Commission authority to prescribe from time to time the extent to which relief from the provisions of that section may be granted. Furthermore, the clause of the fourth section quoted is inapplicable to the situation here presented, where, after hearing, the Commission authorized a reduced rate at water competitive points and subsequently, conditions having changed, after due hearing authorized a higher rate. It should also be borne in mind that there is here no final elimination of water competition such as the Act contemplates. There is merely a diminution and suspension of that influence, due primarily to the war. Possibly under the stimulus of business initiative and the necessities of commerce, it will reappear to an even greater extent than heretofore when conditions again become normal. Marshall Wells Hardware Co. v. S. P. & S., 53 I. C. C. 684, 685.

(3n) There is now sufficient transportation by water and ample indication that it will further develop and increase, to warrant the belief that with in a comparatively short time it will reach a point where it will be felt in a serious loss of tonnage by the rail lines unless they have available appropriate measures to meet the situation. Intermediate Rate Association v. Director General, 61 I. C. C. 226, 244.

(3o) Water competition should affect like rates similarly to all points in the same general territory. Douglas Cham-

ber of Commerce v. A. T. & S. F. Ry. Co., 64 I. C. C. 405, 410.

(3p) Equality of opportunity may be defined as such an adjustment of rates as would cause a business man, under ordinary circumstances, to reach the conclusion after considering service and rates that he would ordinarily be as willing to send traffic by water as by rail, or vice versa. Transcontinental Cases of 1922, 74 I. C. C. 48, 56.

(3q) It is not necessary to have the same rate by water as by rail to afford the two sets of carriers equality of opportunity from any given point of shipment. The slower service, the necessity for making arrangements for transshipment at the ports, the irregularity of ship movements, special requirements as to marking, and other considerations operate to the disadvantage of the water lines. Transcontinental Cases of 1922, 74 I. C. C. 48, 60.

(3r) The fact that there is a water route from a given point to a certain destination, affording a low and reasonable rate, does not justify the Commission in permitting the rail carriers to charge a high and unreasonable rate on traffic between these points. S. P. Co. v. I. C. C., 219 U. S. 433, 451, 21 Sup. Ct. 288, 55 L. ed. 283.

ALL OTHER CITATIONS

Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 16 I. C. C. 276, 281; Fuller & Co. v. P. C. & Y. Ry. Co., 17 I. C. C. 594, 595; Receivers & Shippers' Asso. of Cincinnati v. C. N. O. & T. P. Ry. Co., 18 I. C. C. 440, 453; Kentucky Wagon Mfg. Co. v. I. C. R. R. Co., 18 I. C. C. 360, 363; Rainey & Rogers v. St. L. & S. F. R. R. Co., 18 I. C. C. 88, 89; City of Spokane v. N. P. Ry., 19 I. C. C. 162, 167, 174; Ohio Foundry Co. v. P. C. C. & St. L. Ry. Co., 19 I. C. C. 65, 67; Truck Growers' Ass'n. v. A. C. L. R. R. Co., 20 I. C. C. 190, 194; Anadarko Cotton Oil Co. v. A. T. & S. F. R. R. Co., 20 I. C. C. 43, 45; Railroad Commission of Nevada v. S. P. Co., 21 I. C. C. 329, 355; South Atlantic Waste Co. v. S. Ry. Co., 22 I. C. C. 293, 296; Cohen & Co. v. Mallory S. S. Co., 23 I. C. C. 374, 377; In Re Transportation of Wool, Hides and Pelts, 23 I. C. C. 151, 160; R. R. Com. of Oregon v. S. P. Co., 24 I. C. C. 273, 275; Flour City S. S. Co. v. D. V. R. R. Co., 24 I. C. C. 179, 189; Escanaba Business Men's Assn. v. A. A. R. R., 24 I. C. C. 11; Southern Furniture Mfrs. Assn. v. S. Ry. Co., 25 I. C. C. 379, 385; Gillis & Son v. P. B. & W. R. R. Co., 26 I. C. C. 61, 62; Merchants Freight Bureau of Little Rock, Arkansas v. A. T. & S. F. Ry. Co., 26 I. C. C. 543, 544; American Insulated W. & C. Co., v. C. & N. W. Ry. Co., 26 I. C. C. 415, 416; Rates on Linseed Oil, 26 I. C. C. 265, 270; Gillis & Son v. P. B. & W. R. R. Co., 26 I. C. C. 670, 672; California Pole & Piling Co. v. S. P. Co., 27 I. C. C. 670, 672; Commercial Club of Duluth v. B. & O. R. R., 27 I. C. C. 639, 650; New England Investigation, 27 I. C. C. 560, 575; Topeka Traffic Assn. v. A. & V. Ry. Co., 27 I. C. C. 428, 435; Pig Iron Rates from Virginia to Pennsylvania, 27 I. C. C. 343, 345, 346; Santa Rosa Traffic Ass'n v. S. P. Co., 29 I. C. C. 65, 68; Industrial Railways Case, 29 I. C. C. 212; Taylor Dry Goods Co. v. M. P. Ry. Co., 28 I. C. C. 205, 210; Meridian Board of Trade & Cotton Exchange v. A. G. S. R. R. Co., 28 I. C. C. 360, 361; Schmidt & Peters, Inc. v. A. T. & S. F. Ry. Co., 28 I. C. C. 376, 378; Wausau Advancement Asso. v. C. & N. W. Ry. Co., 28 I. C. C. 459, 461; Traffic Asso. of St. Louis Coffee Importers v. I. C. R. R. Co., 28 I. C. C. 484, 487; Traffic Bureau of Nashville v. L. & N. R. R. Co., 28 I. C. C. 535, 536; Grain Rates in C. F. A. Territory, 28 I. C. C. 549, 552; Memphis Freight Bureau v. I. C. R. R. Co., Unrep. Op. A-632; Fourth Section Violations in the Southeast, 30 I. C. C. 153, 165, 171, 193, 207, 230, 251, 261, 266; Nix & Co. v. S. Ry. Co., 31 I. C. C. 145, 148; Bowling Green Protective Asso. v. E. & B. G. Packet Co., 31 I. C. C. 301, 303; Rates on Sugar, 31 I. C. C. 495, 499; R. R. Comrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641, 653; Franklin Steel Works v. O. W. R. R. & N. Co., Unrep. Op. A-685; North Vernon Lumber Co. v. I. C. R. R. Co., Unrep. Op. A-688; Traffic Bureau of Knoxville v. C. N. O. & T. P. Ry. Co., Unrep. Op. A-695; W. & J. Sloane v. S. P. Co., Atlantic S. S. Lines, Unrep. Op. A-699; Helena Freight Bureau v. M. P. Ry. Co., Unrep. Op. A-701; Bower & Co. v. L. H. & St. L. Ry. Co., Unrep. Op. A-744; Eagle Distillery v. L. H. & S. T. Ry. Co., 32 I. C. C. 195, 197; Chamber of Commerce of Houston v. H. E. & W. T. Ry. Co., 32 I. C. C. 203, 204, 205; Transcontinental Commodity Rates, 32 I. C. C. 449, 455; North-Bound Rates on Hardwood, 32 I. C. C. 521, 525; Car-Ferry Allow-

ance at Cheboygan, Mich., 32 I. C. C. 578, 581; Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 619, 620, 621, 622, 629; Application S. P. Co. in re Operation S. S. Co., 32 I. C. C. 690, 696, 700; Union Bag & Paper Co. v. D. & H. Co., Unrep. Op. A-814; Rates on Melons from California Points, Unrep. Op. A-892; Valley Planing Mill Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-906; Rates on Fresh Fruits and Vegetables to Seattle, Wash., and Other Points, Unrep. Op. A-912; Harmon & Co. v. N. P. Ry. Co., Unrep. Op. A-918; Hughes & McCoy v. C. R. I. & P. Co., Unrep. Op. A-935; Rates on Agricultural Implements from San Francisco, 33 I. C. C. 119, 120; Eastern Fruit Growers Asso. v. B. & O. R. R. Co., 33 I. C. C. 343, 349, 350; Chattanooga Packet Co. v. I. C. R. R. Co., 33 I. C. C. 384, 389, 392; Ownership of Dallas, Portland & Astoria Navigation Co., 33 I. C. C. 462, 467; Rates on Asphaltum, Barley, Beans, and Canned Goods, 33 I. C. C. 480, 482, 483; Doran & Co. v. N. C. & St. L. Ry., 33 I. C. C. 523, 525; Rates on Scrap Iron from Gulf Ports, 33 I. C. C. 688, 672; Lake Line Applications Under Panama Canal Act, 33 I. C. C. 699, 703, 705, 707; New Orleans Shippers' Asso. v. I. C. R. R. Co., 34 I. C. C. 32, 34; Rates on Lumber from Southern Points, 34 I. C. C. 652, 686; National Wholesale Lumber Dealers Asso. v. A. C. L. R. R. Co., Unrep. Op. 1882; 1915 Western Rate Advance Case, 35 I. C. C. 497, 624; St. Louis and Kansas City to Texas Points, 36 I. C. C. 215, 216; Kentucky Distilleries & Warehouse Co. v. L. & N. R. R. Co., 36 I. C. C. 293, 300; Belknap Glass Co. v. G. N. Ry. Co., 36 I. C. C. 322, 323; Glucose from Chicago, 36 I. C. C. 379, 384; Rates on Bituminous Coal, 36 I. C. C. 401, 406; Ownership of Little Kanawha R. R. Co., 36 I. C. C. 560, 576; Texarkana Freight Bureau v. I. C. R. R. Co., 38 I. C. C. 55, 59; Bennett & Son v. C. & O. Ry. Co., 38 I. C. C. 310, 312; Class and Commodity Rates between St. Louis, East St. Louis, and Ohio River Points, 38 I. C. C. 411, 418, 421; Scott v. C. C. R. R. Co., 38 I. C. C. 467, 471; Iron and Steel from Pacific Coast Points, 38 I. C. C. 545, 547; Shippers of Eastman, Ga. v. S. Ry. Co., 38 I. C. C. 672, 673; Gile & Co. v. S. P. Co., 39 I. C. C. 193, 197; Memphis Freight Bureau v. St. L. I. M. & S. Ry. Co., 39 I. C. C. 224, 242; City of Memphis v. C. R. I. & P. Ry. Co., 39 I. C. C. 256, 269; Bituminous Coal to Mississippi Valley Territory, 39 I. C. C. 378, 389, 391; Hessig-Ellis Drug Co. v. L. & N. R. R. Co., 39 I. C. C. 459, 463, 466; Oklahoma Cottonseed Crushers' Asso. v. M. K. & T. Ry. Co., 39 I. C. C. 497, 502; Major Stave Co. v. M. D. & G. R. R. Co., 39 I. C. C. 573, 576; Casey-Hedges Co. v. C. N. O. & T. P. Ry. Co., 39 I. C. C. 569, 571; Concordia Commercial Club v. A. T. & S. F. Ry. Co., 39 I. C. C. 675, 684; Rice from Texas and Louisiana, 40 I. C. C. 285, 286, 288; Bancroft & Sons Co. v. N. Y. N. H. & H. R. R. Co., 40 I. C. C. 411, 414; Tennessee Copper Co. v. S. Ry. Co., 41 I. C. C. 336, 356; Greater Des Moines Committee v. C., St. P. M. & O. Ry. Co., 42 I. C. C. 65, 71; Independent Brewing Asso. v. C., M. St. P. Ry. Co., 42 I. C. C. 129, 132; Sulphuric Acid from New Orleans, La., 42 I. C. C. 200, 202; Petroleum to Kentucky Stations, 43 I. C. C. 35, 42; Traffic Bureau of Nashville v. L. & N. R. R. Co., 43 I. C. C. 366, 368; Inland Nav. Co. v. W. Ry. Co., 43 I. C. C. 588, 592; Cadillac Lumber Exchange v. A. A. R. R. Co., 43 I. C. C. 636, 637; Acme Mills v. L. & N. R. R. 44 I. C. C. 558, 561; Hill v. N. C. & St. L. Ry., 44 I. C. C. 582, 590; Rates from New Orleans and Galveston, 44 I. C. C. 727, 732, 733, 734; C. F. A. Class Scale Case, 45 I. C. C. 254, 276; Nephi Plaster & Mfg. Co. v. D. & R. G. R. R., 45 I. C. C. 433, 434; Graves Bros. Co. v. A. N. R. R., 45 I. C. C. 470, 472; Hopkins v. Ocean S. S. Co. of Savannah, 45 I. C. C. 568, 569; Natchez Chamber of Commerce v. Y. & M. V. R. R., 46 I. C. C. 60, 62; Bituminous Coal to C. F. A. Territory, 46 I. C. C. 66, 84, 105; Transcontinental Rates, 46 I. C. C. 236, 243, 253, 274; Direct Navigation Co., 46 I. C. C. 378, 379; Louisiana Cotton 46 I. C. C. 451, 454; Buffalo Grain Cases, 46 I. C. C. 570, 573; New Orleans Cotton Exchange v. L. & N. R. R., 46 I. C. C. 712, 736; Michigan Percentage Cases, 47 I. C. C. 409, 443, 444; National Utilization Corporation v. B. & A. R. R., 47 I. C. C. 467; Helena Traffic Bureau v. M. P. Ry., 48 I. C. C. 307, 309, 310, 311; Traffic Bureau of Knoxville, Tenn. v. B. & O. R R. 49 I. C. C. 205, 223, 224; Mayfield & Graves County Commercial Club v. I. C. R. R., 49 I. C. C. 521; Natchez Chamber of Commerce v. Y. & M. V. R. R., 49 I. C. C. 700, 706; Richmond Oil

Co., Inc. v. A. C. L. R. R., 50 I. C. C. 213, 216; Steamer Lines on Long Island Sound, 50 I. C. C. 634, 644; Aetna Explosive Co. v. S. A. L. Ry., 51 I. C. C. 674, 676; Earle Cooperage Co. v. St. L., I. M. & S. Ry. Co., 53 I. C. C. 295, 301; Williar v. S. P. Co., 53 I. C. C. 338; Memphis Southwestern Investigation, 55 I. C. C. 515, 529, 562, 564, 565; Chamber of Commerce of Montgomery v. Director General, 57 I. C. C. 610, 619; Helena Traffic Bureau v. S. L. I. M. & S., 57 I. C. C. 11-18; Application of United States Steel Products Co., 57 I. C. C. 513, 516; Natchez Chamber of Commerce v. L. & A., 58 I. C. C. 610, 616; Crown Willamette Paper Co. v. Director General, as Agent, 78 I. C. C. 273; Anson, Gilkey & Hurd Co. v. S. P. Co., 78 I. C. C. 495, 511; Inland Crystal Salt Co. v. B., A. & P. Ry. Co. 78 I. C. C. 659, 663; Elem Coal Co. v. L. V. R. R. Co., 80 I. C. C. 647.

§14. (6) Wagon and Motor Truck Competition.

See Wagon Competition.

CASES 1887-1908

(a) Neither joint traffic nor an arrangement by the carriers with a wagon transportation company extending through lines to points not reached by railroads constitute substantially dissimilar circumstances and conditions, nor make them joint carriers with such transportation company, so as to justify less charges to such points reached by wagons than upon the same goods from the point of origin to the point where wagon transportation commences. Cary v. Eureka Springs R. Co., 7 I. C. C. 286.

IMPORTANT CASES SINCE 1908

(b) And the Commission has recognized motor truck competition by permitting carriers to reduce rates on gasoline and fuel oil lower than those prescribed in the Shreveport case, in order to meet such competition and keep traffic to the rails. Railroad Commissioners of La. v. A. H. T. Ry. Co., 64 I. C. C. 197.

(c) The Panama Canal amendment to section 5 of the interstate commerce act is a part of a public statute and passed in the public interest. It has been found that the ownership and operation of boat lines by rail lines had retarded and stifled competition on routes by water in the interest of the rail lines, and it was to prevent this evil and permit the development of water-borne commerce in the interest of the public that the amendment was passed. S. P. Co. Ownership of Atlantic S. S. Lines, 77 I. C. C. 124, 128.

(d) Competition now exists between steamship lines operating through the Panama Canal and the railroads generally. Application of United States Steel Products Co., 77 I. C. C. 685, 686.

ALL OTHER CITATIONS

Comley Lumber Co. v. C. & S. Ry. Co., Unrep. Op. 1829; Merchants Exchange of St. Louis v. C. & A. R. R. Co., 36 I. C. C. 268, 269; Corp. Comm. of Oklahoma v. A. T. & S. F. Ry. Co., 38 I. C. C. 33, 35; Capital City Oil Co. v. Y. & M. V. R. R. R. Co., 39 I. C. C. 141, 145; Southwestern Class Case, 48 I. C. C. 379, 385.

§14a. Consolidation of Carriers.

See Consolidation of Carriers.

CASES 1887-1908

(a) The acquisition and consolidation by a rail carrier under one system of management of different competing lines of road serving the same territory in the carriage of competitive traffic to the same markets, cannot create a right on the part of the carrier to take advantage of the consolidation of interests to deprive the public of the benefits of fair competition nor afford warrant for oppressive discrimination with a view to its own interests, such as equalizing profits from its several divisions, by making rates and charges for one division that give profitable markets to a portion of its patrons, and higher rates and charges for another division that are destructive to the pursuits of other patrons who are competitors in the same business; but its duty to the public requires that its service must be alike to all who are situated alike. Rice Robinson & Witherop v. W. N. Y. & P. R. R. Co., 3 I. C. C. 162, 166.

§15. Contract Relying on Rate.

IMPORTANT CASES SINCE 1908

(a) A contract based on a lower rate existing before an advance is no ground alone for condemning such advance. Barnum Iron Works v. C. C. C. & St. L. Ry. Co., 18 I. C. C. 94; American Creosote Works v. I. C. R. R. Co., 18 I. C. C. 212.

(b) The Commission is not concerned with conditions of purchase and sale agreed upon between parties except as they may have shifted from one to the other a part or all of transportation charges. Hygienic Ice Co. v. C. & N. W. Ry. Co., 37 I. C. C. 384, 388.

ALL OTHER CITATIONS

Chattanooga Sewer Pipe & Fire Brick Co. v. A. G. S. R. R. Co., Unrep. Op A-450; Stonega Coke & Coal Co. v. L. & N. R. R. Co., 39 I. C. C. 523, 549; Chattanooga Implement & Mfg. Co. v. L. & N. R. R. Co., 40 I. C. C. 146, 149; California Pine Box & Lumber Co. v. S. P. Ry., 47 I. C. C. 372, 377.

§15½. Cost Computations.

See Infra §17; Cost Accounting; Weights and Weighing II.

CASES 1887-1908

(a) The fact that the cost of carriage of all coal upon an entire railroad system, from all points of shipment to all destinations, is a certain per cent of the gross receipts from all coal, is no reason for concluding that upon a particular line or part of the system the cost of carriage bears the same ratio to the coal receipts of that particular line or part. Interstate Commerce Commission v. Lehigh v. R. Co., 5 I. C. R. 643.

(b) Where on shipments of strawberries and vegetables from Charleston, destined for New York, delivery is made by the roads at the terminus of the rail line in Jersey City, in computing the total cost of transportation to New York, the expense of carriage over from Jersey City is to be added to the rate charged to that point. Truck Farmers' Assn. v. Northeastern R. R. Co., et al. 6 I. C. C. 295.

(c) In computing the total cost of transportation to New York on shipments of strawberries and vegetables from Charleston, where complaint is made that the carrier's rates are exorbitant, the expense of carriage from the terminus of railway line in Jersey City, by which route the shipment was made, is to be added to the rate charged to that point. Phelps v. Texas & P. R. Co., 6 I. C. C. 36.

IMPORTANT CASES SINCE 1908

(d) Freight paying less than 3 mills per ton-mile is looked upon by carriers as perhaps paying less than the actual out-of-pocket cost. Fourth Section Violations in the Southeast, 30 I. C. C. 153, 176.

(e) What weight to give to the cost factor depends upon the particular case. In re Separation of Operating Expenses, 30 I. C. C. 676, 678.

(f) Length of haul and volume of traffic are among the determining factors in arriving at cost. In re Separation of Operating Expenses, 30 I. C. C. 676, 681.

(g) The problem of estimating the cost of transporting specific commodities is at best in a developmental stage. 1915 Western Rate Advance Case, 35 I. C. C. 497, 561.

(h) One of the principal criticisms directed to cost computations is that it is impossible to allocate or separate accurately expenses which are chargeable to freight service and passenger service, respectively. Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 350.

(i) It should not be necessary to tear a rate apart in order to determine what proportion of it was intended as compensation for each distinct service performed. Ordinarily the costs of the separate services may be ascertained with reasonable accuracy and if separate charges commensurate therewith are established the task of keeping each charge at the standard of reasonableness will become greatly simplified. Under such a practice the shippers, the carriers, and the Commission could avoid an analysis of the whole rate and many different services in order to determine whether too much or too little was being charged for certain service. Iron Ore Rate Cases, 41 I. C. C. 181, 203.

(j) The equalization of cost theory of rate making is unsound and impracticable. To fix a rate on one commodity that is less than reasonable and a rate on another commodity that is more than reasonable, when such commodities are transported by different carriers, would be a manifest discrimination as between the carriers. Each carrier is entitled to charge a reasonable rate on each commodity transported; and the Commission can not sanction any method of rate making that results in subordinating these basic principles to the equalization of manufacturing costs through the adjustment of freight rates on raw material. Iron Ore Rate Cases 41 I. C. C. 181, 214.

(k) The cost per engine hour suggested by the Commission as a basis for determining what will be a reasonable charge for the service performed by carriers on private industry tracks, such charges to be fixed, in proposed schedules of the carriers at a stated amount per ton or per car for each furnace so serv-

Iron Ore Rate Cases, 41 I. C. C. 1[illegible] 221.

(l) The Commission has usually found the engine hour a safer guide than cars handled for making a separation of costs of switch service. Aluminum Company v. Massena Terminal R. R. Co., 69 I. C. C. 119, 123.

(m) Cost studies are at best only estimated, the accuracy of which could be tested only in practice, with the possibility of harmful results. Limestone from Illinois Points, 89 I. C. C. 11, 14.

ALL OTHER CITATIONS

Coal Rates from Virginia Mines, 30 I. C. C. 635, 646, 649; Rates on Bananas from Gulf Ports, 30 I. C. C. 510, 518; Proposed Bond Issue by N. Y. C. & H. R. R. R. Co., 30 I. C. C. 147, 151; In re Separation of Operating Expenses, 30 I. C. C. 676, 679, 680; Rates on Asphaltum, Barley, Beans and Canned Goods, 33 I. C. C. 480, 485; Lum. v. G. N. Ry. Co., 33 I. C. C. 541, 546, 547; 1915 Western Rate Advance Case, 35 I. C. C. 497, 505, 509, 517, 537; Rates and Rules on Shipments of Packing-House Products, 36 I. C. C. 62, 68; Western Passenger Fares, 37 I. C. C. 1, 12, 22, 24, 42; New York-Jersey City Ferry Rates, 37 I. C. C. 103, 111; Dallas Chamber of Commerce v. A. T. & S. F. Ry. Co., 40 I. C. C. 619, 639; Iron Ore Rate Cases, 41 I. C. C. 181, 189; The Fifteen Per Cent Case, 45 I. C. C. 303, 321; Milk and Cream Rates to Philadelphia, Pa., 45 I. C. C. 371, 382; C. F. A. Territory Milk and Cream Rates, 46 I. C. C. 601, 613; Western Pine Manufacturers Association v. C. I. & W. R. R. Co., 46 I. C. C. 650, 654; Western Cement Rates, 48 I. C. C. 201, 251; City of East Liverpool, Ohio, v. S. E. L. & B. V. T. Co., 51 I. C. C. 563, 567; Increased Rates, 1920, 58 I. C. C. 220, 223; Illinois Northern Ry., 61 I. C. C. 629, 633; Construction and Repair of Ry. Equipment, N. Y. C. R. R. Co., 66 I. C. C. 732, 747; Aluminum Company v. Massena Terminal R. R. Co., 69 I. C. C. 119, 123.

§16. Cost of Production.

See Infra §17; Classification §17 (4).

IMPORTANT CASES SINCE 1908

(a) The fact that the cost of producing wool has increased while its market price has fallen is no reason why less than a reasonable freight rate should be established for its transportation. In Re Transportation of Wool, Hides and Pelts, 23 I. C. C. 151, 156.

(b) The mere fact that complainants, because of outstanding contracts, were required to purchase their supply of pig iron at particular points can not be held to put a carrier under the obligation of moving the pig iron at less than a reasonable rate. Chattanooga Implement & Mfg. Co. v. L. & N. R. R. Co., 40 I. C. C. 146, 149.

(c) Commercial advantages and disadvantages arising from variations in costs of production are not factors that can have any great consideration by the Commission in reaching conclusions as to the propriety of rate structures. Standard Oil Co. v. Director General, as Agent, 66 I. C. C. 37, 40.

(d) Every item of cost which does not diminish with decreased production, i. e., which is properly a fixed charge, will increase the total amount of damage resulting from enforced curtailment of production through prejudicial distribution of cars; whereas every item of cost which does diminish with decreased production, i. e., which is properly a variable charge, will reduce the total amount of damage. Avella Coal Co. v. P. & W. V. Ry. Co., 77 I. C. C. 736.

ALL OTHER CITATIONS

Reconsignment and Storage of Lumber and Shingles, 27 I. C. C. 451, 454; Pardee Works v. C. R. R. Co. of N. J., 29 I. C. C. 500, 502, 503; Grain Rates in C. F. A. Territory, 28 I. C. C. 549, 559; The Illinois Coal Cases, 32 I. C. C. 659, 672, 673; Nix & Co. v. S. Ry. Co., 35 I. C. C. 145, 147; Coal and Oil Investigation, 31 I. C. C. 193, 195; Lumber Rates, Southern Ry. Points to Eastern Points, 31 I. C. C. 244, 250, 252; Eastern Fruit Growers Asso. v. B. & O. R. R. Co., 33 I. C. C. 343, 345; Northern Pine Mfrs. Asso. v. C. & N. W. Ry. Co. 33 I. C. C. 360, 362; San Toy Coal Co. v. A. C. & Y. Ry. Co., 34 I. C. C. 93, 95; Live Stock Rates from Colorado Points to Omaha, 35 I. C. C. 682, 687; Southern Rice Growers' Asso. v. T. & N. O. R. R. Co., 43 I. C. C. 90, 93; Eastern Shore of Virginia Produce Exchange v. A. & St. L. R. R., 50 I. C. C. 436, 444.

§17. Cost of Operation.

See Infra §18; Advanced Rates §7 (2), §10, §11; Reasonableness of Rates §9; Transportation §14.

CASES 1887-1908

(a) Difference in cost of service may justify reasonable difference in rates, Rice v. Louisville & Nashville R. R. Co., 1 I. C. R. 725.

(b) Extraordinary or unnecessary costs of operation or management of the traffic of a carrier cannot be permitted to excuse unreasonable or unjust rates, discriminations, preferences or prejudices. Milk Producers' Protective Asso. v. Delaware, L. & W. R. Co., 7 I. C. C. 92.

IMPORTANT CASES SINCE 1908

(c) Everything else remaining the same, an increase in cost of operation would justify an advance in rates. Other things remaining the same, increase in traffic requires a decrease in rates. It may, therefore, happen that the increase of traffic will more than offset the increase in operating expense. Cattle Raisers' Ass'n of Texas v. M. K. & T. Ry. Co., 13 I. C. C. 418, 430.

(d) There is no standard by which either the cost of the service or the reasonableness of creamery rates can be fixed with any certainty. Beatrice Creamery Co. v. I. C. R. R. Co., 15 I. C. C. 109, 132.

(e) The Commission does not recognize the right of a carrier to single out a piece of expensive road and make the local traffic thereon bear an undue portion of the expense of its maintenance or of its construction. A road is built and operated as a whole and local rates are not to be made with respect to the difficulties of each particular portion charging the cost of a bridge to the traffic of one section or the cost of a tunnel to traffic between its two mouths. Upon the S. P. Co. millions of dollars have been expended in building the Lucine cut off just west of Ogden, a monumental bit of construction which traverses the Great Salt Lake. If rates from one side of the lake to the other were based upon the cost of this cut-off they would be unconscionable. If the position of the defendant were followed by the carriers generally (which it is not, nor even by itself) it would result in rates that would vary from mile to mile as the cost of road per mile varies. Traffic Bureau of Merchants Exchange v. S. P. Co., 19 I. C. C. 259, 261.

(f) The operating officials of the Central Pacific Railroad testified that the road was now doing the maximum business which could be done economically. In other words that an increase in business would add to the expense per unit of operation. Not being in a position to urge that a reduction in rates was unjustifiable because of the lightness of its traffic, the defendant here contends that the Commission would not be justified in reducing the rate because business would increase and the expense of performing the service would increase. The contention seems to be that the Commission must not reduce the rate when the traffic is light, and when the traffic is heavy it must not reduce the rate because it will increase the cost of operation. Traffic Bureau of Merchants Exchange v. S. P. Co., 19 I. C. C. 259, 263.

(g) In determining reasonable rates to be charged by the carrier, the fact that the cost of operation has increased and will increase in proportion to gross operating revenue is not important, because even though the percentage of net to gross is less, still the total net may be more, and the percentage of net to value may also be more. The question to be determined is whether the net return upon the value of the property devoted to the public service is sufficient. In Re Advances in Rates—Eastern Case, 20 I. C. C. 243, 275.

(h) In combating a general advance in rates in Official Classification territory the shippers contended that by the use of "scientific management" $300,000,000 annually could be saved by the proper application of these methods to the business of railroading in the United States. The witness who testified to this stated that such methods were not in actual operation in over 1-10th of 1 per cent of all the manufacturing establishments in this country. HELD, the system is everywhere in an experimental stage and the Commission cannot find that the defendants could make good any part of the actual advances in wages by the introduction of scientific management. In Re Advances in Rates—Eastern Case, 20 I. C. C. 243, 279.

(i) Certain portion of a system of railroad cannot be segregated from the whole and the expenses and earnings charged and credited to such portions on a mileage pro rata basis. In Re Investigation of Advances in Rates on Grain, 21 I. C. C. 22, 25.

(j) It is unfair to take from the carrier whatever of profit it may secure by reason of improvement in its plant

and adoption of the most modern methods. If our railroad systems are to remain in private hands, stimulus must be given to the initiative and imagination of railroad operators. The community may not take with justice whatever comes by the labor or time saving devices adopted by those who serve the public, nor may the carriers absorb the profits of the shipper resulting from similar efforts. In Re Advances on Coal to Lake Ports, 22 I. C. C. 604, 625.

(k) If additional business can be taken on by the carriers at rates which will contribute at least a little in addition to the actual out-of-pocket expense, the carrier will be advantaged to that extent and all its patrons will be benefited to the extent to which such traffic contributes to the net revenue. Without the amount of net contributed by this clas of traffic, assuming a certain amount of revenue to be necessary, such revenue must be contributed entirely by the remaining traffic, and the exclusion of this competitive traffic would increase the burden upon the other traffic to a corresponding extent. Boileau v. P. & L. E. R. R. Co., 24 I. C. C. 129, 132.

(l) Analysis of operating expenses of railroads have been, and can be, made with substantial accuarcy, and whatever defects may still inhere in such processes do not negative the guiding value of the statistical results arrived at. Pittsburgh Vein Operators of Ohio v. Penn. Co., 24 I. C. C. 280, 285.

(m) The Commission fully realizes the limitations of calculations based on the cost of operation with respect to a particular commodity, but also appreciates their intrinsic value. Pittsburgh Vein Operators of Ohio v. Penn. Company, 24 I. C. C. 280, 285.

(n) The principle of cost of operation in determining the reasonableness of rates is vital, even though its application is still subject to much improvement in certain details. Pittsburgh Vein Operators of Ohio, v. Penn. Co., 24 I. C. C. 280, 285.

(o) That trains are broken at a given point seems to be of probative value in determing the reasonableness of a rate. Johnson & Son v. C. & O. Ry. Co., 24 I. C. C. 698, 701.

(p) Cost is an important element in determining reasonableness of freight rates, but it is not controlling. L. & N. R. R. Coal & Coke Rates, 26 I. C. C. 20, 27, 29.

(q) If the carrier does not see proper to make improvements that will reduce the cost of operation, it cannot claim that it may raise rates because cost approaches or overtakes revenue. Louisville & Nashville Railroad Coal & Coke Rates, 26 I. C. C. 20, 26.

(r) A one line haul is highly desirable from the carrier's point of view. Rates from Walsenburg Coal Field, 26 I. C. C. 85, 88.

(s) Statements of increased cost of transportation can have little weight when presented in the abstract with no attempt to consider corresponding reductions resulting from greater efficiency. Hormel & Co. v. C. M. & St. P. Ry. Co., 26 I. C. C. 112, 114.

(t) And the cost of construction is an element to be considered in determining the reasonableness of a rate. Union Tanning Co. v. S. Ry. Co., 26 I. C. C. 159, 164.

(u) An increase in capacity tends to increase gross revenue per car or per train and to decrease operating cost per unit of freight. Memphis Freight Bureau v. L. & N. R. R. Co., 26 I. C. C. 402, 405.

(v) The general progress throughout the country in the higher tractive power of engines, larger cars and trains, elimination of curves and grades and other economies which tend to greater efficiency have been peculiarly reflected in the transportation of coke. Coke Producers Asso. of Connellsville v. B. & O. R. R. Co., 27 I. C. C. 125, 147.

(w) Maintenance of way and structure and train-mile expenses may be considered in passing upon the reasonableness of a rate. Standard Mirror Co. v. P. R. R. Co., 27 I. C. C. 200, 208.

(x) Cost of betterments charged to operating expenses no justification for increase in rates. New York Butter and Cheese Rates, 28 I. C. C. 330, 331.

(y) Increased tractive power of locomotives is significant as tending to reduce the operating cost per unit of freight transported. Traffic Bureau of Nashville v. L. & N. R. R. Co., 28 I. C. C. 533, 535.

(z) Allowances to and free services for proprietary industries have materially increased operating expenses of carriers. Industrial Railways Case, 29 I. C. C. 212, 217.

(aa) Weather interference is an ele-

ment to be considered in determining cost of handling traffic. Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co., 29 I. C. C. 428, 435.

(bb) It is not proof of extravagance that a carrier, operating through a mountainous and sparsely settled country, and having a roadbed upon which there are short curves and steep grades, has a higher operating expense than another carrier in the same general territory having no such transportation difficulties. Railroad Com. of Arkansas v. M. & N. A. R. R. Co., 30 I. C. C. 488, 491.

(cc) A portion of the increase in maintenance charges is due to safety-appliance acts, boiler inspection laws, state legislation requiring the elimination of grade crossings and other enactments. These laws, to no small extent, enforce measures of precaution which the carriers ought to take and which they would voluntarily have taken in many particulars in pursuance of sound railway policy and practice. It is nevertheless true, that in many cases they have had the effect of hastening improvements in equipment and roadway that would have come later, and of burdening the maintenance expenses of the years in which the improvements were made. Wise policy requires that a railway property should be kept up to the level of its highest reasonable efficiency at all times; and the postponement of needed repairs, either in road or equipment because of a temporary falling off in revenues cannot be justified or be regarded as true economy. The Five Per Cent Case, 31 I. C. C. 351, 381.

(dd) Fuel, next to wages, is the largest item in operating expense of railroads. Five Per Cent Case, 31 I. C. C. 351, 412.

(ee) Railroad properties should be kept in a high state of efficiency and freight rates should be sufficiently remunerative to permit it. Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 283.

(ff) Operating ratio can be used as an index of the relative prosperity of carriers only after due allowance is made for other factors which might qualify the showing which the operation indicates on its face. 1915 Western Rate Advance Case, 35 I. C. C. 497, 505.

(gg) The operating ratio for any year as that term is technically employed in the Commission's statistics, is the ratio of that year's operating expenses to operating revenues. From the standpoint of the railway corporation it may be not unappropriate to assimilate taxes and rentals to operating expenses, as all are costs which must be paid out of gross revenue. In gauging the profitableness of the railroad industry, therefore, the inclusion of taxes and rentals along with operating expenses may more accurately mirror its situation than the use of the operating ratio in the sense above defined. At all events, no confusion of thought is involved if in comparing various operating ratios they are all based upon the same method, either excluding or including taxes and rentals in all cases. It is almost a commonplace to say that the operating ratio can be used as an index to the relative prosperity of carriers only after due allowance is made for other factors which might qualify the showing which the operating ratio indicates upon its face. The ratio shows the number of cents out of each dollar of operating revenue which is charged to operating expenses and thus indirectly the amount treated as net operating revenue. An increased operating ratio is combatible with increased net return upon investment where, without corresponding increase in the carries' investment, the gross revenues rise and still afford a larger net revenue over the contemporaneously increased expenses of operation. 1915 Western Rate Advance Case, 35 I. C. C. 497, 505.

(hh) A number of factors such as unusual expenses incurred by reason of floods or washouts or occasioned by the shrinkage of heavy traffic and to strikes or the cessation of shipments from industries of large output, such as coal mines, might indicate by the rise in the operating ratio a depression in the prosperity of the carrier, which would be as transient as the causes which may for the time being have raised the operating ratio. Another factor which may easily alter the operating ratio is a change in accounting. Should a new method of accounting make charges to operation not theretofore customary, such as allowances for depreciation, or more generous apportionments for maintenance than were formerly in vogue, the effect might be reflected in an increased operating ratio. Such an increased ratio would in reality mirror not a decline in

the carriers' prosperity, but merely an addition to the list of operating expenses. 1915 Western Rate Advance Case, 35 I. C. C. 497, 506.

(ii) Changes in the operating ratio are due to variation of expenses or in revenues. It is consequently of importance to determine the influences which have operated, respectively, upon the level of earnings and expenses. 1915 Western Rate Advance Case, 35 I. C. C. 497, 509.

(jj) Carriers in meeting increased costs with increased prices for service are subject to certain disabilities not similarly encountered by many other industries. 1915 Western Rate Advance Case, 35 I. C. C. 497, 540.

(kk) Economy of operation is promoted by heavier loading, and the whole public benefits by economies that reduce the cost of transportation. 1915 Western Rate Advance Case, 35 I. C. C. 497, 575.

(ll) Where there is not sufficient traffic to utilize the full tractive power of a locomotive, a train may move which does not require the rated engine capacity; but where the traffic is sufficient to require the full locomotive capacity the greater the number of cars in which the tonnage is distributed, and consequently the greater the tare weight, the less the revenue freight that an engine can draw. 1915 Western Rate Alvance Case, 35 I. C. C. 497, 582.

(mm) Neither competition nor unreasonable demands of the public must be made the excuse for waste and extravagance. Western Passenger Fares, 37 I. C. C. 1, 34.

(nn) The meeting of bond maturities can not be considered an item of operating expense. Marion & Eastern R. R. Co. v. C. & E. I. R. R. Co., 68 I. C. C. 17, 19.

(oo) Operating ratios are of value as showing trends in comparisons between carriers, but their use to show an alleged out of pocket cost can not be sustained. Joint Rates and Fares of M. & N. A. R. R., 68 I. C. C. 47, 56.

(pp) The use of operating ratios derived from all traffic for adjustment of a part of the traffic without consideration of that part of the business to which the adjustment is not to be applied leads to erroneous conclusions. Divisions of Joint Rates and Fares of M. & N. A. R. R., 68 I. C. C. 47, 57.

(qq) Low density of tonnage together with difficult operating conditions have resulted in high operating costs for the Tennessee Central R. R. Murfreesboro Board of Trade v. L. & N. R. R. Co., 73 I. C. C. 228, 230.

(rr) A road is operated as a whole, and an inquiry as to whether it is economically and efficiently operated must of necessity be directed to the manner of its operation as a complete unit. Nevada Public Service Commission v. S. P. Co., 73 I. C. C. 240, 246.

(ss) The expense incident to the maintenance of through service may not be justified by the amount of traffic secured. Hamilton v. American Express Co., Unrep. Op. 355.

(tt) Light local freight trains, making numerous stops and doing local switching, burn relatively more fuel than a heavy through ore train, though their light tonnage causes less wear and tear on tracks. Adriatic Mining Co. v. C. & N. W. Ry. Co., 78 I. C. C., 611, 627.

ALL OTHER CITATIONS

Kansas City Trans. Co. v. A. T. & S. F. Ry. Co., 15 I. C. C. 491, 493; Cedar Hill Coal & Coke Co v. Colo. & So. Ry. Co., 16 I. C. S. 387, 391; City of Spokane v. N. P. Ry. Co., 19 I. C. C. 162, 173; In Re Advance in Rates—Western Case, 20 I. C. C. 307, 368; In Re Advance in Rates—Eastern Case, 20 I. C. C. 243, 276; Meeker & Co. v. L. V. R. R. Co., 21 I. C. C. 129, 162; Maritime Exchange v. P. R. R. Co., 21 I. C. C. 81, 84; In Re Investigation of Advance in Rates on Grain, 21 I. C. C. 22, 34, 35; Arlington Heights Fruit Co. v. S. P. Co., 24 I. C. C. 671, 672; Consolidated Fuel Co. v. A. T. & S. F. Co., 24 I. C. C. 213, 215; Union Tanning Co. v. S. Ry. Co., 25 I. C. C. 112, 114; Mutnomah Lumber & Box Co. v. S. P. Co., 25 I. C. C. 123, 128; Taylor v. N. & W. Ry. Co., 25 I. C. C. 613, 615; North Fork Cannel Coal Co. v. A. A. R. R. Co., 25 I. C. C. 241, 244; In Re Advances on Live Stock, 25 I. C. C. 63, 64; Edwards & Bradford Lumber Co. v. C. B. & Q. R. R. Co., 25 I. C. C. 93, 96; U. S. v. W. & N. R. R. Co., 26 I. C. C. 309, 311; May Bros. v. Y. & M. V. R. R. Co., 26 I. C. C. 323, 327; Lumber from Louisiana to North Atlantic Points, 26 I. C. C. 186, 189; Louisville & Nashville Railroad Coal and Cake Rates, 26 I. C. C. 20, 25; Lumber Rates from Memphis and Other Points to New Orleans, 27 I. C. C. 471, 484; U. S. v.

U. P. R. R. Co., 28 I. C. C. 518, 523; Arizona Corporation Commission v. A. T. & S. F. Ry. Co., 28 I. C. C. 428, 430; Railroad Com. of Arkansas v. M. & N. A. R. R. Co., 30 I. C. C. 488, 489; Decker & Sons v. C. M. & St. P. Ry. Co., 30 I. C. C. 547, 548; Rental Charges to Insulated Cars, 31 I. C. C. 255, 257; International Agricultural Corp. v. A. & W. P. R. R. Co., 32 I. C. C. 199, 200; Five Per Cent Case, 32 I. C. C. 325, 328; Rates on Fresh Fruits and Vegetables to Seattle, Wash., and Other Points. Unrep. Op. A-912; Public Utilities Commission of Idaho v. O. S. L. R. R. Co., 33 I. C. C. 103, 105; Lumber Rates from Helena, Ark., and Other Points, 33 I. C. C. 297, 300; Bituminous Coal Rates to Baltimore and Other Points, 33 I. C. C. 307, 315; Lum. v. G. N. Ry. Co., 33 I. C. C. 541, 550; Snow Lumber Co. v. R. C. & S. Ry. Co., 33 I. C. C. 587, 589; Johnson v. S. P. Co., 33 I. C. C. 597, 599; Newport Mining Co. v. C. & N. W. Ry. Co., 33 I. C. C. 645, 648; Monon Coal Co. v. C. & E. I. R. R. Co., 34 I. C. C. 221, 222; Goldfield Cases, 34 I. C. C. 360, 373; Pacific Creamery Co. v. S. P. Co., 34 I. C. C. 586, 593; Louisville Board of Trade v. I. C. & S. T. Co., 34 I. C. C. 640, 642; 1915 Western Rate Advance Case, 35 I. C. C. 497, 517, 520; Transportation of Anthracite Coal, 35 I. C. C. 220, 261; Rates and Rules on Shipments of Packing-House Products, 36 I. C. C. 62, 68, 69; The Iron and Steel Cases, 36 I. C. C. 86, 88; Stopping of Cars in Transit to Complete Loading, 36 I. C. C. 130, 135; Western Passenger Fares, 37 I. C. C. 1, 11; Eagle Ice Co. v. C. M. & St. P. Ry. Co., 37 I. C. C. 250, 252; Rates via Rail-and-Lake Routes, 37 I. C. C. 302, 311; City of Astoria v. S. P. & S. Ry. Co., 38 I. C. C. 16, 21; Detroit Coal Exchange v. M. C. R. R. Co., 38 I. C. C. 79, 83; Westport Stone Co. and Big Four Stone Co. Case, 38 I. C. C. 316, 318; Wellington Mines Co., v. C. & S. Ry. Co., 39 I. C. C. 202, 205; City of Memphis v. C. R. I. & P. Ry. Co., 39 I. C. C. 256, 266; Casey-Hedges Co. v. C. N. O. & T. P. Ry. Co., 39 I. C. C. 569, 570, 571; Dallas Chamber of Commerce v. A. T. & S. F. Ry. Co., 40 I. C. C. 619, 639; Public Service Comm. of Wash. v. A. & V. Ry. Co., 42 I. C. C. 54, 57; Becker Brewing & Malting Co. v. D. & R. G. R. R. Co., 42 I. C. C. 133, 135; Fish from Virginia, 42 I. C. C. 415, 419; R. R. Com'rs. of Fla. v. F. E. C. Ry. Co., 42 I. C. C. C. 616, 618; New Orleans Terminal Allowances, 42 I. C. C. 748, 754; Iron Ore Rates Cases, 44 I. C. C. 368, 371, 375; Green Fire Brick Co. v. C. & A. R. R., 44 I. C. C. 448, 451; Hayden Bros. Coal Corp. v. D. & S. L. R. R., 45 I. C. C. 236, 338; The Fifteen Per Cent Case, 45 I. C. C. 302, 318; Arizona Corporation Commission v. A. T. & S. F. Ry., 45 I. C. C. 436, 443; R. R. Com'rs. of Iowa v. A. A. R. R. 46 I. C. C. 20, 38; R. R. Comm. of La. v. A. H. T. Ry. 48 I. C. C. 312, 327, 580; Willamette Valley Lumberman's Asso. v. S. P. Ry., 51 I. C. C. 250, 253; Yeakel Fuel Co. v. W. R. R. & Nav. Co., 51 I. C. C. 449, 450; D. & S. L. R. R. Co. v. C. B. & Q. R. R., 51 I. C. C. 679, 682; Kansas Car-Lot Egg Shippers' Asso. v. B. & O. R. R. Co., 53 I. C. C. 59, 63; Valley & Siletz R. R. Co. v. S. P. Co., 53 I. C. C. 397, 399; Rates on Grain and Grain Products, 56 I. C. C. 133, 140; Aberdeen Commercial v. Director General, 56 I. C. C. 147, 153; Bartlett- Collins Glass Co. v. St. L. & S. W., 56 I. C. C. 236, 244; Illinois Classification, 55 I. C. C. 290, 301; Railway-Mail Pay, 56 I. C. C. 1, 79; Phelps Dodge Corp. v. Director General, 57 I. C. C. 714, 719, 720; Lehigh Portland Cement Co. v. Director General, as Agent, 58 I. C. C. 429, 434; Inland Empire Shippers League v. Director General, 59 I. C. C. 321, 337, 338; P. & W. V. Ry. Co. v. P. & L. E. R. R. Co., 61 I. C. C. 272, 279; New England Divisions, 62 I. C. C. 513, 564; Construction and Repair of Ry. Equipment, A. C. L. R. R. Co., 66 I. C. C. 727; Construction and Repair of Ry. Equipment, N. Y. C. R. R. Co., 66 I. C. C. 727, 732;; Reparation as Relating to Increase of Rates, 68 I. C. C. 5, 6; Reduced Rates, 1922, 68 I. C. C. 676, 690, 691, 697; Nevada Public Service Commission v. S. P. Co., 73 I. C. C. 240, 246.

§18. Cost of Service.

See Advanced Rates §7 (2); Reasonableness of Rates §9, §19.

CASES 1887-1908

(a) While cost is an element to be taken into account in the fixing of rates, and one of the very highest importance, it cannot, for reasons well understood, be made the sole basis, but it must in any case be used with caution and reserve, as it is quite impossible to apportion with accuracy the cost of service among the items of traffic. Re Southern Ry. & Steamship Company, 1 I. C. C. 278, 282.

(b) Cost of service is always an im-

portant element in the fixing of rates. In proportion to amount and to the distance it is transported the cost of local traffic to the carrier is considerably the greater. This fact fairly establishes in favor of the carrier an equity entitling it to make for the more onerous service a greater proportionate charge. Re Southern Ry. & Steamship Asso., 1 I. C. C. 278, 282.

(c) The element of cost of service which may at one period have been recognized as controlling in fixing rates has long ceased to be regarded as the sole or the most important factor for that purpose. The value of the service with respect to the articles carried, the volume of business, and the conditions and force of competition are justly considered to have controlling weight in determining the charges for transportation. Boston Chamber of Commerce v. L. S. & M. S. R. R., 1 I. C. C. 754, 760.

(d) In making rates the cost of service is an element, but not the only one or the most important. The value of the service is generally regarded as the most important factor in fixing rates. Imperial Coal Co. v. P. & L. E. R. Co., 2 I. C. C. 436, 442.

(e) The cost of railway transportation is made up of the expense of the two terminals, and the intermediate haul and the terminal expenses are the same whether the haul be long or short. A few miles, or even a considerable number of miles, of additional haul may in some instances of long distance transportation be practically of very little importance, and the ratio of tonnage cost per mile diminishes with distance. McMorran v. G. T. R. R. Co., 2 I. C. C. 604, 607.

(f) The difference in cost of transportation of various classes of freight is so variable that the average on all affords little assistance in ascertaining what is reasonable for carrying the very low grades which are moved so much below the average cost. James & Abbott v. V. & Ga. R. R., 2 I. C. C. 609, 614.

(fa) Cost of service is an important element in fixing transportation charges and entitled to fair consideration, but is not alone controlling. Thurber v. New York C. & H. R. R. Co. (Com.) 2 I. C. R. 742.

(g) Cost of service is an important element in fixing transportation charges and entitled to fair consideration, but is not alone controlling nor so applied in practice by carriers, and the value of the service to the property carried is an essenital factor to be recognized in connection with other considerations. The public interests are not to be subordinated to those of carriers, and require proper regard for the value of the service in the apportionment of all charges upon traffic. Thurber v. N. Y. C. R., 2 I. C. C. 742, 753.

(h) The commission has never understood that mileage or cost of service alone, regardless of other conditions, should be the controlling factors in determining the lawfulness of rates. Lehmann Higginson & Co. v. S. P. Co., 3 I. C. C. 80, 87.

(ha) The transportation of traffic under circumstances and conditions that force a low rate for its carriage or an abandonment of the business, but which affords some revenue above the cost of its movement, and works no material injustice to other patrons of a carrier, is to be deemed legitimate competition. When, however, its carriage is at a loss and imposes a burden on other traffic and on like traffic at other points, it is to be deemed destructive and illegitimate competition. Lehmann, Higginson & Co. v. S. P. Co., 3 I. C. C. 80, 91.

(i) Charges for transportation service should have reasonable relation to the cost of production and to the value of the service to the producer and shipper, but should not be so low on any as to impose a burden on other traffic. Rates and charges on Food Products 3 I. C. R. 93.

(j) The generally recognized principle that cost of carriage is in inverse ratio to distance, and that therefore the charge per ton per mile should diminish with distance is not a rule required by the statute, and is subject to qualifications and exceptions. Manufacturers & J. Union v. Minneapolis & St. L. R. Co. (Com.) 3 I. C. R. 115.

(k) According to the evidence, the cost of service is far less expensive to the carrier in doing the through business than in doing separately, each for itself, the combined local business of the two railroad companies. It does not appear that the through rate to Boston is unreasonably low; nor does it appear upon the evidence in this

proceeding that the local rates of these two railroad companies are unjust and unreasonable. King & Co. v. N. Y. N. H. & H. R. Co., 3 I. C. R. 273.

(l) Rates should bear a fair and reasonable relation to the antecedent cost of the traffic as delivered to the carrier and to the commercial value of the traffic but it is incumbent upon parties invoking this rule to make satisfactory and reliable proof as to such antecedent cost and commercial value. Loud v. South Carolina R. Co., 4 I. C. C. 205, 211.

(m) Higher rates are not shown to be unreasonable by the fact that lower rates are more than cost of service. Section 1 provides that all charges for the transportation of property, etc., shall be reasonable and just. There is no evidence to justify a finding that the rates charged to the shorter-distance points in this case are unjust and unreasonable in and of themselves. The mere fact that the lower rates which are charged to a long-distance competitive point pay something above the cost of the service of carriage does not show that the shorter-distance rates are unreasonable. The rates to the shorter-distance points in this case are made up of a highly competitive rate from point of shipment to Chattanooga, added to a local rate to destination fixed by the Georgia Railroad Commission. The rates in question, when separately considered, are not unreasonable or unjust. On the contrary, the testimony is that each is reasonable of itself. Citing: Interstate Commerce Commission v. Alabama Midland R. Co. 41 U. S. App. 453, 74 Fed. Rep. 723, 5 Inters. Com. Rep. 685. Interstate Commerce Commission v. Western & Atlantic R. R. Co., 8 I. C. C. App. XIII.

(n) Where the difference in cost or character of service are substantial, either in the work performed by the carrier or in its utility and value to the person served, a fair relation of rates meets the carriers obligation. Carr v. N. P. Ry., 9 I. C. C. 1, 11.

(o) In determining the rates to be charged for transportation, cost of service is one of the principal elements to be considered, but it is not and should not be considered as a controlling element. Glade Coal Co. v. B. & O. R. Co., 10 I. C. C. 226, 250.

(p) In the adjustment of rates as between places on its lines, a carrier cannot rightfully ignore the relative cost of the respective services; but there are other matters equal in importance to that of the cost of service, and often more controlling, which must also be considered; and this includes competition of carriers and competition of markets. S. J. & S. Cannon v. Mobile & O. R. Co., 11 I. C. C. 537.

(q) Cost of service affected by milling in transit. Shiel & Co. v. Ill. Central R. R. Co., 12 I. C. C. 210.

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(r) To divide a railroad system into its constituent elements and to require that each shall show a surplus commensurate with that yielded by the business of the system as a whole in justification of a particular rate on one commodity, is not the proper basis upon which to measure the justness of such rate. Board of Trade of Winston-Salem v. N. & W. Ry. Co., 16 I. C. C. 12, 17.

(s) Rates are not fixed solely with reference to a weaker competing line; but the cost of handling traffic over a short and easy line must largely influence the rate. Commercial Club of Salt Lake City v. A.T. & S. F. Ry. Co., 19 I. C. C. 218, 222.

(t) It is more expensive to handle less-than-carload freight. Commercial Club of Omaha v. B. & O. R. R. Co., 19 I. C. C. 397, 401.

(ta) Carriers may not haul a particular class of traffic or traffic for a particular community at less than the cost of the service and recoup themselves from the charges levied against other traffic. Investigation and Suspension Docket 48, 22 I. C. C. 328, 335.

(u) It is not beyond the range of possibility to approximate the cost of carrying freight as distinguished from passengers over a certain division or even the carrying of a certain kind of freight when this constitutes a large portion of a carrier's traffic over such division. Certainly, for purposes of comparison, such cost figures could be ascertained upon any road by the settling of a few questions by this commission, or between the carriers themselves. In Re Ad-

vances on Coal to Lake Ports, 22 I. C. C. 604,615.

(v) A definite and uniform allotment of funds from the charge imposed for the movement of each character of traffic to provide for interest, dividends and surplus is not proper or justifiable, for the plain reason that it entirely abrogates all classification. In Re Advances on Coal to Lake Ports 22 I. C. C. 604, 625.

(w) The rate made by the carrier must be just and reasonable for the service which it gives and should have relation to the cost of that service and the character of the commodity transported. In Re Advances on Coal to Lake Ports, 22 I. C. C. 604, 625.

(x) What weight is to be given to costs is to be determined in each case. It is generally an important element. Boileau v. P. & L. E. R. R. Co., 22 I. C. C. 640, 652.

(y) Cost of service is ascertainable with much more precision and capable of more tangible expression than the value of the service. Nevertheless both cost and value must be considered as well as all other elements entering into a rate. Boileau v. P. & L. E. R. R. Co., 22 I. C. C. 640, 652.

(z) There must finally be an intimate relation between the actual cost of transportation and the rate paid by the public. The cost of carriage is decreased in proportion as the car loading can be increased. In Re Transportation of Wool, Hides and Pelts, 23 I C. C. 151, 166.

(aa) A road should not carry traffic to one point at less than the cost of service, and thus unduly burden other traffic. Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co., 24 I. C. C. 55, 75.

(bb) Cost of service is material factor, but not only factor to be considered. Boston Chamber of Commerce v. A. T. & S. F. Ry. Co., 28 I. C. C. 230, 232.

(cc) Increased tractive power of locomotives is significant as tending to reduce the operating cost per unit of freight transported. Traffic Bureau of Nashville v. L. & N. R. R. Co., 28 I. C. C. 533, 536.

(dd) Each branch of service should contribute its proper share. The Five Per Cent Case, 31 I. C. C. 351, 392.

(ee) Operating costs in transporting anthracite coal lower than for most other commodities. Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 261.

(ff) Extraordinary expenses attributable to transportation of certain commodities must be considered from standpoint of cost of service and not by adjustments of average revenue. Rates for Transpotation of Anthracite Coal, 35 I. C. C. 220, 262.

(gg) Costs do not determine rates, yet most rates have within them as a constituent the element of cost. Cost is generally an important element in arriving at a judgment with respect to a rate. Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 263.

(hh) Cost is generally an important element in arriving at a judgment with respect to a rate. Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 263.

(ii) Cost of service per ton mile properly decreases as length of haul increases. Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 264.

(jj) Each small shipment requires making out of waybill, an expense bill, and all of the other clerical work required by the ordinary l. c. l. shipment. Regulations as to Storage of Dairy Products, 35 I. C. C. 469,473.

(kk) The time has arrived when carriers can not afford to treat with indifference the cost of services which they perform. Commercial Exchange of Philadelphia v. N. Y. C. & H. R. R. R. Co., 38 I. C. C. 551, 557.

(ll) It should not be necessary to tear a rate apart in order to determine what proportion of it was intended as compensation of each distinct service performed. Ordinarily the costs of the separate services may be ascertained with reasonable accuracy and if separate charges commensurate therewith are established the task of keeping each charge at the standard of reasonableness will become greatly simplified. Under such a practice the shippers, the carriers, and the Commission could avoid an analysis of the whole rate and many different services in order to determine whether too much or too little was being charged for a certain service. Iron Ore Rate Cases, 41 I. C. C. 181, 203.

(mm) It is manifest that if the Commission proceeds to deal with each commodity separately considered on the basis of cost of service alone, ignoring con-

siderations of reciprocity in respect to the whole traffic governed by the lower tariff and the principles underlying it, the result must inevitably be its ultimate disintegration or overthrow. Advances on coal within Chicago switching District. 41 I. C. C. 302, 308.

(nn) The commission has never held, nor does the Act warrant it in holding, that cost of service alone should govern its judgment upon rates, to the exclusion of other important considerations. It is, as has been frequently held, only one of the elements in rate making that must ordinarily be considered. Southeastern Lumber, 42 I. C. C. 548, 555.

(oo) The practice of disregarding the cost of a specific service in constructing rates for long hauls while including it in the rates for shorter distances, may well be accepted as one of the established principles of rate making. N. Y. Harbor Case, 47 I. C. C. 643, 701.

(pp) The practice of disregarding the cost of a specific service in constructing rates for long hauls, while including it in the rates for shorter distances, is such a common one that it may well be accepted as one of the established principles of rate making in this country. It is by no means unusual, for carriers to absorb switching charges when the freight revenue is sufficient to warrant it, and the absorption tariffs usually state the minimum revenue per car which the carrier prescribes in such cases. Transit is frequently accorded without any charge in addition to the through rate when the revenue is sufficient to justify it. An extra charge for a two-mile haul is frequently made when the distances are short, but for longer distances the rate is often the same for a two-line haul as for one over the line of a single carrier. The reason for this general practice is, of course, that when the hauls are long the cost of the specific terminal or switching service is spread over such great distances that the cost of that service per mile is negligible or, in other words, that the cost of that service is so small when compared with the revenue which the carrier derives from the long haul that it can be absorbed without encroaching unduly upon the carrier's earnings. The New York Harbor Case, 47 I. C. C. 643, 701.

(qq) Taking a broad view of the general practice of all of the carriers in this respect, and of its repeated approval by the Commission, it is clearly impossible to conclude that terminal costs must be recognized in the construction of rates for long hauls solely because they are reflected in the rates for shorter hauls. The New York Harbor Case, 47 I. C. C. 643, 702.

(rr) Finding that station costs of $1.77 per ton for handling l. c. l. traffic includes but one handling of the freight, and not for both receiving and delivering such traffic as contended, sustained upon rehearing. R. R. Comm. of La. v. A. H. T. Ry., 48 I. C. C. 312, 320.

(ss) It is impractical and doubtful accuracy to attempt any refinement of the cost beyond the carload unit. A proper distinction could not be made between the class traffic on the one hand and commodity traffic on the other. There are many kinds of commodities as well as many classes. Just because certain traffic moves on a commodity rate does not mean that it is necessarily a lower grade traffic than traffic moving on class rates. Some commodity rates may be and are much higher than some class rates. To attempt such a refinement would necessitate a consideration of the contents of the cars. Distinction would probably have to be made between different commodities and different classes. This is impracticable. Class Rates from C. R. Ry. Stations, 50 I. C. C. 155.

(tt) The cost of transportation, which includes not only the charges paid to the carriers but also the loss and depreciation incident to the transportation, is part of the cost of production and marketing. To decrease this cost benefits the producer and the consumer and tends to increase the total consumption. Kansas Car Lot Egg Shippers Asso. v. B. & O., 53 I. C. C. 59, 63.

(uu) It is recognized that the exact ascertainment of cost of the particular service here in question, is impossible, but it does not follow that the evidence adduced, should for that reason, be rejected. Advance on Coal Within Chicago Switching District, 53 I. C. C. 442, 452.

(vv) Inquiry as to the cost of the service received, especially where rates are increased ostensibly to meet those costs is entitled to serious consideration. Solvay Process Co. v. D. L. & W. R. R., 55 I. C. C. 280, 284, 286.

(ww) A complainant's inquiry of a car-

rier as to the cost of service he receives, especially where rates are increased, ostensibly to meet those costs, is entitled to serious consideration. Solvay Process Co. v. D. L. & W. R. R., 55 I. C. C. 280, 286.

(xx) Morever, while it is conceded that the Commission may not set a maximum scale which fails to cover attested costs, it would not appear unreasonable, in the absence of explicit and comprehensive information, to prescribe a scale approximately equal to indicated costs where the carriers themselves propose a scale differing only by a negligible amount from that prescribed by the Commission and where by universal admission a scale covering not only all costs but the average overhead charges calculated thereon would drive much of the traffic from the carriers lines to other avenues of transportation. Memphis Southwestern Investigation, 55 I. C. C. 515, 531.

(yy) Something more than a generalization that the cost of transportation is less one way than the other is needed to justify a difference of 50 per cent of the rates. Portland Traffic & Transit Assn. v. O. W. R. R. & N., 56 I. C. C. 410, 413.

(zz) Freight rates are based only in part upon cost of service, which usually is known in a vague way. Many other factors are taken into consideration and the rate or rating finally determined by the exercise of judgment. Perishable Freight Investigation, 56 I. C. C. 449, 465, 466.

(3a) Railroad rates making is not an exact science. Freight rates are based only in part upon cost of service, which usually is known only in a vague way. Many other factors are taken into consideration and the rate or rating finally determined by the exercise of judgment. Perishable Freight Service, 56 I. C. C. 449, 466.

(3b) It is impracticable to fit the charges nicely to the cost of service on each particular route, and variations above and below are to be expected. Perishable Freight Investigation, 56 I. C. C. 449, 522.

(3c) Carriers are fairly entitled to a moderate margin over cost as an allowance for the factors of hazard and profit. Perishable Freight Investigation, 56 I. C. C. 449, 522.

(3d) Added cost of operation over mountainous routes, as well as distance, is a factor to be taken into consideration in passing upon the rate structure here in issue. This added cost found to largely offset distance advantage and is not counterbalanced by added density of traffic. Inland Empire Shippers League v. Director General, 59 I. C. C. 321, 337, 338.

(3e) Cost of service includes not only expense of operation but taxes and the proper capital charges incident to the continued functioning of the property. The Commission recognizes this when it makes allowance for density of traffic in the determination of reasonable rates. The share of overhead costs fairly attributable to interchange traffic may likewise be greater, relatively, where this density is low. New England Divisions, 66 I. C. C. 196, 199.

(3f) Evidence introduced to show that certain carriers are neither efficiently nor economically operated, within the meaning of section 15a of the act, has little bearing upon the measure of rates on individual commodities. A road is operated as a whole, and an inquiry as to whether it is economically and efficiently operated must of necessity be directed to the manner of its operation as a complete unit. Nevada Public Service Commission v. S. P. Co., 73 I. C. C. 240 246.

(3g) Complainant submitted a cost study for purpose of showing unreasonableness but no figures were presented to show investment, operation, and maintenance expense or revenue of a necessary part of the transportation facilities furnished by carrier in moving the traffic. HELD, cost study with such eliminations has but little value. Minnesota Steel Co. v. Director General, as Agent, 73 I. C. C. 571, 574, 575.

(3h) It has been held by the courts that a rate may not lawfully be fixed by a regulatory tribunal which is based alone on the out-of-pocket costs ascribable to that particular traffic, but to be lawful the rate must be sufficient to cover a ratable proportion of the average cost of freight traffic generally, including a return on the property devoted to public service. To hold otherwise would compel the performance of a certain specified kind of service at less than average cost. The extension of this principle to other classes of traffic, if pursued far enough, would bankrupt the

road. Transcontinental Cases of 1922, 74 I. C. C. 48, 69.

(3i) The requirements of section 15a may not be defeated or jeopardized by the action of particular rail carriers seeking to augment their own net earnings, irrespective of the effect of rate changes adverse to the carriers in the country generally, or of a large territorial group. Transcontinenal Cases of 1922, 74 I. C. C. 48, 71.

(3j) It clearly would defeat the intent of Congress to foster transportation by rail and water in full vigor if the rail carriers were permitted, at practically little or no profit to themselves, to operate so as to deprive water carriers of traffic which the water carriers would naturally handle. It must be borne in mind that where the out-of-pocket theory is used as a rate basis, there is inevitably thrown upon the rest of the traffic the task of providing the bulk of the net return contemplated in section 15a. Too wide an extension of the out-of-pocket theory would transpose the entire burden of producing dividends and interest and meeting other fixed charges upon only a part of the traffic carried. Transcontinental Cases of 1922, 74 I. C. C. 48, 71.

(3k) Cost is only one of the elements to be considered in arriving at a reasonable charge for switching. Switching and Absorption at Minneapolis, 74 I. C. C. 116, 119.

(3l) Cost is only one of the elements to be considered in arriving at a reasonable charge. Charges at other points where the transportation conditions are substantially similar may serve as a guide. Switching and Absorption at Minneapolis, 74 I. C. C. 119.

(3m) To the extent that additional tonnage can be handled without the use of additional motive power, the movement expense per car will be measurably curtailed. Crude Oil from Louisiana Points, 74 I. C. C. 623, 626.

(3n) The cost of service alone is not the controlling element or factor in rate making. All the conditions as well as the environment of the traffic must be considered. Adriatic Mining Co. v. C. & N. W. Ry., 78 I. C. C. 611, 632.

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American Asphalt Ass'n. v. Uintah Ry. Co., 13 I. C. C. 196, 204; Oregon & Washington Lumber Mfrs. Ass'n. v. U. P. R. R. Co., 14 I. C. C. 1, 9, 10; Duncan & Co. v. N. & W. Ry. C., 16 I. C. C. 590, 593; Albree v. B. & M. R. R. Co., 22 I. C. C. 303, 316; Carstens Packing Co. v. O. & W. R. R. Co., 22 I. C. C. 77, 81; In Re Advances on Cotton, 23 I. C. C. 404, 408; Nebraska State Ry. Commission v. C. B. & Q. R. R. Co., 23 I. C. C. 121, 125; Arlington Heights Fruit Exchange v. S. P. Co., 24 I. C. C. 671, 672; Consolidated Fuel Co. v. A. T. & S. F. Ry., 24 I. C. C. 213, 215; Vein Operators' Assn. of Ohio v. P. Co., 24 I. C. C. 280, 285; Marian Coal Co. v. D. L. & W. R. R. Co., 24 I. C. C. 140, 143; Commercial Club of Superior v. G. N. Ry. Co., 24 I. C. C. 96, 102; Spiegle v. S. Ry. Co., 25 I. C. C. 71, 75; U. S. v. Wharton & Northern R. R., 26 I. C. C. 309, 311; Lumber from Louisiana to North Atlantic Points, 26 I. C. C. 186, 189; Union Tanning Co. v. S. Ry. Co., 26 I. C. C. 159, 164; Hormel & Co. v. C. M. & St. P. Ry. Co., 26 I. C. C. 112, 114; Louisville & Nashville Railroad Coal and Coke Rates, 26 I. C. C. 20, 27, 31; New England Investigation, 27 I. C. C. 560, 575; Chamber of Commerce of New York City v. N. Y. C. & H. R. R. Co., 27 I. C. C. 238, 242; Iowa State Board of R. R. Com'rs v. A. E. R. R. Co., 28 I. C. C. 193, 200; Kansas-Iowa Brick Rates, 28 I C. C. 285, 287; Elgin Commercial Club v. B. & M. R. R., 28 I. C. C. 380, 381; Grain Rates in C. F. A. Territory, 28 I. C. C. 549, 553, 554, National Syrup Co. v. C. & N. W. Ry. Co., 28 I. C. C. 673, 674; Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co., 30 I. C. C. 597, 602; Decker & Sons v. C. N. & St. P. Ry. Co., 30 I. C. C. 547, 548; Fort Scott Industrial Assn. v. St. L. & S. F. R. R. Co., 29 I. C. C. 671, 678; Hughes Creek Coal Co. v. K. & M. Ry. Co., 29 I. C. C. 671, 678; In Re Separation of Operating Expenses, 30 I. C. C. 676, 678; American Refining Co. v. St. L. S. & S. F. R. R. Co. 30 I. C. C. 103, 104; New York Shippers' Protective Asso. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 437, 441; Coal Rates from Oak Hills, Colo., 30 I. C. C. 505, 508; Chamber of Commerce of Washington v. B. & O. R. R. Co., 30 I. C. C. 446, 447; Judd & Detweiler, Inc., v. B. & O. R. R. Co., 30 I. C. C. 455, 457; Railroad Commission of Arkansas v. M. & N. A. R. R. Co., 30 I. C. C. 488, 489, 491; Low Moor Iron Co. of Virginia v. C. & O. Ry. Co., 30 I. C. C. 615, 618; Alderman & Sons Co. v. A. C. L. R. R. Co., Unrep. Op. A-548; Com-

modity Rates to Salt Lake City, Utah, 32 I. C. C. 551, 555; Class and Commodity Rates from Stations in Maine, 31 I. C. C. 18, 22; Five Per Cent Case, 31 I. C. C. 351, 380, 387; Commercial Club of Sioux Falls v. Pullman Co., 31 I. C. C. 654, 658; Weatherford Chamber of Commerce v. M. K. & T. Ry. Co., 31 I. C. C. 665, 666; National Casket Co. v. S. Ry. Co., 31 I. C. C. 678, 691, 695; Kenner Truck Farmers' Asso v. I. C. R. R. Co., 32 I. C. C. 1, 9; American Round Bale Press Co. v. A. T. & S. F. Ry. Co., 32 I. C. C. 458, 463, 466, 548; Commodity Rates to Pacific Coast Terminals, 32 I C. C. 611, 622; Proportional Commodity Rates Between Kerper and Wilson, Ohio, Unrep. Op. A-893; Lum. v. G. N. Ry. Co., 33 I. C. C. 541, 555; Alpha Portland Cement Co. v. B. & O. R. R. Co., 34, I. C. C. 414, 420; Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 265, 335, 347; 1915 Western Rate Advance Case, 35 I. C. C. 497, 569, 575; Minimum Charges on Bulky Articles, 38 I. C. C. 257, 261; Western Passenger Fares 37 I. C. C. 1, 41, 42; Boardman Co. v. S. P. Co., 37 I. C. C. 81, 85; Chicago, West Pullman & Southern R. R. Co. Case, 37 I. C. C. 408, 415; Minimum Charges on Bulky Articles, 38 I. C. C. 257, 261; Gile & Co. v. S. P. Co., 39 I. C. C. 193, 196; City of Memphis v. C. R. I. & P. Ry. Co., 39 I. C. C. 256, 266; Stonega Coke & Coal Co. v. L. & N. R. R. Co., 39 I. C. C. 523, 543; Malone v. New York Telephone Co., 40 I. C. C. 185, 187, 189; The Missouri River-Nebraska Cases, 40 I. C. C. 201, 256; Nashville Switching, 40 I. C. C. 474, 481; Iron Ore Rate Cases, 41 I. C. C. 181 188, 189, 193, 214; Fruits and Vegetables, 43 I. C. C. 291, 299; National Poultry, Butter and Eggs Asso. v. B. & O. S. W. R. R. Co., 43 I. C. C. 392, 407; Northern Potato Traffic Asso. v. B. & O. R. R. Co., 43 I. C. C. 545, 549; Rates on Dairy Products, 43 I. C. C. 700, 711; Independent Ice, Feed & Fuel Co. v. S. P., L. A. & S. L. R. R., 44 I. C. C. 666, 668; Lake Cargo Coal Rates, 46 I. C. C. 159, 168; The Fifteen Per Cent Case, 45 I. C. C. 303, 324; Laundrymen's National Association of America v. Adams Express Co., 45 I. C. C. 361, 362; Milk and Cream Rates to Philadelphia, Pa., 45 I. C. C. 371, 378; Milk and Cream Rates to New York City, 45 I. C. C. 412, 427; R. R. Com'rs. of Iowa v. A. A. R. R., 46 I. C. C. 20, 37; Interior Iowa Cases, 46 I. C. C. 39, 43. 49; C. F. A. Territory Milk and Cream Rates, 46 I. C. C. 601, 610; The New York Harbor Case, 47 I. C. C. 643, 673, 675, 676, 680. 736, 738; R. R. Com. of La. v. A. H. T. Ry., 48 I. C. C. 312, 330; Rankin & Co. v. C. R. I. & P. Ry., 48 I. C. C. 324; Southwestern Class Case, 48 I. C. C. 379, 389; Class Rates from Chestnut Ridge Ry. Stations, 50 I. C. C. 152; National Live Stock Exchange v. A. & S. Ry., 50 I. C. C. 578, 588; In Re Private Cars, 50 I. C. C. 652, 685, 686; Memphis Southwestern Investigation, 55 I. C. C. 515, 530; Railway-Mail Pay, 56 I. C. C. 1, 65; Railway-Mail Pay, 56 I. C. C. 1, 66; Empire Steel & Iron Co. v. Director General, 56 I. C. C. 158, 185; Perishable Freight Investigation, 56 I. C. C. 449, 471, 535, 537, 538; United Verde Extension Mining Co. v. U. V. & P. Ry. Co., 57 I. C. C. 300, 302; Natchez Chamber of Commerce v. L. & A. Ry., Co., 58 I. C. C. 610, 636; American Tobacco Co. v. Director General, 60 I. C. C. 486, 488, Pittsburgh & West Virginia Ry. v. P. L. E., 61 I. C. C. 272, 279; Diamond Alkali Co. v. F. P. & E., 62 I. C. C. 161, 165; Nebraska Rates, Fares and Charges, 60 I. C. C. 305, 308; American Tobacco Co. v. Director General, as Agent, 60 I. C. C. 486, 488; Armour & Co. v. Director General, as Agent, 60 I. C. C. 663. 665; P. & W. V. Ry. Co. v. P. & L. E. R. R. Co., 61 I. C. C. 272, 279; Climax Molybdenum Co. v. Director General, as Agent, 61 I. C. C. 369, 373; Hollingshead Co. v. Director General, as Agent, 62 I. C. C. 147, 149; Wilbur Lumber Co. v. Director General, as Agent, 73 I. C. C. 152, 158; Absorption at Minneapolis, 74 I. C. C. 116, 119; Increased Switching Charges at Jamestown, 74 I. C. C. 120; Alabama Co. v. Director General, as Agent, 78 I. C. C. 561 563; Adriatic Mining Co. v. C. & N. W. Ry., 78 I. C. C. 611, 613.

§19. Credit.

See Advanced Rates §7 (3); Credit Account.

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(a) It was urged as a reason for permitting an advance in freight rates in Official Classification territory that the increase was necessary to maintain the credit of American railroads. It appeared that in 1895 the average rate paid by all the railroads of the country was 4.69 per cent. In 1909 this figure had been reduced to 3.9 per cent and the saving computed upon the indebtedness of

1909, represented by this decrease in the rate of interest, would have amounted to $77,000,000. HELD, the credit of American railroads has gained rather than lost in ten years, and if the credit of American railways is still sound either at home or in foreign money markets it is not because of, but in spite of, the declarations of railroad operators. In Re Advances in Rates—Eastern Case, 20 I. C. C. 243, 251, 252.

(b) Credit of railroads has suffered from causes independent of rates. Five Per Cent Case, 31 I. C. C. 351, 419.

(c) Commission can not accept as final or determinative the recital of failures of particular carriers at particular junctures to borrow except at abnormal or prohibitive rates of interest. 1915 Western Rate Advance Case, 35 I. C. C. 497, 530.

ALL OTHER CITATIONS

Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 267; 1915 Western Rate Advance Case, 35 I. C. C. 497, 532, 533, 534, 540.

§19½. Custom.

See Blanket Rates §5.

§19¾. Customs Duty.

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(a) Custom duty on common brick to Canada prevents entering that market unless Canadian output falls short. Rates on Common Brick to Canada, 26 I. C. C. 129, 131.

§20. Distance of haul.

See Supra §18 (9); Blanket Rates §9; Bridges and Tolls; Differentials; Distance Rates; Evidence §58; Reasonableness of Rates §10 §36; Through Routes and Joint Rates §6; Ton-Mile Revenue.

CASES 1887-1908

(a) The fact that the rates of a railroad company are not established on a mileage basis does not necessarily make out their illegality or injustice. La Crosse M. & J. Union v. Chicago, M. & St. P. R. Co. (Com.) 2 I. C. R. 9, 11.

(b) The principle that the ratio of freight rates decreases with the increase of distance is true when the rates are based upon distance and cost alone, and are not affected by other modifying conditions; the extent of traffic carried, and the character of the country traversed are to be considered. Lincoln Board of Trade v. Burlington & M. R. Co. (Com.), 2 I. C. R. 95.

(c) Where, taking the shortest route from Chicago to Lincoln and from Chicago to Omaha as the basis, the disparity in rates corresponds quite closely with the difference in distance, in attempting to apply the principle acknowledged in making freight rates, that with the increase of distance the ratio of the rates shall decrease, it must be qualified by the considerations: (a). That the Omaha rate is not based alone upon the mileage of the defendant road to that city, but as several lines from Chicago concentrate at Omaha, the mileage of the shortest route is the one which practically governs in the determination of the rate. (b). The different routes traversed by the various lines competing for traffic from Chicago to Omaha, with their various points of intersection, cannot be overlooked. (c.) It is also to be considered that the rates from Omaha and from Lincoln to interior Nebraska points are so arranged that the rates from Chicago are practically the same whether the freight is handled by jobbers at Omaha or at Lincoln. (d) Neither can the ratio of rates charged through the sparsely settled regions of the distant west decrease in proportion to distance without depriving the carriers of necessary revenue, and although this condition may not exist about Lincoln, yet, as the road is almost wholly confined to supplying the necessities of a farming population and the distribution of farm products, the possibilities of such tariff reduction as is made upon roads fed by mineral resources cannot be expected. (e) So, also, the application of the principle that with the increase of distance the ratio of the rate shall decrease, is affected by the fact that the rate for the shorter distance is of itself, alone, often too low to be treated as a fair criterion for points beyond, so that a long line, met at a given point by a short line, and compelled to accept a scarcely remunerative rate, when the point is passed may fairly increase its charges with some consideration of the absolute distance by its own line from the originating point in a ratio more rapid than if it had been able to grade its own rates continuously throughout its line. (f) Water competition and other controlling causes produce a like effect, and a situation upon a navigable river is to be considered, although it does not at present afford active competition with the railroad. Lincoln Board of Trade v. Burlington & Mo. River R. Co., 2 I. C. R. 95.

(d) Where a road makes the same charge to one point that it does to another only one third or two thirds the distance on the same line presumptively its charges to the last-mentioned point are unjust and illegal. Re Chicago, St. Paul & Kansas City R. Co., 2 I. C. R. 137.

(da) That under like conditions freight can be carried proportionally lower for long than short distances is as nearly settled as anything relating to railroad charges can be. Equal mileage rates would often prevent legitimate competition and give a monoply in transportation to the best and shortest road. New Orleans Cotton Exchange v. C. N. O. & T. P. R. R. 2 I. C. C. 289, 292.

(e) A departure from the rule of equal mileage rates as applied to the several branches of a road is not conclusive that such rates are unlawful; but the burden is on the company making such departure to show its rates to be reasonable when disputed. Northwestern Iowa Grain & Stock Shippers' Asso. v. Chicago & N. W. R. Co., 2 I. C. R. 431.

(f) Besides terminal expenses and other aggregate charges not depending upon the distance freight is moved, there are other conditions which justify a lower proportionate charge for longer distances. Coxe v. Lehigh Valley R. Co. (Com.), 3 I. C. R. 460.

(g) At the hearing of this case upon its merits, the Commission prescribed the freight rate upon peaches in carload lots, from New Jersey and the Delaware Peninsula, to Boston, Massachusetts. One of the defendants filed a motion for rehearing, based upon the claim that some of the other defendants construed the decision of the Commission as justifying them in insisting that the freight charge prescribed should be divided among the carriers on a mileage basis merely: HELD, That the former decision of the Commission could not be fairly construed as justifying the claim that the single freight charge between the interstate points should be divided on a mileage basis merely; that many of the considerations which induced the fixing of an increased rate for the special service were peculiar to the Pennsylvania Railroad Company and in which the other carriers east of the Harlem River did not participate; that, under the pleadings and evidence in this case, the Commission could only prescribe a single rate for the service as an entirety, to be reasonably and fairly divided among the several carriers by themselves; that the motion for a rehearing be overruled. Boston Fruit & Produce Exchange v. N. Y. & N. E. R. Co., 3 I. C. R. 604.

(h) The doctrine that transportation charges should be proportioned to the distance between different points, where those distances are greatly dissimilar, has never been advocated by the railroads or recommended by the Commission. While distance is an ever present element in the problem of rates and not infrequently a controlling consideration, the general practice of rate making is opposed to the principle of exact proportion, and there is no opportunity for its application in all conditions. Where all the distances brought into comparison are considerable and the differences between them relatively small, there should be substantial similarity in the respective rates unless other modifying circumstances justify disparity. Eau Claire Board of Trade v. C. M. & St. P. R. Co., 4 I. C. C. 65, 76.

(i) Where all the distances brought into comparison are considerable, and the differences between them relatively small, there should be substantial similarity in the respective rates, unless other modifying circumstances justify disparity. Eau Claire Bd. of Trade v. Chicago M. & St. P. R. Co. (Com.), 4 I. C. R. 65.

(j) Transportation charges need not be proportioned to the distances between different points, where those distances are greatly dissimilar. Eau Claire Bd. of Trade v. Chicago M. & St. P. R. Co. (Com.), 4 I. C. R. 65.

(k) The doctrine that transportation charges should be proportioned to the distances between different points, where those distances are greatly dissimilar, has never been advocated by the railroads or recommended by the Commission. While distance is an ever-present element in the problem of rates and not unfrequently a controlling consideration, the general practice of rate making is opposed to the principle of exact proportion, and there is no opportunity for its application under present conditions. Where all the distances brought into comparison are considerable and the differences between them relatively small, there should be substantial similarity in the respective rates unless other modifying circumstances justify disparity. Eau Claire Board of Trade v. Chicago M. & St. P. R. Co., 4 I. C. R. 65.

(l) Rates on wheat from points in North Dakota to Minneapolis should be adjusted upon the basis of distance over nearest practicable routes. Minneapolis Chamber of Commerce v. Great Northern R. Co. (Com.), 4 I. C. R. 230.

(m) As a general rule it is probably true that rates should not be proportioned strictly to mileage, the more distant point should usually have a greater actual rate, but a less proportionate or ton mile rate than the nearer point. This is due largely to the fact that the terminal expenses which do not vary with distance constitute a considerable part of the entire charge in either case and operate to reduce ton mile rates on the longer haul. Chamber of Commerce of Minneapolis v. G. N. R. Co., 4 I. C. C. 230, 239.

(n) A departure from the rule of equal mileage rates as applied to the several branches of a road or system of roads is not conclusive of the unlawfulness of rates, but the company making such departure should have satisfactory reasons for such variance of rates and must show them to be reasonable when disputed. Freight Bureau v. C. N. O. & T. P. R. Co., 4 I. C. C. 592, 611.

(o) Distance or mileage is by no means the only, or in many cases the most important, factor in rate making, but, other things being equal, it is a circumstance of great, if not controlling weight. Freight Bureau v. C. N. O. & T. P. R. Co., 4 I. C. C. 592, 611.

(p) Mileage, while a circumstance to be considered with all the other facts and conditions, is by no means controlling, or the most important. Interstate Commerce Commission v. L. & N. R. Co., 5 I. C. R., 656.

(q) In cases involving a difference in the rates between two points of shipment the mileage is a circumstance to be considered with all other facts and conditions, but is not controlling or the most important. Interstate Commerce Commission v. Louisville & N. R. Co. (C. C. M. D. Tenn.), 5 I. C. R. 656.

(r) The influence of water competition via the Atlantic on rail rates from northeastern cities to southern territory is not so great, as appears by the proof in these cases, as to account for or justify the difference between the mileage rates from those cities and the mileage rates from Chicago and Cincinnati to such territory under the rates complained of, and the fact of that influence on rates from the former cities cannot be invoked as a justification of rates from the latter, which, after due allowance for such influence as a substantially dissimilar circumstance, still appears on comparison of the two sets of rates to be unduly preferential to the former and unjustly discriminative against the latter. In rates from different territories to a common market, "relative equality is necessary in the degree of the similarity" of circumstances and conditions attending the transportation in the two cases. Freight Bureau v. Cincinnati, N. O. & T. P. R. Co. et al, 6 I. C. C. 197.

(s) Carriers have no right to disregard distance and natural advantages for the purpose of bringing about commercial equality. Commercial Club v. Chicago, R. I. & P. R. Co., 6 I. C. C. 647.

(t) Distance is an important element in the determination of rates, and in the absence of other influences it is a controlling factor. When carriers claim justification for higher rates from a competing locality on the ground of greater distance, and the complainant, representing such locality, fails to show circumstances which operate to eliminate distance from consideration or to counteract its influence, such higher rates, if made in accordance with the principle of distance, will not be held unreasonable. Freight Bureau of Cincinnati v. Cincinnati, N. O. & T. P. R. Co., 7 I. C. C. 180.

(u) Distance, in the absence of other influences, controls in the determination of rates; and the higher rates on the ground of greater distance from a competing locality will not be held unreasonable unless there are circumstances operating to eliminate distance from consideration or counteract its influence. Freight Bureau of Cincinnati v. Cincinnati, N. O. & T. P. R. Co., 7 I. C. C. 180.

(v) That the rates for longer hauls are comparatively lower, though absolutely higher, than the charges for shorter hauls over the same lines, does not necessarily show that the charges for the shorter hauls are unreasonable, though such fact tends to establish unreasonableness, and may under some circumstances be sufficient for that purpose. Kentucky R. R. Comrs. v. Cincinnati, N. O. & T. P. R. Co., 7 I. C. C. 380.

(w) Distance is always an element in determining the reasonableness of a

rate. It is sometimes a controlling element. In the making of rates under actual conditions, however, it is often largely, and sometimes, within certain limits, entirely, disregarded. Board of Railroad Commissioners of Kentucky v. C. N. O. & T. P. R. R. Co., 7 I. C. C. 380, 383.

(x) Distance is an important element in the making of rates, and it has been held that a carrier would not be compelled to disregard distance in order to place two localities upon commercial equality. Savannah Bureau of Freight & Transportation v. C. & S. R. Co., 7 I. C. C. 458, 474.

(y) Distances by shortest available routes are the proper distances on which to base comparison of differentials in grain rates from the same points of shipment to two different markets, situated as are Milwaukee and Minneapolis with reference to various sources of grain supply. Chamber of Commerce v. Chicago, M. & St. P. R. Co., 7 I. C. C. 481.

(z) Carriers frequently disregard distance in making their rates, and they may lawfully do so under some circumstances; but distance should be regarded whenever possible, and no previous decision is authority for a ruling that a carrier may be compelled to disregard it for the purpose of placing two communities upon a commercial equality. New York Produce Exchange v. B. & O. R. Co., 7 I. C. C. 612, 667.

(aa) Distance is recognized as an element in determining the amount of a rate upon the assumption that it corresponds in a degree with the cost of service. It does not, however, necessarily follow that the greater cost of service necessarily goes with the greater distance. New York Produce Exchange v. B. & O. R. Co., 7 I. C. C. 612, 668.

(bb) Distance is undoubtedly a factor, and perhaps ought to be a much more important factor, in the determination of rates, but in the present case, where the distances from the grain fields of Kansas to Kansas City, St. Louis and Galveston vary from 100 to 1000 miles, any attempt to adjust the rates on grain to those cities upon the sole basis of the rate per ton per mile would be impracticable. Board of R. Comrs. v. Atchinson, T. & S. F. R. Co., 8 I. C. C. 304.

(cc) With many mines nearer, the nominal rate on coal from one 1,200 miles distant of no practical importance. Harrell v. M. K. & T. Ry. Co., 12 I. C. C. 27.

(dd) Distance not conclusive. Enterprise Manufacturing Co. v. Ga. R. R. Co., 12 I. C. C. 130.

(ee) Nautical miles, in division of rates two for one by rail, above Hatteras, three for one below. Warren Manufacturing Co. v. Southern Ry. Co., 12 I. C. C. 381.

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(ff) Unquestionably mileage is a factor in the determination of the reasonableness of rates, but how important, or what effect it should have in judging the fairness of a challenged rate is a question which must be answered in the light of all the facts surrounding the exaction of the rate. The Commission will not compel the establishment of rates solely according to mileage; the public benefits, the greater volume of business of carriers warranting lower rates to all, the force of competition and many other potent considerations may far outweigh a claim of right founded only on geographic location. Fort Dodge Commercial Club v. I. C. R. R. Co., 16 I. C. C. 572, 581.

(gg) In passing upon the reasonableness of a blanket rate, the rate to the nearest point must be offset against that to the most distant point. Commercial Club of Salt Lake City v. A. T. & S. F. Ry. Co., 19 I. C. C. 218, 226.

(hh) It is well settled that distance is always a factor to be taken into consideration in determining either the reasonableness of a rate by itself or in considering its relation to rates to other points, but it is equally well settled that distance alone is not controlling. Competition is an important element and there are various other considerations, all of which must be taken into account in determining the fact whether a particular rate or a system of rates is or is not reasonable. Shippers and receivers of freight are entitled as a matter of law to rates that are reasonable and that do not operate to unduly discriminate against them. Corporation Commission of North Carolina v. N. & W. Ry. Co., 19 I. C. C. 303, 309.

(ii) The fact that a commodity does not ordinarily move to any great distance from the mill is entitled to proper weight. Florida Cotton Oil Co. v. C. of G. Ry. Co., 19 I. C. C. 336, 339.

(jj) Equal rates should be applied for equal distances under similar operating conditions, and the fact that the tonnage out of one point may be somewhat heavier than out of another does not justify a difference in the rates where the other conditions are similar. Sioux City Commercial Club v. C. & N. W. Ry., 22 I. C. C. 110, 114.

(kk) It is not enough to show that in miles the distance is less from a producing center via one gateway to a consuming center in order to equalize the rate between the same points via another gateway. It must be shown that the cost of transportation is less, or rather that the combination of rates is less as estimated by the general level of rates in the territory through which the transportation is conducted. In Re Investigation of Unreasonable Rates on Meats, 23 I. C. C. 656, 669.

(ll) Where grouping is reasonably done the shorter distances to the markets may be determined by the average distances from the points reached by two or more systems within a given group. Superior Commercial Club v. G. N. Ry. Co., 25 I. C. C. 342, 345.

(mm) An unreasonable rate by the direct line cannot be allowed for the purpose of permitting the circuitous line to engage in the business at a reasonable profit. Grain Rates in C. F. A. Territory, 28 I. C. C. 549, 558.

(nn) And the through charge should bear a proper relation to distance. St. Matthews Produce Exchange v. L. & N. R. R. Co., 32 I. C. C. 233, 236.

(oo) But ordinarily distance alone cannot determine the measure of rates, and glaring inconsistencies cannot be explained on the ground of varying transportation conditions. Commercial Club of Joplin v. M. P. Ry., 32 I. C. C. 226, 232.

(pp) Relatively equal rail distances from ports should have due weight in making of rates to Columbia and Augusta. Columbia Chamber of Commerce v. S. Ry. Co., 32 I. C. C. 504, 505.

(qq) Other things being equal, the longer the distance the less the revenue per ton mile. Northbound Rates on Hardwood, 32 I. C. C. 521, 529.

(rrss) Distance, grade and curvature are important elements in cost of service, especially on mountain lines. Class and Commodity Rates to Salt Lake City, Utah, 32 I. C. C. 551, 555.

(tt) It is a fundamental principle in rate making that differences in distance as between producing points or markets gradually lose their effect as the distance to destination increases. Grain Rates from Milwaukee, 33 I. C. C. 417, 424.

(uu) The average distance all commodities are hauled on the line of one carrier is not representative of the actual distance specific commodities included in that average are hauled because of the interline transportation of many commodities, and the total distance hauled is a very important factor in rate making. Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 260.

(vv) Distance while important, is not necessarily controlling, especially when there is under consideration a comprehensive fabric and relationship of rates to points in various sections of the country. Michigan Paper Mills Traffic Asso. v. A. & V. Ry., 38 I. C. C. 517, 520.

(ww) In comparing group rates with other rates the average distance from the various points in the group to points of destination in question must be considered, and not the distances from the points on borders of the group. Brush Creek Mining & Mfg. Co. v. L. & N. R. R. Co., 39 I. C. C. 449, 453.

(xx) The element of distance is an important matter to be considered in determining the reasonableness of rates in their relation to other rates with which they are compared, but distance alone is not controlling. Corp. Comm. of Virginia v. C. & O. Ry. Co., 40 I. C. C. 24, 29.

(yy) The familiar rule that differences in rates between points of origin should decrease as the distances to the destinations increase is generally subject to two conditions: (1) that the difference in distances from competing points of origin to the shorter distant destinations is substantially the same as that to the farther distant destinations, and (2) that the general circumstances and conditions surrounding the transportation are substantially the same to the farther distant as to the shorter distant points. Lake Superior Paper Co. v. M. St. P. & S. Ste. M. Ry. Co., 42 I. C. C. 109, 112.

(zz) The principle generally is that as distance increases the earnings per car mile should decrease, but it does not invariably govern. The location of points in different territories where different conditions, prevail occasionally warrants

departure from the rule that per ton mile and per car mile earnings should decrease with distance. Hormel & Co. v. C. G. W. R. R. Co., 43 I. C. C. 23, 25.

(3a) The Commission is unable to subscribe to the doctrine that carriers may observe and disregard constructive mileage at their pleasure. If such mileage is reflected in their rates applicable over a route necessitating the use of a bridge, it may not then be disregarded in ascertaining the mileage of that route. Paducah Board of Trade v. I. C. R. R., 43 I. C. C. 537, 540.

(3b) Rates may properly be higher relatively for shorter than for longer hauls. Fruits from Florida, 43 I. C. C. 595, 596.

(3c) Contention made that differences in rates as between points of origin should normally decrease as distances to points of destinations increase. In applying that rule it is necessary that the difference in distances from competing points of origin should be substantially the same to the nearer as to the farther destinations, and that the general circumstances and conditions surrounding the transportation should be substantially the same in both cases. Lake Superior Paper Co. v. Director General, 61 I. C. C. 709, 716.

(3d) While it appears that the rates complained of are higher, distance considered, than those generally prevailing from nearby points to the destinations in question or to points in that vicinity, over the same or other routes, the question whether the rates were unreasonable or unduly prejudicial can not be determined from that standpoint alone. National Fireproofing Co. v. Director General, 62 I. C. C. 49, 55.

(3e) It may be cheaper to perform a given service for equal distances to points located on a trunk line or on its branches, than to points on an independent line. Pioneer Lumber Co. v. Director General, 64 I. C. C. 485, 489.

(3f) When distances of over 500 miles are involved, the fact that the service is by two lines is largely negligible. Kansas Rock Salt Co. v. A. T. & S. F. Ry., 69 I. C. C. 745, 749.

(3g) The Commission has never held that it is necessary in order to preserve advantages of location, that rates should be based rigidly on mileage or on cost of service. A road is built and operated as a complete unit. The cost of maintenance and operation of any particular portion is charged against no specific traffic with respect to point of origin or destination but is represented in the general cost of moving all traffic. While difficulties in operating and traffic conditions are considerations of importance, a certain degree of flexibility is permitted in adjusting rates if commercial and competitive conditions warrant. Klamath County Chamber of Commerce v. S. P. Co., 74 I. C. C. 207, 213.

(3h) Rates to sections served by several lines of railroad should not necessarily be based upon the short-line distance, or established with regard to either the weakest or strongest line, but should be determined with reference to all reasonably directed lines. South Dakota Ry. Commrs. v. A. & W. Ry. Co., 74 I. C. C. 295, 306.

(3i) Ordinarily for long hauls the rates should be the same to destinations of substantially the same distances. Democrat Printing Co. v. Director General, 74 I. C. C. 595, 597.

(3j) In distributing commodities in competitive territory, the point that can avail itself of a long carload haul and a short less than carload haul is ordinarily entitled to a lower total transportation charge than the point using a short carload haul and a long less than carload haul. Certain-Teed Products Corp. v. A. T. & S. F. Ry., 77 I. C. C. 444, 445.

(3k) Recognized fact that grain rates from Missouri River have not been made with any strict regard to distance. Atchison Board of Trade v. A., T. & S. F. Ry. Co. 80 I. C. C. 350, 360.

(3l) It is a common principle of rate making, although not always followed, that differentials should diminish with increasing distance and vanish when mileage on which differential is based becomes inconsiderable in proportion to total mileage to destination. Western Coal Rates, 80 I. C. C. 383, 413.

(3m) Element that must be considered in judging reasonableness of a differential adjustment as between two competitive fields is relative distance to common markets. Western Coal Rates, 80 I. C. C., 383, 419.

(3n) Vast differences in transportation conditions can not be disregarded in comparing rates from two competitive fields. Western Coal Rates, 80 I. C. C. 383, 419.

ALL OTHER CITATIONS

Black Mountain Coal Land Co. v. S. Ry. Co., 15 I. C. C. 285, 296; Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 16 I. C. C. 56, 60; Railroad Commissioners of Florida v. S. A. L. Ry., 16 I. C. C. 1, 2; Memphis Cotton Oil Co. v. I. C. R. R. Co., 17 I. C. C. 313, 318; Muskogee Traffic Bureau v. A. T. & S. F. Ry. Co., 17 I. C. C. 169, 172; Receivers & Shippers' Asso. of Cincinnati v. C. N. O. & T. P. Ry. Co., 18 I. C. C. 440, 455; Omaha Grain Exchange v. C. & N. W. Ry. Co., 19 I. C. C. 424, 431; In Re Investigation of Advances in Rates on Grain, 21 I. C. C. 22, 34; In Re Advances in Rates on Rice and Rice Products, 21 I. C. C. 124, 127; Investigation of Alleged Unreasonable Rates on Meats, 22 I. C. C. 160, 168; Arlington Heights Fruit Exchange v. S. P. Co., 22 I. C. C. 149, 152; Transportation Bureau of Wichita v. St. L. & S. F. R. R. Co., 23 I. C. C. 679, 680; Huntington Lumber Co. v. I. C. R. R. Co., 23 I. C. C. 507, 509; In Re Advances in Rates for the Transportation of Cotton and Cotton Linters, 23 I. C. C. 404, 408; In Re Transportation of Wool, Hides and Pelts, 23 I. C. C. 151, 165; Merchants & Mfrs. Ass'n. of Baltimore v. A. C. L. R. R. Co., 23 I. C. C. 129; Grand Junction Chamber of Comerce v. D. & R. G. R. R. Co., 23 I. C. C. 115, 118; In Re Advances on Lemons, 23 I. C. C. 27, 28; Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 23 I. C. C. 195, 205; Lewis-Vidger Co. v. S. P. Co., Unrep. Op. A-50; Johnson Son v. C. & O. Ry. Co., 24 I. C. C. 698, 701; In Re Advances on Barley from California Points to Minneapolis, 24 I. C. C. 664, 666, 667; Southwestern Shippers' Traffic Assn. v. A. T. & S. F. Ry. Co., 24 I. C. C. 570, 583; R. R. Com. of Oregon v. S. P. Co., 24 I. C. C. 273, 277; Lumbermen's Exchange of St. Louis v. A. & S. R. R. Co., 24 I. C. C. 220, 223; Boileau v. P. & L. E. R. R. Co., 24 I. C. C. 129, 132; Omaha Grain Exchange v. C. M. & St. P. Ry. Co., 24 I. C. C. 122, 123; Consolidated Fuel Co. v. A. T. & S. F. Ry. Co., 24 I. C. C. 213, 215; R. R. Com. of Oregon v. S. P. Co., 24 I. C. C. 273, 277; Commercial Club of Superior v. G. N. Ry. Co., 24 I. C. C. 96, 110, 115, 116, 120; McCloud River Lumber Co. v. S. P. Co., 24 I. C. C. 89, 95; Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co., 24 I. C. C. 55, 71; National Wool Growers Assn. v. O. S. L. R. R. Co., 25 I. C. C. 675, 678; In Re Lumber Rates, 25 I. C. C. 50, 55; Norris v. St. L. & S. F. R. R. Co., 25 I. C. C. 416, 423; Arkansas Fertilizer Co. v. St. L. I. M. & S. Ry. Co., 25 I. C. C. 645, 648; Bartlesville Salvage Co. v. M. K. & T. Ry. Co., 25 I. C. C. 672, 674; Taylor v. N. & W. Ry. Co., 25 I. C. C. 613, 617; Wichita Board of Trade v. A. T. & S. F. Ry. Co., 25 I. C. C. 625, 633; Gilmore & Co. v. C. & N. W. Ry. Co., 25 I. C. C. 403, 405; Appalachia Lumber Co. v. L. & N. R. R. Co., 25 I. C. C. 193, 194; Union Tanning Co. v. S. Ry. Co., 25 I. C. C. 112, 115; Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co., 26 I. C. C. 638, 654; Scott Paper Co. v. P. R. R. Co., 26 I. C. C. 601, 603; Diamond Crystal Salt Co. v. M. C. R. R. Co., 26 I. C. C. 434, 436; Coal Rates on the Stony Fork Branch, 26 I. C. C. 168, 175; Union Tanning Co. v. S. Ry. Co., 26 I. C. C. 159, 164; Rates from Walsenburg Coal Field, 26 I. C. C. 85, 88; Commercial Club of Duluth v. B. & O. R. R. Co., 27 I. C. C. 639, 643, 644; Lumber Rates from Memphis and Other Points to New Orleans, 27 I. C. C. 471, 475; New England Investigation, 27 I. C. C. 560, 575, 577; Topeka Traffic Assn. v. A. & C. Ry. Co., 27 I. C. C. 428, 434; Coke Producers Assn. of Connellsville v. B. & O. R. R. Co., 27 I. C. C. 125, 143, 150; Pulp & Paper Mfrs. Traffic Assn. v. C. M. & St. P. Ry. Co., 27 I. C. C. 83, 98; Rock Spring Distilling Co. v. I. C. R. R. Co., 27 I. C. C. 54, 58; Brown v. B. & M. R. R. Co., 27 I. C. C. 47, 53; Mississippi River Case, 28 I. C. C. 47, 50; Board of Trade of Carrollton v. C. of G. Ry. Co., 28 I. C. C. 154, 162; Montezuma v. C. of G. Ry. Co., 28 I. C. C. 280, 282; Boney & Harper Milling Co. v. A. C. L. R. R. Co., 28 I. C. C. 383, 388; Lumber Rates, Texas, etc., to Oklahoma and Missouri, 28 I. C. C. 471, 475, 476; Springfield Commercial Asso. v. P. R. R. Co., 28 I. C. C. 511, 512, 513; U. S. v. U. P. R. R. Co., 28 I. C. C. 518, 522; Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 580; Jackson Lumber Co. v. L. & N. R. R. Co., Unrep. Op. A-154; Dodd v. T. & P. Ry. Co., Unrep. Op. A-223; In Re Separation of Operating Expenses, 30 I. C. C. 676, 681; Metropolis Commercial Club v. I. C. R. R. Co., 30 I. C. C. 40, 43; Fourth Section Violations in the Southeast, 30 I. C. C. 153, 163, 178; California-Colorado Lumber Rates, 30 I. C. C. 461, 463; Brownsville, Tex. Class and Commodity Rates, 30 I. C. C. 479,

485; Lumber Rates to Knoxville, Tenn., 30 I. C. C. 524, 526; Omaha Grain Exchange v. N. P. Ry. Co., 30 I. C. C. 572, 576, 580; Kansas Wholesale Grocery Co. v. A. & W. Ry. Co., 32 I. C. C. 139, 143; Underwood Veneer Co. v. A. A. R. R. Co., 32 I. C. C. 265, 269; Coffeyville Merc. Co. v. M. K. & T. Ry., 33 I. C. C. 122, 124; Grain Rates from Milwaukee, 33 I. C. C. 417, 424; R. R. Comm. of California v. A. G. S. R. R. Co., 32 I. C. C. 17, 37; Fourth Section Violations in the Southeast, 32 I C. C. 61, 63; Fox River Valley Mfrs. Asso. v. M. C. R. R. Co., 32 I. C. C. 547, 549; Rates on Clay from Points in Georgia, 32 I. C. C. 564, 567; Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 631; Lipman v. A. C. L. R. R. Co., Unrep. Op. A-896; Valley Planing Mill Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-906; Schreiber Hay Grain Co. v. C. B. & Q. R. R. Co., Unrep. Op. A-946; California Pine Box Lum. Co. v. A. T. & S. F. Ry., 34 I. C. C. 257; Class Rates Between Stations in Louisiana, 33 I. C. C. 302, 305; Northern Pine Mfrs. Asso. v. C. & N. W. Ry. Co., 33 I. C. C. 360, 369; Adrian Wire Fence Co. v. L. S. & M. S. Ry. Co., 33 I. C. C. 403 408; Commodity Rates to Pacific Coast Terminals, 34 I. C. C. 13, 17; New Orleans Shippers' Asso. v. I. C. R. R. Co., 34 I. C. C. 32, 38; Meech & Stoddard v. G. T. Ry. of Can., 34 I. C. C. 39, 40; San Toy Coal Co. v. A., C. & Y. Ry. Co., 34 I. C. C 93, 96; Arizona Corp. Comm. v. A. T. & S. F. Ry. Co., 34 I. C. C. 158, 161, 162; Perry & Co. v. A. E. R. R. Co, Unrep. Op. 1871; Oklahoma Cottonseed Crushers Asso. v. M. K. & T.Ry. Co., 35 I. C. C. 94, 107; Cape Girardeau Portland Cement Co. v. St. L. & S. F. R. R. Co., 35 I. C. C. 109, 119; Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 261; Pig Iron from Virginia Furnaces, 36 I. C. C. 552, 554; Iowa Railroad Commissioners v. A. T. & S. F. Ry. Co., 36 I. C. C. 79, 84; Phoenix Iron & Steel Co. v. G. H. & H. R. R. Co., 36 I. C. C. 175, 177; Import and Domestic Rates, 36 I. C. C. 389, 394; Pig Iron from Virginia Furnaces; 36 I. C. C. 552, 554; Eastern Live Stock Case, 36 I. C. C. 675, 696; McCormick & Co. v. S P. Co., 37 I. C. C. 234, 237; Paducah Board of Trade v. I. C. R. R. Co., 37 I. C. C. 719, 721; Big Basin Lumber Co. v. S. P. Co., 37 I. C. C. 730, 734; Ocean and Rail Rates to Charlotte, N. C., 38 I. C. C. 405, 406; Shippers of Eastman, Go. v. S. Ry. Co., 38 I. C. C. 672; Galloway Coal Co. v. A. G. S. R. R. Co., 40 I. C. C. 311, 320, 323; Capital City Oil Co. v. Y. & M. V. R. R. Co., 39 I. C. C. 141, 146; Memphis Freight Bureau v. St. L. I. M. & S. Ry. Co., 39 I. C. C. 224, 236, 244; Brush Creek Mining & Mfg. Co. v. L. & N. R. R. Co., 39 I. C. C. 449, 454; National Pickle & Canning Co. v. C. B. & Q. R. R. Co., 39 I. C. C. 629, 630; Concordia Commercial Club v. A. T. & S. F. Ry. Co., 39 I. C. C. 675, 684, 685; Berry Coal & Coke Co. v. C. R. I. & P. Ry. Co., 40 I. C. C. 175, 176; The Missouri River-Nebraska Cases, 40 I. C. C. 201, 258, 259; Galloway Coal Co. v. A. G. S. R. R. Co., 40 I. C. C. 311, 320; Milling Logs in Transit on Tap Lines, 40 I. C. C. 597, 601; Dallas Chamber of Commerce v. A. T. & S. F. Ry. Co., 40 I. C. C. 619, 644; Grain from New Orleans, La., 40 I. C. C. 654, 658; Railroad Commission of Louisiana v. A. H. T. Ry. Co., 41 I. C. C. 83, 107; St. Louis Mo.-Illinois Passenger Fares, 41 I. C. C. 584, 591; Kornfalfa Feed Milling Co. v. A. T. & S. F. Ry. Co., 41 I. C. C. 668, 670; Du Pont de Nemours Powder Co. v. P. & R. Ry. Co., 43 I. C. C. 1, 2; Bay State Milling Co. v. G. L. T. Corp., 43 I. C. C. 338, 343; Rates on Dairy Products, 43 I. C. C. 700, 710; Hopkins, Hough, Merril Company v. D. L. & W. R. R., 46 I. C. C. 427, 428; International Paper Co. v. M. C. R. R., 45 I. C. C. 30, 32; C. F. A. Class Scale Case, 45 I. C. C. 254, 262, 263; Interstate Packing Co. v. C. M. & St. P. Ry., 45 I. C. C. 365, 369; Milk and Cream Rates to New York City, 45 I. C. C. 412, 423, 424, 429; Lake Cargo Coal Rates, 46 I. C. C. 159, 181, 188; Hopkins, Hough & Merrill Co. v. D. L. & W. R. R., 46 I. C. C. 427, 428; Louisiana Cotton 46 I. C. C. 451, 459; Vulcanite Portland Cement Co. v. C. R. R. Co. of N. J., 46 I. C. C. 483, 485; Western Cement Rates, 48 I. C. C. 201, 228, 238, 239, 244; Southwestern Class Case, 48 I. C. C. 379, 397; Allentown Portland Cement Company v. B. & O. R. R., 49 I. C. C. 502, 507; Royster Guano Co. v. A. C. L. R. R., 50 I. C. C. 34, 41; West Virginia Rail Co. v. P. R. R., 50 I. C. C. 304, 306; Commercial Club of Greeley v. C. & S. Ry. Co., 53 I. C. C. 66, 74; Omaha Grain Exchange v. C., R. I. & P. Ry. Co., 53 I. C. C. 249, 266, 267; N. O. N. & A. Ry. v. Illinois Central R. R., 55 I. C. C. 113, 116; Guilford Lumber Mfg. Co. v. S. Ry., 53 I. C. C. 669, 677; Consolidated Classifica-

tion Case, 54 I. C. C. 1, 7; Rates on Grain and Grain Products, 56 I. C. C. 133, 141; Jobbers & Mfgs. Bureau of Huntington v. Director General, 57 I. C. C. 64, 73; Corporation Commission of North Carolina v. Director General, 57 I. C. C. 523, 532; Natchez Chamber of Commerce v. A. H. T. Ry. Co., 58 I. C. C. 310, 312; Northern Potato Traffic Asso. v. G. N. Ry. Co., 58 I. C. C. 360, 362; North Iowa Traffic Asso. v. Director General, 58 I. C. C. 491, 492; Inland Empire Shippers' League v. Director General, 59 I. C. C. 321, 340; New England divisions, 62 I. C. C. 513, 540; Utah Rates, Fares and Charges, 60 I. C. C. 388, 394; Holmes & Hallowell v. G. N. Ry. 60 I. C. C. 687, 708; Soda Products from Saltville, Va., 61 I. C. C. 559, 562; Pig Iron from Southeastern Points to Utah, 62 I. C. C. 7, 8; Hollingshead Co. v. Director General, as Agent, 62 I. C. C. 147, 149; Hudson Mule Co. v. L. & N., 63 I. C. C. 6, 14; Nebraska Seed Co. v. Director General, as Agent, 64 I. C. C. 75, 77; South Chester Tube Co. v. M., K. & T. Ry. Co., 64 I. C. C. 78, 80; National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co., 68 I. C. C. 213, 222; Tice v. Director General, as Agent, 69 I. C. C. 140; Mayer & Co. v. C. M. & St. P. Ry. Co., 69 I. C. C. 519, 521; Calivada Fertilizer Co. v. S. P. Co., 73 I. C. C. 496, 504; Jiffy Dessert Co. v. Director General, as Agent, 73 I. C. C. 525; Alpha Portland Cement Co. v. Pennsylvania R. R. Co., 74 I. C. C. 697, 698; Vulcanite Portland Cement Co. v. P. R. R. Co., 74 I. C. C. 697, 698; Petroleum to Memphis and Ohio River Points, 77 I. C. C. 73, 75; Ft. Worth Cotton Mills v. A., T. & S. F. Ry. Co., 80 I. C. C. 18, 25; Atchison Board of Trade v. A., T. & S. F. Ry. Co., 80 I. C. C. 350, 360; Reduced Rates from New York Piers, 81 I. C. C. 312, 324; Cramp & Sons Co. v. Director General, as Agent, 83 I. C. C. 55, 57; Cairo Board of Trade v. A. G. S. R. R., Co. 83 I. C. C. 761, 764.

§21. Dividends.

IMPORTANT CASES SINCE 1908

(a) Dividends are of little importance apart from an understanding of the value of the investment. Railroad Commission of Tex. v. A. T. & S. F. Ry. Co., 20 I. C. C. 463, 483.

(b) Whether a carrier earns dividends or not sheds little light on the question as to whether the rate on a particular article is reasonable. For, if the carrier's total income enables it to declare a dividend, that does not justify an order requiring it to haul one class of goods for nothing, or for less than a reasonable rate. I. C. C. v. U. P. R. R., 222 U. S. 541, 549, 32 Sup. Ct. 108, 56 L. ed. 308.

§21½ Emergency Rates.

See Emergency Rates; Experimental Rates.

IMPORTANT CASES SINCE 1908

(a) Where the Commission is considering a novel service only recently introduced, whose efficiency and permanence are in some degree problematical, the question of fixing a reasonable rate is attended with no little uncertainty, and immediate establishment of an appropriate and reasonable charge for the new service is possibly requiring more of carriers than in fairness could be exacted. Arlington Heights Fruit Exchange v. S. P. Co., 39 I. C. C. 88, 93.

ALL OTHER CITATIONS

Schreiber Hay & Grain Co. v. C. B. & Q. R. R., Unrep. Op. A-946; Lake Cargo Coal Rates, 46 I. C. C. 59, 192.

§22 Equipment Furnished.

See Infra §48½; Cars and Car Supply; Classification §12⅞; Equipment; Minimum; Reasonableness of Rates §13; Refrigeration §4¼;

CASES 1887-1908

(a) It is one of the plain duties of the carrier to properly equip its road with all such cars as experience has shown to be necessary for the right movement of freight along its line, and in like manner to have depots and arrangements for the proper and necessary receipt and delivery of freight at stations along its line. A carrier is not warranted under the statute in setting up its own omission in these respects to justify an exceptional rate which unjustly discriminates against one locality in favor of all others and against one kind of traffic in favor of another. Board of Trade of Chicago v. C. & A. R. Co. 3 I. C. C. 233, 244.

(aa) When an article of traffic does not move on account of burdensome rates, and the carrier is hauling a considerable number of empty cars in the direction such article would naturally move if accorded a lower rate, the carrier may be justified in carrying at a rate sufficient to induce the movement of

such trafic, provided no extra or additional charge is in consequence put upon other articles carried; but the fact that freight will furnish return loads for empty cars is not a reason for the reduction of rates on such freight when it does not appear that the rates are unreasonable. F. Schumacher Milling Co. v. C. R. I. & P. R. Co., 4 I. C. C. 373, 378.

(b) While the hauling of flat cars empty to the mills, and the practice of shippers to load cars below their capacity, are conditions which, to the extent they exist, are properly taken into account by carriers in fixing rates, it must be assumed that they were considered by defendants in making and maintaining the rates so long in force prior to the advance complained of. Tift v. Southern R. Co., 10 I. C. C. 548.

IMPORTANT CASES SINCE 1908

(c) While the Commission frequently considers in determining reasonableness of rates the character of equipment necessary for the transportation of various commodities, it cannot go into the matter of subordinate grades of equipment used in transportation. Bash Fertilizer Co. v. Wabash R. R. Co., 18 I. C. C. 522, 524.

(d) An advance in rates is not justified because of acquiring new equipment where the former equipment was sufficient. City of Spokane v. N. P. Ry. Co., 19 I. C. C. 162, 171.

(e) Equipment is an element to be considered in determining the reasonableness of a rate. Casey Hedges Mfg. Co. v. C. of G. Ry. Co., 26 I. C. C. 63, 64.

(f) The return movement of empty cars used in the anthracite traffic is an element of expense that should be given consideration. But in considering comparisons of revenue, while giving due weight to extraordinary operating cost attributable to the anthracite traffic, we also have in mind that the heavy tonnage hauled in trains which transport coal offsets to a large extent the expense of returning the empty coal cars. It is therefore, apparent that these various elements of extraordinary expense attributable to the transportation of certain commodities must be considered from the standpoint of cost of service and not by adjustments of average revenue. Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 260.

(g) And the present chaotic congested conditions of carriers' terminals, tracks, and facilities make it imperative that corrective measures should be carefully studied and established and rigidly enforced; efforts to attain that end have in full measure Commission's hearty co-operation. Export Grain Storage Charges, 42 I. C. C. 530, 542.

(h) Maintenance of equipment is one of the large items of expense in the operating costs of common carriers and maintenance of equipment expenses had increased to a more marked extent than other operating expense items. Lehigh Portland Cement Co. v. Director General, 58 I. C. C. 429, 434.

(i) A lower rate is justified on shipments moving in equipment furnished by shippers than would be reasonable for shipments moving in carriers' equipment. Missouri Portland Cement Co. v. Director General, as Agent, 64 I. C. C. 243, 246.

(j) Shipments which move in equipment furnished by shipper are entitled to lower rates than would be reasonable for shipments in carriers' equipment. St. Louis Chamber of Commerce v. Director General, as Agent 74 I. C. C. 308, 321.

(k) Particularly on long hauls full utilization of carriers' equipment is an important factor in keeping cost of transportation at a minimum. Sugar Cases of 1922, 81 I. C. C. 448, 461, 462.

ALL OTHER CITATIONS

Rickards v. A. C. L. R. R. Co., 23 I. C. C. 239, 240; Hormel & Co. v. C. M. & St. P. Ry. Co., 26 I. C. C. 112, 114; Furniture Rates in the Northwest, 26 I. C. C. 655, 662; Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co., 30 I. C. C. 597, 602, 603; Lum. v. G. N. Ry., 33 I. C. C. 541, 550; Kenner & Truck Farmers' Asso. v. I. C. R. R. Co., 32 I. C. C. 1, 8; Lindsay & Co., v. N. P. Ry. Co. 32 I. C. C. 287, 289; Rates on Live Poultry in Western Trunk Line Territory 32 I. C. C. 380, 383; Middletown Car Co. v. P. R. R. Co., 32 I. C. C. 185, 187; Rates on Tomatoes from Jacksonville to Kansas City 33 I. C. C. 145 146; Ochsenreiter v. A., T. & S. F. Ry. Co., 33 I. C. C. 518, 520; Newport Mining Co. v. C. & N. W. Ry. Co., 33 I. C. C. 645, 651, 654; Trap or Ferry Car Service Charges, 34 I. C. C. 516, 542; Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 270; Chattanooga Log Rates, 35 I. C. C. 163, 167; 1915 Western Rate Advance Case, 35 I. C. C. 497, 515, 605; Wabash Sand & Gravel Co. v. C. & E. I. R. R. Co., 42 I. C. C. 138, 143; Coal from

Pennsylvania Mines, 42 I. C. C. 206, 207; Lachman & Co. v. S. P. Co., 42 I. C. C. 440, 442, 445; Car Supply Investigation, 42 I. C. C. 657. 688; Fruits and Vegetables, 43 I. C. C. 291, 298, 325; National Poultry, Butter & Eggs Asso. v. B. & O. S. W. R. R. Co. 43 I. C. C. 392, 403; Rates on Dairy Products, 43 I. C. C. 700, 710; Independent Ice, Feed & Fuel Co. v. S. P. L. A. & S. L. R. R., 44 I. C. C. 666, 668; Pierce Oil Corp. v. M. K. & T. Ry., 44 I C. C. 279, 283; Business Men's League of St. Louis v. A. T. & S. F. Ry., 44 I. C. C. 308, 322; Northern Potato Traffic Asso. v. C. & A. R. R., 44 I. C. C. 426, 430; Oakley & Son v. C. T. H. & S. E Ry., 44 I. C. C. 448, 490; Fuller & Co. v. A., T. & S. F. Ry., 44 I. C. C M. K. & T. Ry., 47 I. C. C. 355, 356; National Live Stock Exchange v. C. B. & Q. R. R. 47 I. C. C. 380, 395; Wabash Pittsburgh Terminal Investigation, 48 I. C. C. 96, 135; R. R. Comm. of La. v. A. H. T. Ry., 48 I. C. C. 312, 343; Live Poultry & Dairy Shippers' Traffic Asso. v. A. T. & S. F. Ry., 49 I. C. C. 228, 231; Chamber of Commerce Houston, Texas, v. S. P. Co., 49 I. C. C. 316, 319; Express Charges on Empty Fish Cars, 50 I. C. C. 24; Empire Oil Works v. N. Y. C. R. R., 50 I. C. C. 99, 102; In re Private Cars, 50 I. C. C. 652, 667; Kentucky Peerless Distilling Co. v. L. H. & St. L. Ry., 51 I. C. C. 209, 210; New York & New Jersey Produce Co. v. N. J. N. H. & H. R. R., 51 I. C. C. 399, 400; Farmers & Ginners Cotton Oil Co. v. A. G. S. R. R., 51 I. C. C. 593, 594; Commercial Club of Greeley v. C. & S. Ry. Co., 53 I. C. C. 66, 72; Goodyear Tire & Rubber Co. v. A., C. & Y. Ry. Co., 53 I. C. C. 389; Lowry Lumber Co. v. Director General, 58 I. C. C. 113, 116; Standard Asphalt & Refining Co. v. Director General, 60. I. C. C. 384, 386; Live Poultry and Dairy Shippers' Asso. v. Director General, as Agent, 60 I. C. C. 284, 285; La Crosse Shippers' Asso. v. A. A. R. R. Co., 66 I. C. C. 371, 373; Construction and Repair of Ry. Equipment: Penn. R. R. Co., 66 I. C. C. 694; Construction and Repair of Ry. Equipment: A. C. L. R. R. Co., 66 I. C. C. 727; Construction and Repair of Ry. Equipment: N. Y. C. R. Co., 66 I. C. C. 732; Gypsum Plaster and Stucco to North Pacific Coast, 83 I. C. C. 753, 759.

§22a. Equalization of Cost Theory.

ALL CITATIONS

Trunk-Line and Ex-Lake Iron Ore Rates, 69 I. C. C. 589, 602.

§22¼ Erroneous Rates.

See Advanced Rates §5 (6); Erroneous Rate.

CASES 1887-1908

(a) That a shipper is allowed a rate better than he was entitled to, by mistake of the station agent, does not entitle him to such rate upon later shipments. Rea v. Mobile & O. R. Co., 7 I. C. C. 43.

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(b). But a carrier should not be penalized for a purely technical omission or error made in an effort to bring its tariff into conformity with the Commission's regulations. Highland Park Mfg. Co. v. S. Ry. Co., 26 I. C. C. 67, 69.

(c) An "erroneous' rate repeatedly published, and upon which considerable traffic has moved for upward of two years, does not stand upon the basis of an ordinary "error.' In re Export Rates on Flaxseed Products from Minneapolis, 27 I. C .C. 246, 247.

(d) The claim of error or sentiment as an excuse for increasing a long existing rate adjustment has been urged in many cases before the Commission. In a situation where the adjustment which it is sought to change was voluntarily established by the carriers and has been in force for many years, the allegation of error is not persuasive. Proportional Rates to Ohio River Crossings, 43 I. C. C. 458, 464.

ALL OTHER CITATIONS

Okerson v. Penn. R. R. Co., 18 I. C. C. 127; American Trust & Saving Bank v. C. M. & St. P. Ry. Co., 20 I. C. C. 104; Wausau Advancement Asso. v. C. & N. W. Ry., 28 I. C. C. 459, 460; Bartlett Co. v. C. P. & St. L. Ry. Co., Unrep. Op. A-203; Reshipping Rates on Grain from Omaha, 32 I. C. C. 590, 591; Rates on Fresh Fruits and Vegetables to Seattle, Wash., and Other Points, Unrep. Op. A-912; Hermann Vinegar & Pickle Co. v. C. R. I. & P. Ry., 38 I. C. C. 737; Darby & Brown v. B. & O. R. R Co., 42 I. C. C. 544, 546; Nebraska Bridge Supply & Lumber Co. v. N. C. & St. L. Ry., 35 I. C. C. 86, 89; Riverside Portland Cement Co. v. A., T. & S. F. Ry., 45 I. C. C. 139; Inman, Akers & Inman v. S. Ry., 45 I. C. C. 564; Morris & Co. v. M. K. & T. Ry., 49 I. C. C. 101; Illinois Brick Co. v. Director General, 57 I. C. C. 320; Substitution for Increases in Rates, 61 I. C. C. 518, 522; Atlantic Refining Co. v. Director General, as Agent,

80 I. C. C. 298; Staley Mfg. Co. v. C. P. Ry. Co., 80 I. C. C. 512; Oils to Nebraska and South Dakota, 83 I. C. C. 29; La Fayette Box Board Co. v. Director General, as Agent, 83 I. C. C. 307; Utah-Idaho Sugar Co. v. Director General, as Agent, 83 I. C. C. 566.

§22½ Expert Evidence.

See Supra §40; Undercharges §4.

IMPORTANT CASES SINCE 1908

(a) Testimony as to the effect an increase in rate will have on the business of shippers involved is always revelant, but should be established by direct evidence as distinguished from opinion testimony. Stonega Coke & Coal Co., v. L. & N. R. R. Co., 39 I. C. C. 523, 549.

(b) But the mere statement of an opinion that a certain increase in rates will put shippers out of business is not conclusive, since this fact can be established by direct proof of actual conditions, and in many other ways. Stonega Coke & Coal Co. v. L. & N. R. R. Co., 39 I. C. C. 523, 549.

(c) Unreliability of mere opinion, evidence is well understood by all who have had experience with it. An opinion is personal to the man who gives it. It depends upon his education, his mental habit, his present mental state, and is influenced by his environment and often controlled by objective point which he desires to reach. The same man may hold different opinions upon same subject at different times. Texas Midland 75 I. C. C. 136.

ALL OTHER CITATIONS

Wichita Falls & W. Ry. Co. of Tex. v. Asher (Tex., 1915), 171 S. W. 1114, 1117; Reshipping Rates on Grain from Omaha, 32 I. C. C. 590, 591.

§23 Failure to Serve Prejudiced Locality.

See Discrimination §7.

IMPORTANT CASES SINCE 1908

(a) The fact that the rails of certain carriers do not actually extend to a shipping center which is discriminated against cannot relieve such carriers from responsibility for the effect of rates, which create such discrimination, which they control and in which they participate. Chamber of Commerce of Newport News v. S. Ry. Co., 23 I. C. C. 345, 353.

(b) It is well settled that unless circumstances and conditions affecting transportation to any two points are substantially similar the fact that one has lower rates than the other does not of itself constitute undue preference Tulsa Traffic Asso. v. A. T. & S. F. Ry. Co., 40 I. C. C. 9, 11, 12.

§24 Fixed Charges.

IMPORTANT CASES SINCE 1908

(a) The fixed charges of a railroad sometimes represent the entire value of the property. Instances could easily be cited where a railroad ought not to earn in excess of its fixed charges. Mountain Ice Co. v. D. L. & W. R. R. Co., 15 I. C. C. 305, 319.

§25 Governmental Regulation and Operation.

See Control and Regulations; State Rates and Regulation; War Legislation.

IMPORTANT CASES SINCE 1908

(a) Government regulation, in some respect, has largely increased carriers' revenues. Shoemaker v. C. & P. Tel. Co., 20 I. C. C. 614, 618.

(b) It has become increasingly clear, since the outbreak of the European War, that unification in the operation of the railroads during the period of conflict is indispensible to their fullest utilization for the national defense and welfare. Unification of Railroad Operation, 47 I. C. C. 757.

(c) If unification of the railroads is to be effected by the carriers it should be effected in a lawful way, with financial assistance from the Government treasury. Unification of R. R. Operation, 47 I. C. C. 757, 760.

(d) The lawfulness of rates can not be determined by a construction of General Order 28 of the Director General. Silica Sand Producers Asso. v. C. B. & Q. R. R. 73 I. C. C. 588, 589.

(e) Though the president took over the transportation systems as entities, and under various general orders of the director general each system filed its own tariffs, made an inventory of its material and supplies, and had a separate bank account and in the order promulgating the wage award of the Railroad Wage Commission each system was individually named, it does not follow that the carriers were not being operated, as required by the Federal control act, under a unified and coordinated national control and not in competition. American Hominy Co. v. Director General, as Agent, 74 I. C. C. 206.

(f) Rates can not be condemned upon the mere showing that carriers failed to comply with instructions of the director general. Atlas Portland Cement Co. v. Director General, as Agent, 74 I. C. C. 653.

ALL OTHER CITATIONS

In Re Advances in Rates, Eastern Case, 20 I. C. C. 243, 285; In Re Advances in Rates, Western Case, 20 I. C. C. 307, 321, 353; Morgan Grain Co. v. A. C. L. R. R. Co., 19 I. C. C. 460, 472; Farmers Elevator Co. v. C. M. & St. P. Ry 47 I C. C. 475, 476.

§25¼ Harbor or Water Facilities.

IMPORTANT CASES SINCE 1908

(a) Harbor facilities at Duluth, Minn., shown to be superior to those at Chicago, Ill. Rates on Grain and Grain Products, 56 I. C. C. 133, 140.

§25½ Hearsay Evidence.

IMPORTANT CASES SINCE 1908

(a) The Commission, however, will not refuse to consider the accuracy of inspected track scales of a carrier, on mere hearsay evidence that a certain shipment weighed less on private scales. Miller & Co. v. C. T. W. Ry. Co., Unrep. Op. A-417.

§25¾ History of Rates.

See Infra §29; Past Rates.

IMPORTANT CASES SINCE 1908

(a) Though only an element to be considered, and in no way conclusive, the history of rates involved in a proceeding sometimes has a material bearing upon the question of what rates should properly apply. This is particularly true if the former rates are shown to have been voluntarily maintained. Green v. A. & V. Ry. Co., 43 I. C. C. 662, 674.

§26 Import Duty.

See Advanced Rates §18 (6).

IMPORTANT CASES SINCE 1908

(a) When establishing rates and privileges to the United States from Cuba in comparison with those from Florida the carriers have no right to count the import duty as a part of the transportation charge. Florida Fruit & Vegetable Ass'n v. A. C. L. R. R. Co., 17 I. C. C. 552, 561.

§26½. Interest on capital.

IMPORTANT CASES SINCE 1908

(a) The rise in the rate of interest results from influences that also produce a rise in the general level of prices. The same necessity that requires the carriers to pay a higher rate of interest on capital borrowed compels them to pay also higher prices for certain articles. This double disability rests, it is true, upon other industrial enterprises, although, as previously indicated, the ordinary concern may advance the prices upon its own output, and thus in a way offset the disability of rising costs with less delay and hindrance than can a public service industry. 1915 Western Rate Advance Case, 35 I. C. C. 497, 532.

(b) The interest on bonds alone is only indirectly a criterion of the adequacy of operating returns, inasmuch as the bonds may remain but slightly affected in price so long as the net income of the carrier easily covers the bond interest. The situation is not unlike that of a mortgage on realty where the value of the mortgage may remain wholly unaffected by a progressive shrinkage in the value of the property mortgaged, so long as there exists a clear margin, even though a decreasing margin, in the value of the equity over and above the mortgage indebtedness. The rise in the rate of interest on capital borrowed results from influences that also produce a rise in general level of prices, 1915 Western Rate Advance Case, 35 I. C. C. 497, 532, 533.

§26¾. Intention.

IMPORTANT CASES SINCE 1908

(a) The matter of intention may be of importance under some circumstances, but it can not be controlling; and if such discrimination as the Act condemns is not shown an order based upon a finding of wrongful intention would find no warrant in law. Traffic Bureau, Sioux City Commercial Club v. Am. Exp. Co., 39 I. C. C. 703, 721.

§27. Investment relying on rate.

See Supra §6: Advanced Rates §13; Evidence §6; Reasonableness of Rates §14.

CASES 1887-1908

(a) Where an existing classification and rate are not shown to operate injuriously to the carriers from a given point, or to give undue advantage to shippers, a change is not justifiable that materially injures an important industry and a class of shippers at that point who have there built up the industry in reliance on a continuation of the previous classification and rate, first established and long maintained by the carriers themselves with-

out complaint from any quarter. Bates v. Pennsylvania R. Co. (Com.), 2 I. C. R. 715

(b) Continuance of a system of unjust rates cannot be required or excused on the ground that parties have made investments and entered into the business affected thereby on the faith of assurances from carriers of their maintenance, although a change might work injury to the parties whom such rates had unduly favored. Potter Manufacturing Co. v. Chicago & G. T. R. Co., 4 I. C. R. 223.

IMPORTANT CASES SINCE 1908

(c) The Commission has never understood that it could dictate the policy of a carrier in the making of its rates in so far as there was just room for the exercise of a policy. It has several times explicitly so declared. It has, however, believed that it might consider what the policy of a carrier had been in determining whether the rates resulting from a change in that policy were just and reasonable. It often happens that the very existence of an industry depends upon the rate accorded to it. If, now, a carrier has established a particular rate for the express purpose of enabling an industry to exist, and if upon the strength of that rate money has been invested which must be destroyed if the rate is withdrawn, this fact might properly be considered in passing upon the reasonableness of the proposed change in the rate. Such fact is not controlling, but is one of the circumstances which may properly be kept in view. The Commission might in a proper case order the continued maintenance of a rate upon which the investment of money had been induced, even though it would not in the first instance as an original proposition have directed the establishment of that rate. Oregon & Washington Lumber Mfrs. Assn. v. S. P. Co., 21 I. C. C. 389, 394.

(d) The fact that contracts have been entered into on the basis of a lower rate will not of itself preclude the increasing of such rate. Rates on Crushed Stone from McCook and Thornton, Ill., 29 I. C. C. 136, 137.

(e) In a typical case it appeared that complainant had invested large sums in their plants, and said that they had built up their business on the assumption that no substantial change would be made in a transit arrangement. They suggested that it is now neither right nor fair for the carriers to burden them with a transit charge. Little, if any weight however, may be given that consideration, in view of the Supreme Court's decision in So. Pa. Co. v. I. C. C. 219 U. S. 433, 426; Mercantile Lumber Co. v. I. C., 53 I. C. C. 663, 665.

(f) Complainant, acting in good faith, made extensive changes in its plants at considerable expense on the presumption that a special rate would be established. Contention that present rates are higher than the traffic will bear, based primarily upon a showing that traffic has been diverted to water routes; that it has become necessary to scrap some plants; and that it will be impossible to continue operation unless the increases under the Fifteen Per Cent case, 45 I. C. C., 303, and Ex Parte 74, 58 I. C. C., 220, are removed. HELD, the reasonableness of rates may not be measured by the commercial necessities of shippers. Peninsular Portland Cement Co. v. Director General, as Agent, 73 I. C. C. 542.

ALL OTHER CITATIONS

Albree v. B. & M. R. R. Co., 22 I. C. C. 303, 315; Corporation Commission of N. C. v. N. & W. Ry. Co., 19 I. C. C. 303, 308; Douglas & Co. v. C. R. I. & P. Ry. Co., 16 I. C. C. 232, 237; Michigan Upper Peninsula Pig-iron Rates, 26 I. C. C. 284, 285; Duluth Log Rates, 29 I. C. C. 420, 421; Lumber Rates from Local Points to Chattanooga, Tenn., 29 I. C. C. 646, 647; Chattanooga Log Rates, 30 I. C. C. 36, 39; Meridian Fertilizer Factory v. L. & N. R. R. Co., 30 I. C. C. 494, 497; Crawford & Bunce v. P. C. C. & St. L. Ry. Co., 32 I. C. C. 12, 14; Brantley Co. v. A. C. R. R., 34 I. C. C. 21, 24; Lighterage and Storage Regulations at New York, 35 I. C. C. 47, 53; Peninsula Portland Cement Co. v. C. N. R. R. Co., Unrep. Op. 2024; Colorado Alfalfa Meal & Mfg. Co. v. M. P. Ry. Co., 41 I. C. C. 540, 544; Lumber Rates from Helena, Ark., and Other Points, 41 I. C. C. 565, 577; Milk and Cream Rates to New York City, 45 I. C. C. 412, 429; General Porcelain Co. v. Director General, as Agent, 66 I. C. C. 681; Atlas Portland Cement Co. v. C., B. & Q. R. R. Co., 81 I. C. C. 1, 15.

§28. Local rates and combinations.

See Local Rates and Combinations; Through Routes and Joint Rates §13½, §15.

IMPORTANT CASES SINCE 1908

(a) Where the combination of local rates is less than the through rates the adjustment is prima facie unreasonable. Greater Des Moines Committee v. C. M. & St. P. Ry. Co., 18 I. C. C. 73, 80.

(b) The existence of a lower combination over another route does not present a combination lower than the through rate on which the presumption obtains such through rate is unreasonable. Lull Carriage Co. v. C. K. & S. Ry. Co., 19 I. C. C. 15, 17.

(c) Where the spread between the local rates and the divisions of through rates between the same points is large the local rates should be carefully scrutinized. R. R. Com. of Nev. v. N. C. O. Ry. Co., 22 I. C. C. 205, 210.

(d) The combination and through rate should not be equal. El Dorado, etc., Co. v. C. R. I. & P. Ry. Co., 22 I. C. C. 286, 287.

(e) A carrier has no right to single out a piece of expensive road and make the local traffic bear an undue portion of the expense of its maintenance or construction. Norman Lumber Co. v. L. & N. R. R. Co., 29 I. C. C. 565, 569.

(f) Rate applicable alleged to be excessive because it is a combination rate, but this fact in and of itself affords no basis for condemning the rate. Lookout Paint Mfg. Co. v. N. Y. C. R. R., 45 I. C. C. 539, 540.

ALL OTHER CITATIONS

St. Louis Blast Furnace Co. v. V. Ry. Co., 21 I. C. C. 215, 220; Webster Grocer Co., v. C. & N. W. Ry. C., 21 I. C. C. 20; Wells-Higman Co. v. G. R. & I. Ry. Co., 19 I. C. C. 487, 488; Webster Grocery Co. vv. G. R. & I. Ry. Co., 19 I. C. C. 487, 488, 493, 495; Crombie & Co. v. A. T. & S. F. Ry. Co., 18 I. C. C. 57, 59.

§29. Long Continuance of Voluntary Rate.

See Infra §43; Advanced §5 (4); Evidence §68; Express Companies §22; Reasonableness of Rates §16, §16½, §25.

CASES 1887-1908

(a) A railroad company, while long maintaining a rate without the presence of competition on other than equal terms, is making evidence that such rate is not too low. Northwestern Iowa Grain & Stock Shippers Asso. v. C. & N. W. R., 2 I. C. C. 431, 434.

(b) Rates on shipments of strawberries and vegetables from Charleston to Jersey City are prima facie excessive where the carrier has previously charged the same rates for a series of years for similar shipments from the same place to New York by way of Jersey City. Truck Farmers' Asso. v. Northeastern R. Co., 6 I. C. C. 295.

(c) A railroad company putting in force a rate of charges furnishes evidence that the rate is profitable, which is more convincing when such rate is long maintained. Truck Farmers' Asso. v. Northeastern R. Co., 6 I. C. C. 295, 321.

(d) The long continued carriage of any article of freight at certain rates, while establishing a presumption that such rates are reasonable and remunerative, is not alone conclusive, but to carry such presumption must show a settled practice or policy. Warren Mfg. Co. v. Southern Ry., 12 I. C. C. 381, 387.

IMPORTANT CASES SINCE 1908

(e) Undoubtedly the fact that a rate has been voluntarily maintained by a carrier for a period of years is evidence tending to show that it is reasonably remunerative, and when it is sought to be increased the burden on the carrier would seem to require stronger proof of justification than in a case where the proposed increase relates to a rate that has been in effect but a short time. It not infrequently occurs, however, that increases in rates that have been maintained for many years are found to be amply justified. Freight Rates from Minnesota Points, 32 I. C. C. 361, 364.

(f) The contention that carriers should not be permitted to increase rates voluntarily established and maintained for several years, not sustained. Excelsior from St. Paul, Minn., 36 I. C. C. 349, 364.

(g) A rating that has been long continued should not be disturbed unless it is found to cause the exaction of an unreasonable or an unjustly discriminatory or unduly prejudicial charge. McCrory Stores Corp. v. Director General, 55 I. C. C. 423, 424.

(h) Carrier contended that rate on butter when applied to oleomargarine was unremunerative, but the continued maintenance of the rate on butter justifies the conclusion that carrier regarded it as a compensatory rate, and if compensatory for butter, it would have been compensatory for oleomargarine. Armour & Co. v. Director General, as Agent, 60 I. C. C. 663, 665.

(i) A voluntary rate, established to meet competition, is not to be taken as

the measure of what is reasonable. L. & N. R. R. Co. v. I. C. C. 195, Fed. 541. 558.

ALL OTHER CITATIONS

Chaffin Coal Co. v. B. & O. R. R. Co., Unrep. Op. 585; Burgess v. Transcontinental Freight Bureau, 13 I. C. C. 668, 677; Darling & Co. v. B. & O. R. R. Co., 15 I. C. C. 79, 80, 83; Green Bay Business Men's Ass'n. v. B. & O. R. R. Co., 15 I. C. C. 59, 63; Sunderland Bros. Co. v. P. M. R. R. Co., 16 I. C. C. 450, 451; Kiser Co. v. C. of G. Ry. Co., 17 I. C. C. 430, 440; Memphis Cotton Oil Co. v. I. C. R. R. Co., 17 I. C. C. 313, 318; Bartles Oil Co. v. C. M. & St. P. Ry. Co., 17 I. C. C. 146, 148; Boise Commercial Club v. Adams Express Co., 17 I. C. C. 115, 121; Clark Co. v. Buffalo & Susquehanna Ry. Co., 18 I. C. C. 380, 381; Bresse-Trenton Mining Co. v. Wabash R. R. Co., 19 I. C. C. 598, 600; Pabst Brewing Co. v. C. M. & St. P. Ry. Co., 19 I. C. C. 584, 586, 587; Morgan Grain Co. v. A. C. L. R. R. Co., 19 I. C. C. 460, 468; Gamble-Robinson Commission Co. v. St. L. & S. F. R. R. Co., 19 I. C. C. 114; Millar v. N. Y. C. & H. R. R. Co., 19 I. C. C. 78; Winterbotham & Sons v. M. P. Ry. Co., 21 I. C. C. 266, 269; Commercial Club of Omaha v. S. P. Co., 20 I. C. C. 631, 636; Audley Hill & Co. v. S. Ry. Co., 20 I. C. C. 225, 226; Chattanooga Feed Co. v. A. G. S. R. R. Co., 22 I. C. C. 480, 484; Fairmont Creamery Co. v. C. B. & Q. R. R. Co., 22 I. C. C. 252, 254; Arlington Heights Fruit Exchange v. S. P. Co., 22 I. C. C. 149, 151; Chamber of Commerce of New York v. N. Y. C. & H. R. R. Co., 24 I. C. C. 55, 74; Dupont de Nemours Powder Co. v. C. R. R. of N. J., 25 I. C. C. 19, 20; Advances on Iron Ore, 26 I. C. C. 675, 676; Topeka Traffic Assn. v. A. & V. Ry. Co., 27 I. C. C. 428, 435; In re Basket Rates from Points East of to Points West of the Missouri River, Unrep. Op. A-490; Lumber Rates S. Ry. Points to Eastern Points, 31 I. C. C. 244, 253; Nix & Co. v. S. Ry. Co., 31 I. C. C. 145, 149; Grain Rates to Pittsburgh, 30 I. C. C. 383, 384; Rates on Bananas from Gulf Ports, 30 I. C. C. 510, 515; Augusta Cotton Exchange and Board of Trade v. S. Ry. Co., 30 I. C. C. 704, 706; Stuart's Draft Milling Co. v. S. Ry. Co., 31 I. C. C. 623, 625; Birdsboro Stone Co. v. Penn. R. R., 37 I. C. C. 577; Alamo Iron Works v. N. Y. O. & W. Ry. Co., Unrep. Op. 2237; Capital City Oil Co. v. Y. & M. V. R. R. Co., 39 I. C. C. 141, 145; Pacific Coast-Southwest Lumber, 40 I. C. C. 387, 394; Grain Reshipped from Peoria, 50 I. C. C. 185, 190.

§30. Low Rates in Opposite Direction. See Comparative Rates; Discrimination §11; Reasonableness of Rates §27¾.

CASES 1887-1908

(a) There is no necessary connection or relation between the rates on traffic of the same kind or class transported between the same points in opposite directions over the same road or line, and the fact that such rates in one direction is materially higher than that in the opposite direction does not, as in case of hauls over the same line in the same direction, establish prima facie the unreasonableness of the higher rate. This is especially true where the hauls are of great length. Duncan v. A. T. & S. F. R. Co., 4 I. C. C. 385, 393.

(b) There is no necessary connection or relation between the rates on traffic of the same kind or class transported between the same points in opposite directions over the same road or line, and the fact that such rate in one direction is materially higher than that in the opposite direction does not, as is case of hauls over the same line in the same direction, establish prima facie the unreasonableness of the higher rate. This is especially true where the hauls are of great length. Blanton Duncan v. A. T. & S. F. R. R. Co., et al, 6 I. C. C. 85.

(c) Upon the evidence as presented, it does not appear that the rate of 62 cents per hundred pounds on "wool in the grease" from Philadelphia, Pa., to Ft. Wayne, Ind., is unjust in comparison with the rate on the same commodity of 43 cents east bound from Ft. Wayne to Philadelphia. Weil v. Pennsylvania R. Co. 11 I. C. C. 627.

(d) Upon complaint that the rates on wire-screen doors and windows eastbound from Fenton, Mich., a place near Detroit, to Winooski, Vt., and certain other eastern points, are higher than the rates on such articles westbound from Winooski to Detroit, and certain other western points, and result in unreasonable rates and unjust discrimination against such eastbound shipments. HELD: That somewhat lower rates on westbound than on eastbound traffic seems, from the difference in conditions, to be justified; but no satisfactory reason appears why there should be a great-

er disparity between the rates on the traffic in question eastbound and westbound than that which prevails on articles of substantially the same character in the classes. A. J. Phillips Co. v. Grand Trunk W. R. Co., et al, 11 I. C. C. 659.

(e) Complainant attacked rates on wirescreen doors and windows from Fenton, Mich., to Winooski, Vt., as unjust and unreasonable as compared with the rates in the reverse direction. From Winooski to Detroit 20c, eastbound 36c. The eastbound rates are commodity rate and are practically the same as fourth class while the westbound rates are pratically fifth class. There is a greater movement of empty cars under light power westbound, which increases the cost of transportation to the carriers. Generally rates are lower for the transportation of westbound traffic than for eastbound. Some disparity seems to be justified but not as much as is shown. HELD, carriers will be expected to make some readjustment in the eastbound rates, no order to be entered at this time. A. J. Phillips & Co. v. G. T. W. Ry., 11 I. C. C. 659.

(f) Complainant attacked as unreasonable and unjustly discriminatory carload commodity rates on woodenware from Menasha, Wis., to north Pacific coast terminal points higher than from such Pacific coast terminals to Missouri and Mississippi River points and to Chicago. HELD, there is no sufficient basis for a conclusion that the rates involved are unreasonably excessive; that existing disparities in the rates eastbound and westbound on the traffic constitute undue discrimination against complainant, but this record furnishes no basis for specific order, carriers are expected to make a readjustment that would fulfill the requirement of the law as to justice and equality, complaint dismissed. Menasha Woodenware Co. v. A. T. & S. F. Ry., 11 I. C. C. 666.

(g) It appears that defendant's rates on woodenware are higher from Menasha, Wis., to north Pacfiic coast terminal points than from such Pacific coast terminals to Missouri River and Mississippi River points and to Chicago common points, including Menasha. Upon complaint that such rate adjustment results in unreasonable rates from Menasha and undue preference to Pacific coast woodenware shipments,—HELD: (1) That there is no sufficient basis in the record for a conclusion that the rates involved are unreasonably excessive; (2) that existing disparities in the rates eastbound and westbound on the traffic in question constitute undue discrimination against complainant, but this record furnishes no sufficient basis for such specific order respecting the exact adjustment of the rates on the different articles involved as would fulfill the requirements of the law as to justice and equality; and (3) that no order will be made at this time, but it is expected that defendants will so readjust the rates as to remove the undue discrimination. Menasha Wooden Ware Co. v. Atchison, T. & S. F. R. Co., 11 I. C. C. 666.

(h) To whatever extent long previous existence of lower rates in actual use may justify an inference or presumption that they are sufficiently high, the mere publication of such rates, under which there has been no appreciable movement of traffic, is not conclusive proof that they are reasonably remunerative to the carriers. R. R. Shiel & Co. v. Ill. Cent. R. R. Co., et al, 12 I. C. C. 211.

IMPORTANT CASES SINCE 1908

(i) But differing rates in opposite directions over the same lines require explanation. Producers Sales Co. v. N. Y. N. H. & H. R. R., 48 I. C. C. 438.

(j) While the rate in one direction is not always a fair test of what the rate should be in the opposite direction, the greater volume of the traffic may well justify a somewhat lower rate. Merchants Freight Bureau of Little Rock v. M. P. R. R., 50 I. C. C. 247.

(k) Where the transportation conditions affecting the movements in opposite directions between the same points are substantially similar there should be no material disparity in the rates. Rates to and from Nashville, 61 I. C. C. 308, 334.

(l) The Commission has repeatedly said that where the transportation conditions affecting the movements in opposite directions between the same points are substantially similar there should be no material disparity in the rates. Moore Oil Refining Co. v. Director General, 64 I. C. C. 621, 622.

(m) Rates on emergency shipments of gas, oil, gasoline, and distillate, in tankcar loads, from Oklahoma points to Potwin, Kans., found not unduly prejudicial as compared with lower rates to other Kansas refining points, which rates

were subsequently made applicable to Potwin. Rates assailed compare favorably with those in the reverse direction prescribed in National Petroleum Asso., 47 I. C. C. 355. Vickers Petroleum Co. v. Director General, as Agent, 73 I. C. C. 578.

(n) Where the transportation conditions affecting movements in opposite directions between the same points are substantially similar, the rates should be substantially on the same basis. Memphis-Southwestern Investigation, 77 I. C. C. 473, 495.

(o) Though the maintenance of a higher rate than that which applies for a movement between the same points in the opposite direction ordinarily requires explanation, the higher rate can not be condemned solely on that circumstance. Hyman Michaels Co. v. Director General, 80 I. C. C. 703, 705, 706.

(oa) A rate in the reverse direction is not a controlling test of reasonableness. International Paper Co. v. Director General, 88 I. C. C. 211, 212.

(p) The mere fact that a rate is higher one way between the same points than it is the other does not prove that the higher rate is unreasonable, and this is particularly true where there is a preponderance of empty cars moving in the one direction. L. & N. R. R. Co. v. I. C. C. 195 Fed. 541, 559.

(q) It is well established that a rate between two points in one direction is not necessarily the measure of a reasonable and non-discriminatory rate in the opposite. Rate on windmills and towers from Superior, Wis., to Washington, Iowa, not found unreasonable. Duplex Mfg. Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-858.

ALL OTHER CITATIONS

Hill & Webb v. T. & P. Ry. Co., Unrep. Op. 451; Hill & Webb v. I. & V. R. R. Co., Unrep. Op. 333; Pons v. S. A. L. Ry., Unrep. Op. 330; LaCrosse Implement Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 220; Patten v. Wis. Cent. Ry. Co., 14 I. C. C. 189; Wilburine Oil Works v. P. R. R. Co., 18 I. C. C. 548; Galveston Commercial Ass'n. v. G. H. & S. A. Ry. Co., 23 I. C. C. 512; Arkansas Fertilizer Co. v. St. L. I. M. & S. Ry. Co., 25 I. C. C. 645, 648; Browne Grain Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A-15; Ohio Iron & Metal Co. v. C. & E. I. R. R. Co., Unrep. Op. A-72; Austin Mill & Grain Co. v. G. C. & S. E. Ry. Co., Unrep. Op. A-91; Interior Iowa Cities Case, 28 I. C. C. 64, 72; Volco Mfg. Co. v. A. T. & S. F. Ry. Co., 28 I. C. C. 289, 291; Hull Vehicle Co. v. Southern Ry Co., 28 I. C. C. 619; Marshall Oil Co. v. C. G. W. R. R. Co., 28 I. C. C. 707, 708; Board of R. R. Com'rs. of Mont. v. N. P. Ry. Co., Unrep. Op. A-157; Zwick & Greenwald Wheel Co. v. C. N. O. & T. P. Ry. Co., Unrep. Op. A-259; R. R. Com. of La. v. T. & P. Ry. Co., Unrep Op. A-311; Pacific Creamery Co. v. S. P. Co., Unrep. Op. A-356; Bessemer Refining Co. v. P. Co., Unrep. Op. A-457; Cheek & Sons v. C. P. Ry. Co., 31 I. C. C. 265, 269; Shea Bros. v. T. Ry. Co., Unrep. Op. A-558; Franklin Steel Works v. O. W. R. R. & N. Co., Unrep. Op. A-686; Barnhardt Mfg. Co. v. S. Ry. Co., Unrep. Op. A-698; Pittman & Harrison Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-732; Du Pius v. F. E. C. Ry. Co., Unrep. Op. A-739; Bower & Co. v. L. H. & St. L. Ry. Co., Unrep. Op. A-744; Chamber of Commerce, Houston, Tex. v. I. & G. N. Ry. Co., 32 I. C. C. 247, 259; Lewis v. A. C. L. R. R. Co., Unrep. Op. A-883; Rates on Grain and Grain Products, 33 I. C. C. 374, 376; Chamber of Commerce of Freeport, Ill., v. C. M. & St. P. Ry. Co., 33 I. C. C. 673, 677; East Bound Transcontinental Cotton Rates, 34 I. C. C. 248, 252; Rates on Lumber from Southern Points, 34 I. C. C. 652, 676; Great Western Oil Refining Co. v. M. K. & T. Ry. Co., Unrep. Op. 2002; Mfrs. Supply Co. v. M. & St. L. R. R. Co., Unrep. Op. 2071; Midcontinent Oil Rates, 36 I. C. C. 109, 124; Grain to the Southwest, 36 I. C. C. 660, 661; 1915 Western Rate Advance Case, 37 I. C. C. 114, 128, 145; Houston Packing Co. v. I. & G. N. Ry., 37 I. C. C. 584; York Mfg. Co. v. S. P. Co., Unrep. Op. 12545 .... Con Dig .... GAR .... 3-3-24 .... 2240; Chautauqua Refrigerating Co. v. Erie R. R. Co., 37 I. C. C. 625, 626; Houston Packing Co. v. I. & G. N. Ry. Co., 37 I. C. C. 584, 585; Shelbyville Business Men's Assn. v. L. & N. R. R. Co., 37 I. C. C. 675, 680, 681; Traffic Bureau of Knoxville, Tenn. v. C. N. O. & T. P. Ry. Co., 37 I. C. C. 687, 691; Official Classification Rates on Paper, 38 I. C. C. 120, 129; Holverscheid & Co. v. L. V. R. R. Co., 38 I. C. C. 495, 496; Heider Mfg. Co. v. C. G. W. R. R. Co., 39 I. C. C. 556, 557, 558; Memphis Freight Bureau v. I. C. R. R., 39 I. C. C. 641; Memphis Freight Bureau v. St. L. I. M. & S. Ry. Co., 39 I. C. C. 224,

243; Shreveport Chamber of Commerce v. K. C. S. Ry. Co., 39 I. C. C. 296, 302; Obear-Nester Glass Co. v. M. P. Ry. Co., 41 I. C. C. 446, 447; Wabash Sand & Gravel Co. v. C. & E. I. R. R. Co., 42 I. C. C. 138; International Paper Co. v. M. C. R. R. Co., 43 I. C. C. 159, 161; Western Trunk Line Rate Increases, 43 I. C. C. 481, 486; Cadillac Lumber Exchange v. A. A. R. R., 43 I. C. C. 636, 639; Cameron & Co. v. A. T. & S. F. Ry., 44 I. C. C. 286, 295; International Harvester Co. v. C. & N. Ry., 45 I. C. C. 105; Cameron & Co. v. A. T. & S. F. Ry., 44 I. C. C. 286, 295; Wisconsin Rate Cases, 44 I. C. C. 602, 620; Fern Glen Distilling Co. v. St. L. & S. F. R. R., 45 I. C. C. 101, 102, 105; International Harvester Co. of N. J. v. C. & N. W. Ry., 45 I. C. C. 105, 106; Zelnicker Supply Co. v. St. L. S. W. Ry., 45 I. C. C. 185, 186; State of Iowa v. Wabash Ry., 46 I. C. C. 703; Official Classification Ratings, 46 I. C. C. 383, 384, 387; Alabama Packing Co. v. L. & N. R. R., 47 I. C. C. 524, 526, 531; Lexington Flouring Mills v. M. P. Ry., 48 I. C. C. 687, 688; Morris & Co. v. M. K. & T. R. R., 49 I. C. C. 101; Merchants Freight Bureau of Little Rock v. M. P. R. R., 50 I. C. C. 247, 248; West Virginia Rail Co. v. B. & O. R. R., 50 I. C. C. 318, 322; Merchants Freight Bureau of Little Rock v. M. P. R. R., 50 I. C. C. 247; West Virginia Rail Co. v. B. & O. R. R., 50 I. C. C. 319, 322; Little Rock Freight Bureau v. M. P. Ry., 51 I. C. C. 23; Simonds Mfg. Co. v. A. T. & S. F. Ry., 51 I. C. C. 131; R. R. Com'rs. of North Dakota v. N. P. Ry. Co., 53 I. C. C. 437, 441; Zelnicker Supply Co. v. Director General, 53 I. C. C. 567; Savage Tire Co. v. Director General, 53 I. C. C. 578, 581; Bell Co. v. Director General, 53 I. C. C. 702; Owens Bottle-Machine Co. v. B. & P. R. R., 55 I. C. C. 122, 129; San Antonio Freight Bureau v. A. & W. P. R. R., 53 I. C. C. 326, 330; Associated Cooperage Industries v. Director General, 55 I. C. C. 327, 330; MacIntyre v. C. St. P. M. & O. Ry., 55 I. C. C. 421; Portland Traffic & Transportation Asso. v. O. W. R. R. & N. Co., 56 I. C. C. 410; Cohen-Schwartz Rail & Steel Co. v. St. L. S. F. Ry. Co., 57 I. C. C. 141; Meridian Cellulose Co. v. Director General, 57 I. C. C. 283; Liggett & Myers Tobacco Co. v. Director General, as Agent, 58 I. C. C. 196; Atlantic Ice & Coal Corp. v. S. Ry. Co., 61 I. C. C. 111; Rates to, from and between Points South of Ohio River, 64 I. C. C. 107, 133; The Pure Oil Co. v. Director General, 64 I. C. C. 444, 445; Birmingham Traffic Bureau v. St. L. & S. F. Ry. Co., 68 I. C. C. 108; Duluth Brewing & Malting Co. v. N. P. Ry. Co., 68 I. C. C. 315; Republic of France v. Director General, as Agent, 68 I. C. C. 424, 426; Wilckes, Martin & Wilckes Co. v. Director General, as Agent, 74 I. C. C. 13; Indiahoma Refining Co. v. Director General, as Agent, 74 I. C. C. 392; David Cole Creamery Co. v. Director General, 78 I. C. C. 91, 97; Scrap Iron and Steel between River Crossings, 77 I. C. C. 32; Memphis-Southwestern Investigation, 77 I. C. C. 473, 495; Turner Supply Co. v. Director General, as Agent, 77 I. C. C. 747; Webb-Summer Oil Mill v. Director General, as Agent, 78 I. C. C. 292; Atlantic Refining Co. v. Director General as Agent, 80 I. C. C. 298; Cramp & Sons v. Director General, as Agent, 80 I. C. C. 341; Zelnicker Supply Co. v. D. & R. G. W. R. R. Co., 81 I. C. C. 367; Armour & Co. v. P. R. R. Co., 83 I. C. C. 289; Hayward Bros. Shoe Co. v. C., M. & St. P. Ry. Co., 83 I. C. C. 525; Texas Chamber of Commerce v. Director General, as Agent 83 I. C. C. 538; Gypsum Plaster and Stucco to North Pacific Coast, 83 I. C. C. 753, 759.

§31. Manufactured Products.

See Classification §10, §11 IV; Evidence §31, §44; Reasonableness of Rates §17.

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(a) Upon a rehearing of this case the additional evidence warrants a finding contrary to what appeared and was found in the original hearing, that the cost to the defendants of transporting the direct products of corn, including terminal expenses, properly chargeable as freight charges, between Indianapolis and seaboard points, is greater on the product than on raw corn. Bates v. Penn. R. Co. 3 I. C. R. 296.

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(aa) The general rule is that manufactured products bear higher rates of transportation than does raw material, and is founded in reason, because ordinarily there is a substantial difference between the value of the one and that of the other, and frequently there is a greater degree of risk incident to the transportation and care of the manufactured product than of the raw material. The practice, however, is not universal, and is departed from in some instances because

the reasons for the distinction are lacking and in other cases because of countervailing commercial and market conditions and considerations. Within the last main class of exceptions would fall the case of grain and grain products, which are generally carried at the same rate. The rule, however, more nearly universally applies with respect to the primary or principal product or products than to the secondary products or by-products from the same raw material. East St. Louis Cotton Oil Co. v. St. L. & S. F. R. R. Co., 20 I. C. C. 37, 40, 41.

(b) Manufactured products generally take higher rates than the raw materials, although there are exceptions to the rule. Straw Rates from St. Louis to Anderson, Ind., 36 I. C. C. 30, 33.

(c) It appears to be a debatable question as to when in the process of manufacture iron and steel articles become finished products. In certain circumstances bar iron might properly be considered a finished article, while in others it might be considered rough material. The final use to which the articles is put may determine whether it should be considered finished or unfinished. The Iron and Steel Cases, 36 I. C. C. 86, 107.

(d) The general rule a manufactured artcile should take a higher rating than the raw material is subject to exceptions based on considerations arising out of varying conditions. For example, the manufactured article might be a better transportation unit than the raw material. Official Classification Ratings, 37 I. C. C. 166, 183.

(e) Ordinarily a manufactured product is rated higher than its components. Wilckes, Martin & Wilckes Co. v. Director General, as Agent, 74 I. C. C. 13, 15.

(f) Where certain grades of a commodity made and sold for common grades are not mere by-products of the production of higher grades, and otherwise fully conform to description and loading requirements of common grades, incidental final use by purchaser of a selected few thereof for better purposes should not be regarded as affecting their essential character for rate-making purposes, although exclusive or predominant use of grades for a given purpose is a circumstance to be considered, along with other facts, in determining proper description to be applied. National Paving Brick Mfgs. Asso. v. A. & Y. Ry. Co., 80 I. C. C. 179, 183.

(g) Maintenance of lower rates on finished articles than are applicable on commodity from which manufactured, must be justified, if at all, by clear, positive, and convincing evidence. Oklahoma Iron Works v. Director General, as Agent, 80 I. C. C. 327, 331.

(h) Manufactured articles ought generally to pay a higher transportation charge than the raw material, but this rule is by no means inflexible, and facts and circumstances surrounding the movement of the raw materials may be such as to warrant a higher rate. Mississippi Railroad Commission v. A. & V. Ry., 89 I. C. C. 47, 67.

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Bulte Milling Co. v. C. & A. R. R. Co., 15 I. C. C. 351, 364; Electric Malting Co. v. A. T. & S. F. Ry. Co., 23 I. C. C. 378, 380; Massee & Felton Lumber Co. v. S. Ry. Co., 23 I. C. C. 110, 112; Trojan Mfg. Co. v. V. R. R. Co., Unrep. Op. A-49; Wylie Bros. Co., v. S. P. & S. Ry. Co., Unrep. Op. A-45; Kellogg Toasted Corn Flake Co. v. M. C. R. R. Co., 24 I. C. C. 604, 606; In re Rates on Salt, 24 I. C. C. 192, 194; East St. Louis Cotton Oil Co. v. St. L. & S. F. R. R. Co., 24 I. C. C. 588; State of Iowa v. A. C. L. R. R. Co., 24 I. C. C. 134, 137; Chamber of Commerce of New York v. N. Y. C. & H. R. R. R., 24 I. C. C. 55, 71; Capital Electric Co. v. B. & O. C. T. R. R. Co., 26 I. C. C. 472, 473; Rates on Linseed Oil, 26 I. C. C. 265, 270; Rates on Sash, Doors and Blinds into Texas, 26 I. C. C. 116, 118; Eastern Wheel Mfrs. Assn. v. A. & V. Ry. Co., 27 I. C. C. 370, 379; Boldt Co. v. C. R. I. & P. Ry. Co., 27 I. C. C. 11, 13; Paper Rates, Manitowoc and Milwaukee to Kaukauna, Wis., 28 I. C. C. 305, 307; Broom Rates to Colorado Points, 28 I. C. C. 310, 311; Clinton Sugar Refining Co. v. C. & N. W. Ry. Co., 28 I. C. C. 364, 365; Grain Rates in C. F. A. Territory, 28 I. C. C. 549, 551; National Syrup Co. v. C. & N. W. Ry. Co., 28 I. C. C. 673, 674; Bessemer Refining Co. v. P. Co., Unrep. Op. A-457; Stuart's Draft Co. v. S. Ry. Co., 31 I. C. C. 623, 631; Hammerschmidt & Franzen Co. v. C. & N. W. Ry. Co., 30 I. C. C. 71, 74; Malt Rates to Texas Points, 30 I. C. C. 385, 387; Clark-Danforth Handle Co. v. I. C. R. R. Co., Unrep. Op. A-570; Paducah Box & Basket Co., Inc., v. I. C. R. R. Co., Unrep.

Op. A-582; Curry & Whyte Co. v. D. & I. R. R. Co., 32 I. C. C. 162, 165; Douglas & Co. v. I. C. R. R. Co., 31 I. C. C. 587, 593; Knight Woolen Mills v. C. & N. W. Ry. Co., 32 I. C. C. 490, 491; Mixed Car Dealers Asso. v. D. L. & W. R. R. Co., 33 I. C. C. 133, 139; Anson, Gilkey & Hurd Co. v. S. P. Co., 33 I. C. C. 332, 339; Kellogg Toasted Corn Flake Co. v. A. T. & S. F. Ry. Co., 33 I. C. C. 534, 535; Maley & Wertz v. L. & N. R. R. Co., 36 I. C. C. 657, 658; Vanderboom-Stimson Lumber Co. v. St. L. I. M. & S. Ry. Co., 38 I. C. C. 432, 437; National Sirup Co. v. C. & N. W. Ry. Co., 43 I. C. C. 228, 230; Western Trunk Lines Iron and Steel, 47 I. C. C. 109, 112; Wooden Package Rating, 48 I. C. C. 708, 714; Live Poultry & D. S. Assn. v. A. T. & S. F. Ry., 49 I. C. C. 228, 236; Chamber of Commerce, Houston, Texas, v. S. P. Co., 49 I. C. C. 316, 319; Live Poultry & Dairy Shippers Traffic Asso. v. A. T. & S. F. Ry., 49 I. C. C. 228, 236; Porter Mirror & Glass Co. v. Director General, as Agent, 59 I. C. C. 308, 309; E. H. Edwards v. Director General, 60 I. C. C. 258, 261; Shibakawa & Co. (Inc.) v. P. & R. Ry. Co., 66 I. C. C. 261; Texas Steel Co. v. Director General, as Agent, 74 I. C. C. 535, 537; Crude Oil from Louisiana Points, 74 I. C. C. 623, 629; Crown Williamette Paper Co. v. Director General, as Agent, 78 I. C. C. 273, 277; Oklahoma Iron Works v. Director General as Agent, 80 I. C. C. 327, 331; Agricultural Implement, Sleigh and Vehicle Wood, 83 I. C. C. 25, 26, 27.

§31½. Maps.

See Market Competition.

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(a) A privately published set of maps such as is in the Rand-McNally Atlas is not an official publication of carriers and cannot control rates. Crescent Coal & Mining Co. v. C. & E. I. R. R. Co., 24 I. C. C. 149, 154.

§32. Market Competition.

See Analogous Commodities; Long and Short Hauls §8; Equalization of Rates §3, §6; Express Companies §19; Market Competition.

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(a) Competition at St. Paul with sugar from the east refined in New York, although necessitating low rates to St. Paul on sugar from the west refined at San Francisco, does not justify a greater charge on the latter to Fargo than to St. Paul. Raworth v. Northern P. R. Co. (Com.) 3 I. C. R. 857.

(b) A town favorably situated with respect to one through route, but competing in a common market with another town more favorably located on another through route, should not have a reduction of the local rate over roads connecting the two through routes for the purpose of overcoming the natural advantage which the latter competing town enjoys. Chamber of Commerce of Minneapolis v. Great Northern R. Co., 4 I. C. R. 230.

(c) The "drive" of shingle logs down rivers which flow past the place of cut in Maine to a seaport in Canada where shingle mills are located, and from which the product may go by sea to market ports, affects shingle traffic from competing mills located along these rivers at a place in Canada and a place in Maine, but operates with less force at the latter point. The rail rate from the Canadian mill to market being fixed with especial reference to the effect of the log drive to and water competition for shingle traffic from the seaport, the rate from the Maine mill should be made upon the same basis. James & Abbott v. Canadian Pacific R. Co., 4 I. C. R. 274.

(d) Competition of market with market may not be so direct in its effect, as competition of carrier with carrier; but when it does exist, it is influential, and perhaps as effective and controlling with carriers, as to their rates, as other competition. It may, therefore, constitute a part of the circumstances and conditions which a carrier can consider in fixing rates for the transportation of goods. Interstate Commerce Commission v. Cincinnati N. O. & T. P. R. Co., 4 I. C. R. 332.

(e) When a method of regulation would have the effect of throwing many competitors out of the trade, and centralizing it in the hands of one or more dealers, it would not be permissible if another method, without doing wrong to any one, would have the effect of leaving the market open to all competitors; for it is undoubtedly true that both the law and good business principles favor all fair competition. Schumacher Milling Co. v. C. R. I. & P. R. R. Co., 4 I. C. C. 373, 384.

(f) Each locality competing with others in a common market is entitled to reasonable and just rates at the hands of the carriers serving it and to the benefit of all its natural advantages, and no departure from the rule requiring rates in all cases to be reasonable in themselves can be justified on the ground that it is necessary in order to maintain existing trade relations, or to "protect competing markets," or to "equalize commercial conditions," or to secure to carriers traffic from certain territory assumed to be exclusively theirs. Freight Bureau v. Cincinnati, N. O. & T. P. R. Co., 4 I. C. R. 592.

(g) Division of territory between lines to a common market is without warrant in law, when made for the benefit of the carrier without regard to the interest of shippers in the territory so divided, to whom it is in effect a denial of the privilege of shipping their goods or produce to market by the line or route they may prefer. Cincinnati Freight Bureau v. Cincinnati, N. O. & T. P. R. Co., (Conn.) 4 I. C. R. 592.

(h) Division of territory between lines to a common market is without warrant in law when made for the benefit of the carrier without regard to the interest of shippers in the territory so divided to whom it is in effect a denial of the privilege of shipping their goods or produce to market by the line or route they may prefer. Freight Bureau v. Cincinnati, N. O. & T. P. R. Co., 6 I. C. C. 195.

(i) Each locality competing with others in a common market is entitled to reasonable and just rates at the hands of the carriers serving it and to the benefit of all its natural advantages, and no departure from the rule requiring rates in all cases to be reasonable in themselves can be justified on the ground that it is necessary in order to maintain existing trade relations, or to "protect competing markets," or to "equalize commercial conditions," or to secure to carriers traffic from certain territory assumed to be exclusively theirs. Freight Bureau v. Cincinnati, N. O. & T. P. R. Co., et al, 6 I. C. C. 197.

(j) The competition of markets or the competition of carrying lines subject to regulation under the Act to Regulate Commerce does not justify carriers in making greater short haul or lower long haul charges over the same line in the same direction (the shorter being included within the longer distance) in the absence of an order of relief issued by the Commission upon application therefor and after investigation. H. W. Behlmer v. Memphis & Charleston R. Co., et al, 6 I. C. C. 257.

(k) The law requires regulation of railroad charges according to the ascertained rights of persons and places; it is not an agency for the regulation of trade by enabling shippers and communities to do business, or putting them on even terms with rivals more remote from competitive territory. Therefore, the fact that one town is able, under existing rates to and from that point, to compete with another town on practically even charges for the aggregate in and out transportation, cannot be regarded as an excuse for any injustice in the rates to the former town; the rates to the two competing towns should accord with their relative situation. Daniels v. Chicago, R. I. & P. R. Co., et al, 6 I. C. C. 458.

(l) Coal transported from Corona, Birmingham or Blocton, Ala., to Vicksburg, Miss., must go by railroad, and the competition of such coal and coal from other Alabama mines in the Vicksburg market is with coal brought over long distances down the Ohio and Mississippi Rivers from Pittsburg, Pa., and other points in that mining district. HELD, That this is not competition between rail and water lines for transportation from a particular locality, but the competition of markets or mines for the supply of coal at Vicksburg, the force and effect of which is determined by commercial considerations peculiar to the business of shippers and wholly disconnected from the circumstances and conditions under which transportation is conducted. Fewell v. Richmond & D. R. Co., 7 I. C. C. 354.

(m) It is neither sound in principle nor equitable in practice for railway lines to create artificial differences in market conditions by an arbitrary differential in rates whereby the product of one section of the country is assigned to one market and the product of another section of the country to another market. Export Rates from Points E. & W. of Mississippi River v. 8 I. C. C. 185.

(n) A carrier can not lawfully establish and maintain an adjustment of rates which in practice prevents ship-

pers on its line from availing themselves of a principal market, which they have long been using, and confers a substantial monopoly upon a new market in which, for reasons of its own, it has greater interest. Savannah Bureau of Freight & Transportation v. L. & N. R. Co., 8 I. C. C. 377, 405.

(o) When a carrier makes rates to two competing markets, which give the one monopoly over the other, because it can secure reshipments from the favored locality and none from the other, it goes beyond serving its fair interest, and disregards the statutory requirement of relative equality as between persons, localities and particular descriptions of traffic. Savannah Bureau of Freight & Transportation v. Louisville & N. R. Co., 8 I. C. C. 377.

(p) It is the province of the Commission to interfere and secure, if possible, a fair adjustment in cases of unreasonable rates or unjust discrimination; but the Commission has no more authority to place competing millers in different states upon precisely the same footing than it has to equalize conditions in all localities and in every industry. Wichita v. Missouri P. R. Co., 10 I. C. C. 35.

(q) In the adjustment of rates as between places on its line, a carrier can not rightfully ignore the relative cost of the respective services, but there are other matters equal in importance to that of the cost of service, and often more controlling, which must also be considered, and this includes competition of carriers and competition of markets. Cannon v. M. & O. R. R., 11 I. C. C. 537, 542.

(r) Carrier may not control competition as between mills. Texas Cement Plaster Co. v. St. L. & S. F. R. R. Co., 12 I. C. C. 68.

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(s) While market competition must always be considered and while it may alone in some cases, perhaps, justify the granting of relief under section 4, it does not justify such relief in this case. In re Rates on Salt, 24 I. C. C. 192, 194. See also Kellogg Toasted Corn Flake Co. v. M. C. R. R. Co., 24 I. C. C. 604, 606.

(t) Market competition may be considered in determining a violation of section 3, but it is no defense to a charge of undue prejudice that competition compels the low rate at the favored point when similar conditions obtain at the point discriminated against. North Fork Cannel Coal Co. v. A. A. R. R. Co., 25 I. C. C. 241, 246.

(u) To a certain extent carriers are justified in placing competitive markets upon an equal basis. Minneapolis Civic & Commerce Asso. v. C. M. & St. P. Ry. Co., 30 I. C. C. 663, 672.

(v) Jobbing points not concerned as to measure of the rate itself but interested solely as to relative adjustment between them. Rates on Sugar, 31 I. C. C. 495, 509.

(w) Efforts to equalize market competition may not justify or require rates unreasonably low nor permit unjust discrimination. Hide Rates to Los Angeles, Cal., 31 I. C. C. 633, 636.

(x) Only some peculiar circumstances or condition can warrant the maintenance of a commodity rate from a few points of manufacture in a limited locality. Westbound Lake-and-Rail Knit Goods Commodity Rates, 32 I. C. C. 54, 57.

(y) A rate adjustment should not be so made that shippers at one point or certain points can control the field in a territory properly tributary to another shipper. Kansas Wholesale Grocer Co. v. A. & W. Ry. Co., 32 I. C. C. 139, 141.

(z) Market competition between dealers located on two lines of railroad is of itself insufficient to warrant an order requiring carriers to equalize thei rrates. Nebraska State Railway Comm. v. U. P. R. R. Co., 34 I. C. C. 381, 382.

(aa) The Commission will not condemn lightly a system which gives satisfaction at many important markets. Kansas City Live Stock Exchange v. A., T. & S. F. Ry. Co., 34 I. C. C. 423, 427.

(bb) The competition of markets, of producers, and of rival carriers, especially by water, has resulted in a freight-rate system which can not be assumed to be so adjusted that rates effective result in earnings proportioned nicely to respective costs involved. 1915 Western Rate Advance Case, 35 I. C. C. 497, 562.

(cc) When carriers undertake to lay aside transportation conditions and to create a rate relationship based largely on commercial factors, they must do it consistently so as to avoid artificial and undue advantages for some shippers to the prejudice and disadvantage of others. Pardee Works v. C. R. R. Co. of N. J., 39 I. C. C. 162, 165.

(dd) If places A and B are competing in or for same markets, the fact that carrier serving them both has elected to make its rates to or from A with regard or relation to rates to or from another place, and its rates to or from B with regard or relation to rates to or from still another place, can not be accepted as justification for depriving either A or B of the benefits of its natural location or for unjust discrimination against either A or B. Goldcamp Mill Co. v. N. & W. Ry. Co., 39 I. C. C. 433, 444.

(ee) Competition alone is not the only factor to be considered in the fixing of groups and rates. To take into consideration commercial and competitive conditions only would be to disregard distance and transportation conditions and to revert to the discarded equalization of cost theory; and to carry this theory to its logical conclusion would compel the consideration of the cost to the industry of manufacturing its products, which, of course, is clearly beyond the Commission's powers under the law. The Grouping of Monessen and Donora, 48 I. C. C. 650, 653.

(ff) A carrier has no right to limit markets on behalf of industries located on its line. Pikes Peak Cons. Fuel Co. v. Director General, 55 I. C. C. 249, 251.

(gg) A mere showing of competition in a common market with a competitor enjoying a lower and preferential rate does not establish damage in the amount of the difference in rates on every shipment made at the higher rate regardless of the number of shipments at the lower rate made by the competitor. Hormel & Co. v. C. G. W. R. R., 56 I. C. C. 419, 425.

(hh) The freight rate is but one of the factors that effect the marketing of paper, and even though it be shown that a shipper is able to meet competition, that fact would not be evidence that he is receiving all of the transportation advantage to which he is entitled. Michigan Paper Mills Traffic Asso. v. A., T. & S. F. Ry. Co., 59 I. C. C. 649, 654.

(ii) It is not within the Commission's power to determine where certain cities or persons should transact their business and such power is not vested in carriers. As a matter of sound policy a carrier is not justified in attempting to restrict its traffic to movements between points on its own line. Lumber Rates from Pacific Coast, 63 I. C. C. 125, 128.

(jj) It is one thing to give consideration to the condition of all competing carriers in fixing rates between competitive points on a reasonable basis, but quite a different matter to lift the entire rate structure of an important territory solely for the purpose of enabling carriers operating through a different and higher-rated territory to compete at border with the carriers operating within that territory on a rate equality without reducing the rates at intermediate points in such higher-rated territory. Rates to, from, and between Points south of Ohio River, 64 I. C. C. 306, 329.

(kk) A complainant is entilted to an equal opportunity with its competitors in disposing of its product along the lines of carriers and may not be denied that opportunity because of a preference on their part for a longer haul and consequently greater revenue from their coal traffic. Roundup Coal Mining Co. v. Director General, 66 I. C. C. 249, 254.

(ll) It is well established that the inability of jobbing points generally to compete in their contiguous territory is a condition that may or should be considered in determining whether the rate adjustment to the jobbing points is just and reasonable and free from undue prejudice. Certain Teed Products Corp. v. A. T. & S. F. Ry., 73 I. C. C. 82, 86.

(mm) Rates may not be made solely with regard to the resultant ability of shippers to meet commercial competition. If carriers elect to reduce rates in order to enable shippers to find a market for their products in a particular field, they must, under the law, acord equal opportunity to competing shippers at other points who are dependent upon them for transportation. Pig Iron from Southern Producing Points, 74 I. C. C. 330, 334.

(nn) Thriving communities, all in the same general section of the country, striving for population, industry, and business growth, do not need elaborate evidence to show that they are entitled to relief if the rates are not properly related. Graham & Gila Counties Traffic Asso. v. A. E. R. R. Co., 81 I. C. C. 134, 143.

ALL OTHER CITATIONS

Association of Union-Made Garment Manufacturers v. C. & N. W. Ry. Co., 16 I. C. C. 405, 408; Goerres Cooperage Co. v. C. M. & St. P. Ry. Co., 21 I. C. C. 5, 6; Commercial Club of Su-

perior v. G. N. Ry. Co., 24 I. C. C. 96, 118; Concentration of Cotton, 26 I. C. C. 585, 591; Omaha Grain Exchange v. C. B. & O. R. R. Co.. 26 I. C. C. 553, 556; Coke Products Assn. of Connellsville v. B. & O. R. R. Co., 27 I. C. C. 125, 140, 141; Columbia Chamber of Commerce v. S. Ry. Co., 28 I. C. C. 339, 346; Elgin Commercial Club v. B. & M. R. R., 28 I. C. C. 380, 381; Mayor and Council of Douglas v. A. B. & A. R. R. Co., 28 I. C. C. 445, 450; Omaha Grain Exchange v. C. R. I. & P. Ry. Co., 28 I. C. C. 680, 686; Fourth Section Violations in the Southeast, 30 I. C. C. 153, 170; Memphis Freight Bureau v. I. C. R. R. Co., 30 I. C. C. 471, 472; Onion Rates to New York, N. Y., 30 I. C. C. 528, 529; Rates on Tropical Fruits from Gulf Ports, 30 I. C. C. 621, 627; Augusta Cotton Exchange and Board of Trade v. S. Ry. Co., 30 I. C. C. 704, 705; Coal and Oil Investigation, 31 I. C. C. 193, 195, 213; Lumber Rates from Southern Ry. Points to Eastern Points, 31 I. C. C. 244, 250; Phoenix Printing Co. v. M. K. & T. Ry. Co., 31 I. C. C. 289, 290; Wichita Business Asso. v. C. & O. W. Ry. Co., 31 I. C. C. 323, 324; Lindsay & Co., Ltd., v. Wells Fargo & Co., Unrep. Op. A-755; R. R. Comm. of California v. A. G. S. R. R. Co., 32 I. C. C. 17, 33; Northbound Rates on Hardwood, 32 I. C. C. 521, 529; Reynolds Corporation v. N. & W. Ry. Co., Unrep. Op. A-803; Alexandria Traffic Bureau v. M. L. & T. R. R. & S. S. Co., Unrep. Op. A-955; Lumber Rates from Helena, Ark., and Other Points, 33 I. C. C. 297, 300; Anson, Gilkey & Hurd Co. v. S. P. Co., 33 I. C. C. 332, 334; Cement Rates from Salt Lake City, 33 I. C. C. 5, 6; Boldt Co. v. C. R. I. & P. Ry. Co., 33 I. C. C. 8, 12; Public Utilities Commission of Idaho v. O. S. L. R. R. Co., 33 I. C. C. 103, 107; Rates on Tomatoes from Jacksonville to Kansas City, 33 I. C. C. 145, 148; Lindsay & Co. v. N. P. Ry. Co., 33 I. C. C. 150, 153, 156; Eastern Fruit Growers Asso. v. B. & O. R. R. Co., 33 I. C. C. 343, 346; Northern Pine Mfrs. Asso. v. C. & N. W. Ry. Co., 33 I. C. C. 360, 362; Lindsay & Co. v. Northern Exp. Co., 33 I. C. C. 394, 396; Delphos Mfg. Co., v. P. Co., 33 I. C. C. 400, 401; Cullman Commercial Club v. L. & N. R. R. Co., 33 I. C. C. 634, 637; San Toy Coal Co. v. A., C. & Y. Ry. Co., 34 I. C. C. 93, 100; Monon Coal Co. v. C. & E. I. R. R. Co., 34 I. C. C. 221, 226; California Pine Box & Lumber Co. v. A., T. & S. F. Ry. Co., 34 I. C. C. 257, 261; Chamber of Commerce of Milwaukee v. C. M. & St. P. Ry. Co., 34 I. C. C. 581, 583; Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co., 35 I. C. C. 460, 464; 1915 Western Rate Advance Case, 35 I. C. C. 497, 604, 610; The Iron and Steel Cases, 36 I. C. C. 86, 95, 99; Midcontinent Oil Rates, 36 I. C. C. 109, 112; Peppard Seed Co. v. A. T. & S. F. Ry. Co., 36 I. C. C. 311, 314; Oklahoma Traffic Assn. v. A. & S. Ry. Co., 36 I. C. C. 329, 343, 344, 345; Glucose from Chicago, 36 I. C. C. 379; Rates on Bituminous Coal, 36 I. C. C. 401, 415; Eastern Oregon Lumber Producers' Assn. v. O. W. R. R. & N. Co., 36 I. C. C. 526, 527; Morris & Co. v. U. P. R. R. Co., 36 I. C. C. 540, 541, 542; Eastern Live Stock Case, 36 I. C. C. 675, 702; Official Classification Ratings, 37 I. C. C. 166, 185; Big Basin Lumber Co. v. S. P. Co., 37 I. C. C. 730, 738; City of Astoria v. S. P. & S. Ry. Co., 38 I. C. C. 16, 27; Official Classification Rates on Paper, 38 I. C. C. 120, 121, 130; Royster Guano Co. v. A. C. L. R. R. Co., 38 I. C. C. 190, 192; Import and Domestic Rates—Clay, 39 I. C. C. 132, 136; Capital City Oil Co. v. Y. & M. V. R. R. Co.. 39 I. C. C. 141; Drake Marble & Tile Co. v. N. Y. O. & W. Ry. Co.. 39 I. C. C. 392, 398; Stonega Coke & Coal Co. v. L. & N. R. R. Co., 39 I. C. C. 523, 543, 545; Heider Mfg. Co. v. C. G. W. R. R. Co., 39 I. C. C. 556, 558; Traffic Bureau, Sioux City Commercial Club v. Am. Exp. Co., 39 I. C. C. 703, 719; Clay from Florida, 40 I. C. C. 275, 279; Kerr & Co. v. S. S. Ry. Co., 40 I. C. C. 291, 294; Galloway Coal Co. v. A. G. S. L. R. R. Co., 40 I. C. C. 311, 320; Transit at Kansas Points, 40 I. C. C. 358, 364; Sioux City Live Stock Exchange v. C. St. P. M. & O. Ry. Co., 40 I. C. C. 418, 423; Molasses from Texas and Louisiana, 40 I. C. C. 435, 442; Dallas Chamber of Commerce v. A. T. & S. F. Ry. Co., 40 I. C. C. 619, 636; Sanford Day Iron Works v. L. N. R. R. Co., 41 I. C. C. 10, 12; Iron Ore Rate Cases, 41 I. C. C. 181, 194; Iron and Steel to Colorado Points, 41 I. C. C. 76, 79; Nashville Flour Transit Rules, 41 I. C. C. 483, 496; Sioux City Commercial Club v. C., B. & Q. R. R. Co., 41 I. C. C. 518, 520; Sulphuric Acid from New Orleans, La., 42 I. C. C. 200, 204; Coal from Pennsylvania Mines, 42 I. C. C. 206, 212; Bradbury Marble Co. v. L. & N. R. R. Co., 42 I. C. C. 329, 330; Eastern Export Iron and Steel Case, 43 I. C. C. 5, 6, 7; Hormel & Co. v. C. G. W. R. R.

Co., 43 I. C. C. 23, 28; Fruits and Vegetables, 43 I. C. C. 291, 313; Memphis Merchants Exchange v. I. C. R. R., 43 I. C. C. 378, 380, 383; Coal to Glencoe, Mo., 43 I. C. C. 412, 414; Traffic Bureau Toledo Commerce Club v. C., H. & D. Ry. Co., 43 I. C. C. 446, 452; Proportional Rates to Ohio River Crossings, 43 I. C. C. 458, 464, 465, 466; Western Trunk Line Increases, 43 I. C. C. 481, 483, 490; Fruits from Florida, 43 I. C. C. 595, 602; New England Lumber Rates No. 2, 43 I. C. C. 641; Lumber to Eastern Colorado, 43 I. C. C. 687, 688; Hutchinson Traffic Bureau v. C., R. I. & P. Ry. Co., 43 I. C. C. 689, 693; Grain from Missouri Points, 43 I. C. C. 737, 739; South Mississippi Dairymen's Asso. v. I. C. R. R., 44 I. C. C. 297, 298; Board of Trade of Chicago v. P. M. R. R., 44 I. C. C. 345, 347; Grain to Little Rock, Ark., 44 I. C. C. 355, 357; Atlas Portland Cement Co. v. B. & M. R. R., 44 I. C. C. 416, 421; Hill v. N., C. & St. L. Ry., 44 I. C. C. 582, 591; Wisconsin Rate Cases, 44 I. C. C. 602, 613, 620; U. S. Cast Iron Pipe & Foundry Co. v. S. Ry., 44 I. C. C. 757; C. F. A. Class Scale Case, 45 I. C. C. 254, 284; Goodner-Malone Co. v. M. O. & G. Ry., 45 I. C. C. 531, 534; Natchez Chamber of Commerce v. Y. & M. V. R. R., 46 I. C. C. 60, 62; Bituminous Coal to C. F. A. Territory, 46 I. C. C. 66, 119; Lake Cargo Coal Rates, 46 I. C. C. 159, 165; Cairo Board of Trade v. C. C. C. & St. L. Ry., 46 I. C. C. 343, 344; Louisiana Cotton, 46 I. C. C. 451, 452; Buffalo Grain Cases, 46 I. C. C. 570, 572; Buffalo Grain Cases, 46 I. C. C. 570, 573; Coal to South Dakota, 46 I. C. C. 628, 633; Western Pine Mfrs. Asso. v. C. I. & W. R. R., 46 I. C. C. 651, 652; New Orleans Cotton Exchange v. L. & N. R. R., 46 I. C. C. 712, 736; Coulbourn v. N. Y. P. & N. R. R., 47 I. C. C. 54, 55, 56; Official Classification No. 44, 47 I. C. C. 91, 97; Western Trunk Lines Iron and Steel, 47 I. C. C. 109, 111, 118; National Live Stock Exchange v. C. B. & Q. R. R., 47 I. C. C. 380, 382; Western Cement Rates, 48 I. C. C. 201, 234, 235; R. R. Comm. of La. v. A. H. T. Ry., 48 I. C. C. 312, 362; Showers Bros. Co. v. A. A. R. R., 48 I. C. C. 518, 524; Wooden Package Rating, 48 I. C. C. 708, 711; Live Poultry and Dairy Shippers' Traffic Asso. v. A. T. & S. F. Ry., 49 I. C. C. 228, 236; Alletown Portland Cement Co. v. B. & O. R. R., 49 I. C. C. 502, 505; Business Men's League of St. Louis v. A. T. & S. F. Ry., 49 I. C. C. 713, 714; Hannah Distributing Co. v. M. K. & T. Ry., of Texas, 49 I. C. C. 720, 722; Kentucky Peerless Distilling Co. v. L. H. & St. L. Ry., 51 I. C. C. 209; Concrete Engineering Co. v. P. Co., 51 I. C. C. 423, 424; Ohio Valley Coal Operators Asso. v. I. C. R. R. Co., 53 I. C. C. 148, 151; Michigan Paper Mills Traffic Asso. v. N. Y. C. R. R. Co., 53 I. C. C. 344, 351; Goodyear Tire & Rubber Co. v. A., C. & Y. Ry. Co., 53 I. C. C. 389, 391; Michigan Paper Mills Traffic Asso. v. N. Y. C., 53 I. C. C. 344, 351; Memphis-Southwestern Investigation, 55 I. C. C. 515, 546; George A. Hormel & Company v. C. G. W., 56 I. C. C. 419, 425; Rates on Grain Products, 56 I. C. C. 689, 692; Plymouth Coal Co. v. P. R. R., 56 I. C. C. 699, 701; Memphis-Southwestern Investigation, 55 I. C. C. 515, 546; Jobbers' & Mfrs'. Bureau of Huntington v. A. C. R. R. Co., 57 I. C. C. 64, 76; State of Washington ex rel v. Director General, as Agent, 58 I. C. C. 701, 706; Utah Rates, Fares, and Charges, 60 I. C. C. 388, 394; Mason Valley Mines Co. v. W. P. R. R., 64 I. C. C. 477, 482; National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co., 68 I. C. C. 213, 238; Waggoner & Gates Milling Co. v. Director General, as Agent, 69 I. C. C. 86; Horses and Mules from Kansas City, Mo., 69 I. C. C. 97, 101; Proportional Rates on Grain and Products, 69 I. C. C. 203, 205; Adluh Milling Co. v. Director General, as Agent, 69 I. C. C. 376, 377; Proportional Rates 388, 390, 391; Grain, Grain Products and Feeds, 78 I. C. C. 209, 217; Rates from River Crossings to Nebraska, 78 I. C. C. 439, 442; Anson, Gilkey & Hurd Co. v. S. P. Co., 78 I. C. C. 495, 519, 520; Detroit Board of Trade v. W. Ry. Co., 80 I. C. C. 717, 718; Sugar Cases of 1922 81 I. C. C. 448, 454; Minimum Weights on Furniture, 83 I. C. C. 64, 66; Cairo Board of Trade v. A. G. S. R. R. Co., 83 I. C. C. 761.

§33. Merger of Terminals.

IMPORTANT CASES SINCE 1908

(a) The cities of San Pedro and Wilmington, situated on the harbor of San Pedro, are about twenty-two miles distant from Los Angeles, which is inland. These communities were merged into the city of Los Angeles and connected therewith by a narrow strip of land half a mile in width, locally known as "the shoestring." HELD, while these communities have been merged into one municipality for the purposes of civil gov-

ernment and administration this does not necessarily merge the two into one community from a transportation point of view. Harbor City Wholesale Co. v. S. P. Co., 19 I. C. C. 323, 331.

§34. Mineral Lands Owned by Carrier.

See Reasonableness of Rates §18.

IMPORTANT CASES SINCE 1908

(a) Where the coal lands owned by a carrier are leased to an independent company, which makes a profit out of their operation, the carrier should not be permitted to use the value of such property for the purpose of swelling the amount upon which it may demand an income from rates to be paid by the public. City of Spokane v. N. P. Ry. Co., 15 I. C. C. 376, 407.

ALL OTHER CITATIONS

City of Spokane v. N. P. Ry. Co., 15 I. C. C. 376, 408; Pridham Co. v. S. P. Co., 30 I. C. C. 117, 120.

§34¼. Mixed Shipments.

IMPORTANT CASES SINCE 1908

(a) There is no provision of the Act and no rule of the Commission which prescribes what rate shall apply on a combination of commodities made in course of transportation. Mixed Car Dealers Asso. v. D. L. & W. R. R., 33 I. C. C. 133, 138.

§34½. Motives.

See Advanced Rates §14½; Reasonableness of Rates §18½.

IMPORTANT CASES SINCE 1908

(a) The intent or motive actuating carriers in the establishment of rates can not outweigh other considerations when determining their present reasonableness. Curry & Whyte Co. v. D. & I. R. R. Co., 32 I. C. C. 162, 164.

ALL OTHER CITATIONS

Norris v. St. L. & S. F. R. R. Co., 25 I. C. C. 416, 423; American Round Bale Press Co. v. A. T. & S. F. Ry. Co., 32 I. C. C. 458, 468.

§35. Municipal Charter or Investment.

CASES 1887-1908

(a) The right of one locality to equal rates with another is not diminished by municipal subscriptions for the building of the road. Lincoln Board of Trade v. Burlington & M. R. R. Co. (Com.), 2 I. C. R. 95.

IMPORTANT CASES SINCE 1908

(b) A municipal charter is not determinative of the relations which a community bears to a railroad which gives it service. Enterprise Fuel Co. v. Pa. R. R. Co., 16 I. C. C. 219, 223.

§36. Need for Revenue.

See Infra §50, §51, §58; Advanced §5, (4); Reasonableness of Rates §20, §30, §36.

IMPORTANT CASES SINCE 1908

(a) The fact that a road may be operated at a loss does not justify rates unreasonably high for the service performed. Railroad Commissioners of Iowa v. I. C. R. Co., 20 I. C. C. 181, 186.

(b) The relative lack of financial prosperity of carriers, considered in determining the reasonableness of a rate. Michigan Copper & Brass Co. v. D. S. S. & A. Ry. Co., 25 I. C. C. 357, 363.

(c) The question of revenue should be kept separate from the question of classification. Western Classification Case, 25 I. C. C. 442, 453.

ALL OTHER CITATIONS

Black Mountain Coal Land Co. v. S. Ry. Co., 15 I. C. C. 286, 295; Boileau v. P. & L. E. R. R. Co., 22 I. C. C. 640, 655; R. R. Com. of Nev. v. N. C. O. Ry. Co., 22 I. C. C. 205, 210; Lindsay Bros. v. P. M. R. R. Co., 25 I. C. C. 368, 369; 1915 Western Rate Advance Case, 35 I. C. C. 497, 520, 522.

§37. New Lines.

See Advanced Rates §12 (2); Branch Lines §2; Cars and Car Supply.

IMPORTANT CASES SINCE 1908

(a) Rates on a branch line may lawfully be higher than on main lines through well-developed territory where the density of traffic is much greater Commercial Club of Omaha v. C. & N. W. Ry. Co., 19 I. C. C. 156, 159.

(b) A new line ought to be worth what it cost and ought to earn a return upon that amount. City of Spokane v. N. P. Ry. Co., 19 I. C. C. 162, 171.

(c) If the branch lines of a railroad are judiciously planned and constructed they should certainly be taken into account in determining the value of the railroad, for although they may not earn a large return upon the cost considered as an independent proposition, they do add to the traffic and the earning power

of the entire system; but it must be assumed that the new branches which have been constructed are good investments, otherwise they would not have been built, and that they will add to the earnings of the property in proportion as they have added to its cost. No increase in rate should be called for on this account. City of Spokane v. N. P. Ry. Co., 19 I. C. C. 162, 171.

ALL OTHER CITATIONS

Billings Chamber of Commerce v. C. B. & Q. R. R. Co., 19 I. C. C. 71, 75; In Re Advances in Rates—Eastern Case, 20 I. C. C. 243, 264.

§38. New Rates.

IMPORTANT CASES SINCE 1908

(a) Where a new short line meets a rate voluntarily established and long maintained by a long line, it must be assumed that if the rate is compensatory for the long line it is compensatory for a materially shorter line. Railroad Commissioners of Florida v. S. A. L. Ry., 16 I. C. C. 1, 5.

ALL OTHER CITATIONS

Maxwell v. W. F. & N. W. Ry. Co., 20 I. C. C. 197.

§39. Notices.

See Cars and Car Supply §9; Notice.

IMPORTANT CASES SINCE 1908

(a) While a long course of dealing between the shipper and the carrier involving daily or frequent shipments of automobiles from a definite station might so familiarize the carrier's agents at that point with the requirements of the shipper in the way of equipment, as to justify a holding that an order for a car for three automobiles was sufficient to charge the carrier with notice that a 36-foot car was wanted, such a relationship between shipper and carrier must be clearly made out before reparation can be awarded on that basis for the exaction by the carrier of the minimum for a larger car than the one alleged to be ordered. Pope Mfg. Co. v. B. & O. R. R. Co., 17 I. C. C. 400, 403.

(b) Where a lower export rate had been in effect for more than six months prior to the date of the first shipment, complainant was charged with notice thereof. Port Arthur Rice Milling Co. v. T. & Ft. S. Ry. Co., 28 I. C. C. 697, 700.

(c) The courts have repeatedly held that in so far as rulings of the Commission are administrative they may be availed of by any person in a position to do so. Plymouth Coal Co. v. L. V. R. R. Co., 36 I. C. C. 143, 144.

§40. Oral Testimony.

IMPORTANT CASES SINCE 1908

(a) The reasonableness of rates cannot be proven by categorical answers by which the witness testifies that the goods are worth so much per pound or the services worth so much a day. I. C. C. v. U. P. R. R., 222 U. S. 541, 549, 32 S. Ct. 108, 56 L. ed. 308.

(b) Although the oral testimony of witnesses as to the existence of a lawful rate is not the best evidence, still such evidence cannot be disregarded where it is admitted without objection. Kansas City So. Ry. v. Albers Comm. Co., 223 U. S. 573, 595, 32 Sup. Ct. 316, 56 L. ed. 556.

(c) All must concede weight and force to be attached to explanations given by railroad officials for fixing particular rates. Penn. Tobacco Co. v. Old Dominion S. S. Co., 18 I. C. C. 197 199.

ALL OTHER CITATIONS

Brown Bros. Mfg. Co. v. C. B. & Q. R. R. Co., 21 I. C. C. 513, 514; Penn. Tobacco Co. v. Old Dominion S. S. Co., 18 I. C. C. 197, 199.

§40½. Origin of Traffic.

See Advanced Rates §5 (8); Origin of Traffic; Through Routes and Joint Rates §9.

CASES 1887-1908

(a) Rates of carrier under desire to keep upon its line a material for which it has use or to keep the price low for its own advantage cannot be justified. Reynolds v. Western New York & P. R. Co., 1 I. C. R. 600, 685. 688.

(b) Carriers are allowed to prefer one locality to another under stress of competition in some instances, for the reason that the interest of the carrier requires it, but every preference is to a degree a hardship upon one community against which it is enforced, and that hardship should be, in a way, set over against the interest of the carrier. New York Produce Exchange v. B. & O. R. Co., 7 I. C. C. 612, 661.

IMPORTANT CASES SINCE 1908

(c) The right of a carrier to get long haul out of traffic which it originates is

subordinate to the public interest. Toledo Produce Exchange v. A. A. R. R. Co., 27 I. C. C. 536, 543.

(d) But a carrier cannot reserve to itself the long haul if to do so works to the detriment of shippers. Paducah Board of Trade v. I. C. R. R. Co., 29 I. C. C. 583, 591.

(e) A carrier's contention that it is entitled to the longer hauls described by it is without merit since it does not originate the traffic. West Lumber Co. v. St. L. & S. F. R. R. Co., 38 I. C. C. 401, 404.

(f) The theory that it is good business policy for a railroad, by adjustment of rates, to give its industries a practical monopoly of traffic on its line can not be sanctioned. Lumber to C. M. & St. P. Ry. Stations., 38 I. C. C. 587, 588.

(g) Certain carriers refused to establish joint rates because they desire to reserve markets on their lines for mills on their lines; but the right of a carrier to so reserve or restrict markets on its own lines has repeatedly been denied by the Commission. Eastern Oregon Lumber Producers' Asso. v. C. B. & Q. R. R. Co., 39 I. C. C. 316, 317, 318.

(h) The law upholds the carrier in retaining tonnage on its line where the transportation can be performed with reasonable dispatch and without undue discrimination. West Coast Lumber Mfrs. Asso. v. T. E. R. R., 45 I. C. C. 227, 229.

(i) While it is clearly in the interest of carriers to hold traffic which it originates to its own rails, by forcing it under pressure of lower rates to points of consumption on its own line, they should not be permitted to do so when the result is to restrict in number the markets that otherwise would be available to shippers. Kansas City Hay Dealers' Asso. v. C. R. I. & P. Ry. Co., 49 I. C. C. 350, 352.

(j) The act forbids the Commission to order a carrier to short haul itself unless its route is unduly circuitous. Routing on Fruits and Vegetables from Texas Points to Certain Defined Territories, 74 I. C. C. 575, 578.

(k) In absence of undue prejudice or an unduly circuitous route, the commission can not, because of jurisdictional limitation contained in paragraph (4) of section 15 of the act, require a carrier to turn traffic over to a connecting line when to do so would require it "to participate in a through route embracing substantially less than entire length of its line." The New York Harbor Case, 47 I. C. C. 643, 722. Miller Paper Co. v. P. R. R. Co., 80 I. C. C. 317.

(ka) A carrier originating or receiving traffic from connections should be allowed to carry it as far as it can before delivering it to a connecting line, if public interest does not suffer thereby. Routing on Coal from Western Maryland Ry. Mines, 66 I. C. C., 103. Intermediate Routing, 81 I. C. C., 272, 275.

(l) The Commission approves a settlement which relieves one carrier of traffic it does not want when entirely satisfactory to shipper. In re Wrapping Paper Rates from East Moss Point, Miss., Unrep. Op. A-546.

ALL OTHER CITATIONS

Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co., 26 I. C. C. 638, 643; Rates from the Walsenburg Coal Field, 26 I. C. C. 85, 88; Withdrawal of Joint Rates on Grain via Minnesota Transfer, 26 I. C. C. 595, 598; Salt Rates from Wisconsin to Iowa, etc., 27 I. C. C. 526, 529; In re Rates on Plaster and Gypsum Rock, 27 I. C. C. 67; Lumber Rates, Texas, etc., to Oklahoma and Missouri, 28 I. C. C. 471, 474; Texarkana Freight Bureau v. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 571; Wheeler Lumber Bridge & Supply Co. v. A. T. & S. F. R. R. Co., 30 I. C. C. 343, 344; Omaha Grain Exchange v. N. P. Ry. Co., 30 I. C. C. 572, 578; Marble Rates from Vermont Points, 29 I. C. C. 607, 608; Lumber Rates from Oregon and Washington, 29 I. C. C. 609, 612; Hughes Creek Coal Co. v. K. & M. Ry. Co., 29 I. C. C. 671, 677; Low Moor Iron Co. of Virginia v. C. & O. Ry. Co., 30 I. C. C. 615, 619; Westbound Lake-and-Rail Knit Goods Commodity Rates, 32 I. C. C. 54, 57; Oklahoma Portland Cement Co. v. A. L. & G. Ry. Co., 32 I. C. C. 221, 225; Beck & Corbitt Iron Co. v. K. C. S. Ry. Co., Unrep. Op. A-836; Lighterage and storage Regulations at New York, 35 I. C. C. 47, 53; Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 234; Class Rates from Michigan, Unrep. Op. 2136; Rates via Rail-and-Lake Routes, 37 I. C. C. 302, 303; Black Mountain Corp. v. L. & N. R. R. Co., 39 I. C. C. 153, 160; Eastern Oregon Lumber Producers' Asso. v. C. B. & Q. R. R. Co., 39 I. C. C. 316, 317, 318; Export Grain to Gulf Ports, 40 I. C. C. 280, 282; Raw-

son-Works Lumber Co. v. N. P. Ry. Co., 42 I. C. C. 303, 306; Terhune Lumber Co. v. S. Ry. Co. in Miss., 42 I. C. C. 317, 318; American Sand and Gravel Co. v. C. & N. W. Ry., 48 I. C. C. 1, 2, 4; Live Stock from Nashville, Tenn., 48 I. C. C. 277, 280; Shreveport-Texas Cattle, Lignite, Wood and Tanbark, 48 I. C. C. 283, 286; R. R. Comm. of La. v. A. H. T. Ry., 48 I. C. C. 312, 371; Southwestern Class Case, 48 I. C. C. 379, 394; Chattanooga Sewer Pipe & Fire Brick Co. v. S. Ry. Co., 48 I. C. C. 642, 646; The Southeastern Sugar Cases, 48 I. C. C. 739, 747, 755; Kansas City Hay Dealers' Asso. v. C. R. I. & P. Ry., 49 I. C. C. 350, 354; Routing on Coal from Western Maryland Ry. Mines, 66 I. C. C. 103, 108; Routing Coal from Western Maryland Mines to Eastern Destinations, 74 I. C. C. 128; The New York Harbor Case, 47 I. C. C. 643, 722; Proportional Class Rates from Interior Iowa Points, 83 I. C. C. 93, 97.

§41. Original Cost of Road.

See Classification; Reasonableness of Rates §15.

IMPORTANT CASES SINCE 1908

(a) The original cost of a carrier's property devoted to the public use is an element to be considered in determining the reasonableness of rates. Portland Chamber of Commerce v. O. R. R. & N. Co., 19 I. C. C. 265, 280.

ALL OTHER CITATIONS

Omaha Grain Exchange v. N. P. Ry. Co., 30 I. C. C. 572, 578.

§41½. Ownership of Shipment.

See Classification §12; Reasonableness of Rates §23; Reduced Rates §6.

IMPORTANT CASES SINCE 1908

(a) To determine whether or not it will transport a shipment the carrier cannot inquire into its ownership. St. Louis, Springfield & Peoria R. R. v. P. & P. U. Ry. Co., 26 I. C. C. 226, 237.

(b) The carrier's ownership or operation of a plant for treatment of ties can not affect its right and obligation to charge just and reasonable rates. Nashville Tie Co. v. L. & N. R. R. Co., 40 I. C. C. 377, 378.

§42. Panama Canal.

See Panama Canal.

IMPORTANT CASES SINCE 1908

(a) Competition, especially in view of the Panama Canal, must be a dominant factor in determining both the present rates and the future policy of transcontinental lines. City of Spokane v. N. P. Ry. Co., 15 I. C. C. 376, 387.

§42¼. Paper Rates.

See Supra §25¾; Advanced Rates §5 (4) (7½); Reasonableness of Rates §24.

CASES 1887-1908

(a) To whatever extent long previous existence of lower rates in actual use may justify an inference or presumption that they are sufficiently high, the mere publication of such rates, under which there has been no appreciable movement of traffic, is not conclusive proof that they are reasonably remunerative to the carriers. R. R. Shiel & Company v. I. C. R. R., 12 I. C. C. 211, 215.

IMPORTANT CASES SINCE 1908

(b) The Commission should not ordinarily require a maintenance of rates on a given article if in point of fact no traffic was likely to move under them. In re Advances on Potatoes, 25 I. C. C. 247, 248.

(c) A comparison of actual rates with paper rates affords a very insecure basis for a finding of undue or unlawful prejudice against complainants in favor of Memphis or northern Mississippi Mills. Capital City Oil Co. v. Y. & M. V. R. R. Co., 39 I. C. C. 141, 145, 146.

(d) A rate loses its persuasive force when it is not shown that any substantial traffic moves under it. Molasses from Texas and Louisiana, 40 I. C. C. 435, 441.

(e) The fact that there is no movement of a commodity between two points is not justification for the permanent maintenance of rates out of line with the general adjustment. Paper rates serve no useful purpose. In the Matter of Rates on and Classification of Lumber and Lumber Products, 52 I. C. C. 598, 625.

(f) In southwestern territory a great many commodity rates, substantially lower than the class rates, apply on most traffic moving in carloads, which has the effect of making the class rates largely paper rates. Certain-Teed Products Corp. v. A., T. & S. F. Ry. Co., 73 I. C. C. 82, 91.

ALL OTHER CITATIONS

Pacific Creamery Co. v. S. P. Co., Unrep. Op. A-356; Rates on Potash and Other Commodities, 29 I. C. C. 626, 628; Rates on Tropical Fruits from Gulf Ports, 30 I. C. C. 621, 631; Muskogee Refining Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-805; Platts v. N. Y., N. H. & H. R. R. Co., 43 I. C. C. 504, 508; Mosby v. Y. & M. V. R. R., 48 I. C. C. 499, 500; Meridian Cellulose Co. v. Director General, 57 I. C. C. 283, 284; Du Pont de Nemours & Co. v. Director General, as Agent, 58 I. C. C. 427, 428; Lookout Planing Mills v. Director General, as Agent, 58 I. C. C. 751; Rates Between Ohio River and Cumberland River Points, 61 I. C. C. 10, 15; Farley & Loetscher Mfg. Co. v. Director General, as Agent, 62 I. C. C. 721, 724; Rosin & Turpentine Export Co. v. A. C. L. R. R., 73 I. C. C. 141; Gulf Refining Co. of La. v. Director General, as Agent, 73 I. C. C. 729; Indiana State Highway Commission v. C. R. I. & P. Ry. Co., 83 I. C. C. 577, 578.

§43. Past Rates.

See Advanced Rates §5 (4); Supra §29; Reasonableness of Rates §25.

CASES 1887-1908

(a) A railroad company, while long maintaining a rate without the presence of competition on other than equal terms, is making evidence that such rate is not too low. Northwestern Iowa Grain & Stock Shippers Asso. v. Chicago & N. W. R. Co., (Com.), 2 I. C. R. 431.

(b) Where carriers frequently put in force and continue for considerable periods of time tariffs of rates and charges, it is a fair inference that such rates and charges are profitable. Re Rates & Charges on Food Products (Com.), 3 I. C. R. 93.

(c) In case of a change of delivery of shipments from Charleston to New York from New York to Jersey City, and the maintenance after the change of the same rates to the latter as had been in force to the former city for a series of years preceding the change, the carriers are charging for a less service the compensation which they had presumably deemed adequate for a greater, and the rates as applied to Jersey City are prima facie excessive. Truck Farmers' Asso. v. Northeastern R. R. Co., et al, 6 I. C. C. 295.

(d) The presumption as to the reasonableness of rates long kept in effect by carriers as a voluntary act on their part does not attach in a case where such rates have been established by carriers in compliance with a decision and order of the Commission. Proctor & Gamble Co. v. C. H. & D. Ry., 9 I. C. C. 440, 488.

(e) A presumption that rates are reasonable arises from the voluntary action of the carriers in keeping rates in effect for a long period. Procter & Gamble Co. v. C. H. & D. R. Co., 9 I. C. C., 440, 490.

(f) Where a rate is comparatively the lowest in its territory on a given article by freight and by reason thereof has been made the basis of reductions from competitive points, it will not be further reduced on the ground alone that it had at stated periods in the past been somewhat lower, unless it be shown that it is unreasonably high for the service performed. Warren Mfg. Co. v. Southern Ry., 12 I. C. C. 381, 387.

(fa) There are no prescriptive rights to past rates. Quimby v. Clyde S. S. Co. 12 I. C. C. 392.

IMPORTANT CASES SINCE 1908

(g) The Commission must be largely influenced in many instances in passing upon the reasonableness of a given rate by the adjustment which has grown up in the particular locality under consideration. In Re Advances in Rates for the Transportation of Fresh Meats, 23 I. C. C. 652, 655.

(h) Past rates can be considered in determining the reasonableness of a rate Augusta & Savannah Steamboat Co. v. O. S. S. Co. of Savannah, 26 I. C. C. 380, 387; Memphis Freight Bureau v. L. & N. R. R. C., 26 I. C. C. 402, 404; Robinson Land & Lumber Co. v. M. & O. R. R. Co., 26 I. C. C. 427, 429.

(i) Time has undoubted weight in rate matters. Mississippi River Case, 28 I. C. C. 47, 54.

(j) And where a particular rate has been in effect for several years, the presumption is that it is compensatory, and it will not be disturbed except upon proof that present conditions are such as to demand it. Chicago Switching Charges, 28 I. C. C. 677, 679.

(k) But when important and long-standing relation is sought to be changed justification must be clear and convinc-

ing. Reshipping Rates on Grain from Omaha, 32 I. C. C. 590, 594.

(l) In view of competitive elements and presumption attaching to long existing general adjustments, disparities in distance are not controlling. Eastern Fruit Growers Asso. v. B. & O. R. R. Co., 33 I. C. C. 343, 353.

(m) It is well settled that an increase in rates which are unreasonably low is not precluded by the fact that investments were made in expectation that such rates would be continued in effect. Duffney Brick Co. v. B. & M. R. R., 39 I. C. C. 118, 122.

(n) Where individual rates are attacked, the fact that in the past defendants operations have been profitable is not of controlling importance. Brundred Brothers v. Prairie Pipe Line Co., 68 I. C. C. 458, 460.

ALL OTHER CITATIONS

Burnham, Hanna, Munger Dry Goods Co., v. C. R. I. & P. Ry. Co., 14 I. C. C. 229, 312; Board of Mayor and Aldermen v. V. & S. W. Ry. Co., 15 I. C. C. 453, 458; Lagomarino-Grup Co. v. I. C. R. R. Co., 16 I. C. C. 151, 152; Memphis Cotton Oil Co. v. I. C. R. R. Co., 17 I. C. C. 313, 318; Bluefield Shippers' Asso. v. N. & W. Ry. Co., 22 I. C. C. 519, 525; In Re Transportation of Wool, Hides and Pelts, 23 I. C. C. 151, 157; In re Advances on Furniture, 25 I. C. C. 331, 336; Dupont de Nemours Powder Co. v. C. R. R. Co., of N. J., 25 I. C. C. 19, 20; Evens & Howard Fire Brick Co. v. St. L. I. M. & S. Ry. Co., 25 I. C. C. 141, 151; Traffic Bureau of Nashville v. L. & N. R. R. Co., 28 I. C. C. 533, 536; Grain Rates in C. F. A. Territory, 28 I. C. C. 549, 555; National Syrup Co. v. C. & N. W. Ry. Co., 28 I. C. C. 673, 675; Pueblo Commerce Club v. D. & R. G. R. R. Co., 31 I. C. C. 133, 135; Five Per Cent Case, 31 I. C. C. 351, 353; Corp. Comm. of Okla. v. A. T. & S. F. Ry. Co., 31 I. C. C. 532, 536; Stuart's Draft Milling Co. v. S. Ry. Co., 31 I. C. C. 623, 625, 627; Financial Investigation of N. Y. N. H. & H. R. R. R. Co., 31 I. C. C. 32, 61; Northbound Rates on Hardwood, 32 I. C. C. 521, 529; Neb. Bridge Suply & Lum. Co. v. N. C. & St. L. Ry., 35 I. C. C. 86, 89; National Asso. of Tanners v. L. V. R. R. Co., 35 I. C. C. 175, 176, 178; Proctor & Gamble Distributing Co. v. A. & V. Ry. Co., 40 I. C. C. 373, 376; Wheat Rates from Oklahoma Points, 41 I. C. C. 389, 391; Green v. A. & V. Ry. Co., 43 I. C. C. 662, 674; Arizona Corp. Comm. v. A. T. & S. F. Ry., 45 I. C. C. 436, 439; Proposed Increases in New England, 49 I. C. C. 421, 462; Crown Williamette Paper Co. v. S. P. Ry., 49 I. C. C. 635, 637; Paducah Board of Trade v. Director General, 53 I. C. C. 559; Tanner & Co. v. C. B. & Q. R. R. Co., 53 I. C. C. 401, 406; Memphis Southwestern Investigation, 55 I. C. C. 515, 543; National Council, Farmers' Assos. v. Director General, 56 I. C. C. 399; Phelps Dodge Corp. v. Director General, 57 I. C. C. 714, 718.

§43¼. Percentage Contracts.

See Percentage.

IMPORTANT CASES SINCE 1908

(a) Percentage contracts enabled carriers to obtain control of coal production of independent operators and prevent it from being sold in markets in competition with output from their own mines. Rates for Transportation of Anthracite Coal, 35 I. C. C. 220.

(b) Rates based on a percentage of the selling price of a commodity whose selling price increased from year to year would naturally climb to an excessive basis. Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 230.

ALL OTHER CITATIONS

Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 231.

§43½. Permanent Improvements.

IMPORTANT CASES SINCE 1908

(a) Improvements which required expenditures of large sums of money, which have added to the efficiency of the service, and therefore to its value to the commuters, are entitled to some recognition in determining the reasonableness of the increased commutation rates. Commutation Rate Case, 21 I. C. C. 428, 444.

(b) If the carriers were to equip themselves with cars, motive power, tracks, and terminals so as to meet at any moment the maximum demand for transportation, the shipping public would be obliged to pay interest upon that investment, and for the maintenance of these facilities. In re Mine Ratings, 25 I. C. C. 286, 293.

(c) Where extensive improvements are going on, a higher operating cost is necessarily involved. Trains are delayed, the free movement of traffic unin-

terrupted, and many unusual expenses incurred. L. & N. R. R. Coal and Coke Rates, 26 I. C. C. 20, 26.

(d) Traffic moving during a given year should not be made to bear the entire cost of permanent improvements and betterments. L. & N. R. R. Coal and Coke Rates, 26 I. C. C. 20, 26.

(e) Rebuilding and strengthening bridges and trestles and laying heavier rails are expenses incident to increased tonnage and are indicative of prosperity rather than distress. Memphis Freight Bureau v. L. & N. R. R. Co., 26 I. C. C. 402, 405.

(f) By reason of the great cost of such structures, a bridge has been regarded more or less generally as adding a constructive mileage to the carrier's line. East Dubuque Supply Co. v. I. C. R. R. Co., 28 I. C. C. 425, 427.

(g) Ownership of bridge does not render carriers using it any the less liable to contribute to its maintenance in proportion to the use made of it. Norman Lumber Co. v. L. & N. R. R. Co., 29 I. C. C. 565, 570.

(h) For unproductive betterments a railroad, no doubt, is justified in accumulating a reasonable amount of surplus. Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 271.

ALL OTHER CITATIONS

Paducah Board of Trade v. I. C. R. R. Co., 29 I. C. C. 583, 591; Lum. v. G. N. R. R. Co., 33 I. C. C. 541, 550; New York-Jersey City Ferry Rates, 37 I. C. C. 103, 110; City of Astoria v. S. P. & S. Ry. Co., 38 I. C. C. 16, 22, 23, 25; Fruits and Vegetables from Norfolk, Va.,38 I. C. C. 252, 256; Southeastern Lumber, 42 I. C. C. 548, 554.

§43½a. Physical Valuation.

See Physical Valuation.

ALL CITATIONS

Reduced Rates, 1922, 68 I. C. C. 676, 684, 685; Indiana Passenger Fares of C., L. S. & S. B. Ry. Co., 69 I. C. C. 180, 183

§43¾. Population.

ALL CITATIONS

Export Grain from Colorado, 42 I. C. C. 114, 118.

§44. Previous Haul on Raw Material.

IMPORTANT CASES SINCE 1908

(a) The fact that freight has been shipped once and paid one rate cannot be taken into consideration in fixing charges for a subsequent transaction. in Re Reduced Rates on Returned Shipments, 19 I. C. C. 409, 416.

(b) While the fact that a given line both brings in the raw materials for a furnace and likewise serves the community which such furnace has built up may warrant such line in making some moderate allowance in the construction of its transportation charges, it cannot proceed to the point of establishing charges so disproportionate as by comparison to be unjust or unreasonable. Low Moor Iron Co. v. C. & O. Ry. Co., 30 I. C. C. 615, 619.

ALL OTHER CITATIONS

Paragon Plaster Co. v. N. Y. C. & H. R. R. R. Co., 19 I. C. C. 480; Pacfic Creamery Co. v. S. P. Co., Unrep. Op. A-356; Am. Round Bale Press Co. v. A. T. & S. F. Ry. Co., 32 I. C. C. 458, 468; Knight Woolen Mills v. C. & N. W. Ry. Co., 32 I. C. C. 490, 491; Delphos Mfg. Co. v. P. Co., 33 I. C. C. 400, 401; Carey Mfg. Co. v. G. T. W. Ry. Co., 36 I. C. C. 203, 204; Oklahoma Traffic Assn. v. A. & S. Ry. Co., 36 I. C. C. 329, 347.

§44¼. Prior Decision of Commission.

See Advanced Rates §14¾; Blanket Rates §4; Panama Canal; Previous Decisions of Commission; Through Routes and Joint Rates.

CASES 1887-1908

(a) A decision of the Commission in one case is not necessarily controlling in all similar cases. Such decision hardly has the effect of an estoppel, and there is not the same reason for applying the maxim stare decisis which exists in courts of law. Board of Railroad Commissioners of Kansas v. A. T. & S. F. R. Co., 8 I. C. C. 304, 308.

(b) A decision by the Commission in one case is not necessarily controlling in all similar cases. Such decision hardly has the effect of an estoppel, and there is not the same reason for applying the maxim stare decisis which exists in courts of law. But when the relation in freight rates determines where and how business should be done, the decisions of this Commission fixing or approving a given relation should only be reversed for imperative reasons. Board of R. Comrs. v. Atchison, T. & S. F. R. Co., 8 I. C. C. 304.

(c) One case can seldom be an exact

precedent for another, for each traffic situation presents points of difference and each complaint must be considered upon its own peculiar facts. City of Danville v. Southern Ry. Co., 8 I. C. C. 409, 429.

(d) Decision of Interstate Commerce Commission not necessarily controlling in all similar cases. Board of R. Comrs. v. Atchison, T. & S. F. R. Co., 8 I. C. C. 304.

(e) A decision by the Commission in one case is not necessarily controlling in all similar cases. But when the relation in freight rates determines where and how business should be done, the decisions of the Commission fixing or approving a given relation should be reversed only for imperative reasons. Board of R. Comrs. v. Atchison, T. & S. F. R. Co., 8 I. C. C. 304.

(f) One case can seldom be an exact precedent for another, for each traffic situation presents points of difference, and each complaint must be considered upon its own peculiar facts. Danville v. Southern R. R. Co., 8 I. C. C. 409.

(g) Until general review, rates fixed with reference to old cases. Dallas Freight Bureau v. G. C. & S. F. Ry. Co., 12 I. C. C. 223.

(h) The Commission having upheld a rate of $1.15 per 100 pounds on cotton goods from southern cotton mills to Pacific ports, in Enterprise Manufacturing Company v. Georgia R. R. Co., 12 I. C. C. Rep. 130, and held a rate of 10 cents higher to Asiatic ports from the same points to be reasonable, in China & Japan Trading Company v. Georgia R. R., et al, 12 I. C. Rep. 236, the latter case is followed and the rate of $1.25 per 100 pounds under present condition again approved. Enterprise Mfg. Co., et al. v. Georgia R. R. Co., et al, 12 I. C. C. 451.

IMPORTANT CASES SINCE 1908

(i) When the Commission, upon a given state of facts, reaches a conclusion regarding a certain rate, it will adhere to that conclusion in subsequent proceedings regarding the same rate, unless (a) some new facts are brought to its attention, (b) conditions are shown to have undergone a material change, or (c) it proceeded on a misconception or misapprehension. Traffic Bureau of Nashville v. L. & N. R. R. Co., 43 I. C. C. 366, 369.

(j) In determining a proper level of rates for the future consideration must be given the commission's findings made in other proceedings affecting the rates. South Dakota R. R. Comrs. v. Director General, 73 I. C. C. 347, 356.

(k) Approval by the commission of rate schedules submitted in Transcontinental Commodity Rates, 48 I. C. C., 79, was general, individual rates not being passed upon. Under no circumstances can commission's orders therein be interpreted as warranting rate increase in violation of contractual obligation previously assumed by carriers parties thereto. Brenner Lumber Co. v. Director General, as Agent, 81 I. C. C. 241, 244.

ALL OTHER CITATIONS

Wheland Co. v. A. G. S. R. R. Co., 43 I. C. C. 53, 54; Mississippi Dairymen's Asso. v. I. C. R. R., 44 I. C. C. 297, 298; Iron Ore Rate Cases, 44 I. C. C. 368, 369; Traffic Bureau of the Toledo C. C. v. A. A. R. R., 45 I. C. C. 527; Swift & Co. v. B. & O. R. R., 45 I. C. C 8, 10; Beall & Co. v. O. W. R. R. & Nav. Co., 47 I. C. C. 474; Fort Smith Com. Co. v. K. C. S. Ry., 50 I. C. C. 109; Consolidated Companies (Inc.) v. A. T. & S. F. Ry. Co., 59 I. C. C. 283; Rates, Fares, and Charges of N. Y. C. R. R. Co., 59 I. C. C. 290, 297; Proctor & Gamble Co. v. A. C. R. R. Co., 64 I. C. C. 213, 217; Swift & Co. v. Director General, as Agent, 66 I. C. C. 409; Beaumont Chamber of Commerce v. A. & W. Ry. Co., 66 I. C. C. 544; Brooks-Scanlon Lumber Co. v. Director General, as Agent, 73 I. C. C. 109; Iten Biscuit Co. v. Director General, as Agent, 73 I. C. C. 281; Wilson & Co. v. Director General, as Agent, 73 I. C. C. 438; South Dakota Ry. Commrs. v. A. & W. Ry. Co., 74 I. C. C. 295; R. Mohr & Sons v. New England Steamship Co., 80 I. C. C. 205.

§44½. Public Interest.

See Advanced Rates §14; Blanket Rates §4; Panama Canal Act; Public Interest; Through Routes and Joint Rates II.

CASES 1887-1908

(a) Carriers in making rates can not arrange them from an exclusive regard to their own interests, but must respect the interests of those who may have occasion to employ their services, and subordinate their own interests to the rules of relative equality and justice which

the act prescribed. Freight Bureau v. C. N. O. & T. P. R. Co., 4 I. C. C. 592, 615.

(b) The welfare of the communities occupying the localities where goods are delivered is to be considered, as well as that of the communities which are in the locality of the place of shipment, in considering the question of undue preference or disadvantage between localities. Texas & P. R. Co. v. Interstate Commerce Commission (U. S. Sup.) 5 I. C. R. 405.

(c) The public at large is greatly interested in competition, and the more favorable prices which it brings, and for that purpose the public is interested in keeping open the larger markets of the country to all points of production and supply. Where traffic from a distance can compete with traffic nearer the market the public is interested in having the greater distance traffic carried at rates which will enable it to compete with the traffic which is nearer the market. Interstate Commerce Commission v. L. & N. R. R. Co., 5 I. C. R. 656.

(d) The carrier's business of transporting goods involves the rights of, and the necessity of doing justice to, three parties. The interest of the seller at the point of departure, the interest of the carrier, and the interest of the trade or consumer at the point of delivery, are all concerned in a given transaction, and must be duly considered by a tribunal or court in the decision of any case involving the carrier's freight tariff. Interstate Commerce Commission v. L. & N. R. Co., 5 I. C. R. 656.

(e) It is the duty of the Commission to consider all circumstances and conditions that reasonably apply to the situation, the legitimate interests of the carrying companies as well as those of traders and shippers and the welfare of the communities at localities where the goods are delivered as well as that of communities in the places of shipment. (Texas & P. R. Co. v. Interstate Commerce Commission, 162 U. S. 197, 40 L. ed. 940, 5 I. C. C. Rep. 405, 16 Sup. Ct. Rep. 666), and to give effect to this rule a much broader view must be taken than that of the competition of carriers alone. Mayor and Council of Tipton v. L. & N. R. R. Co., et al, 9 I. C. C. 160.

IMPORTANT CASES SINCE 1908

(f) The public interest can be best served by careful consideration of all facts which bear upon reasonableness of rates. Union Tanning Co. v. S. Ry. Co., 26 I. C. C. 159, 164.

(g) The public interest is always considered in determining rate question Wichita Board of Trade v. A. & S. Ry. Co., 29 I. C. C. 376, 380.

(h) So the trap-car service has developed until the movement of less-than-carload shipments by this means is of great magnitude, and with respect to which commercial and transportation interests of the country are vitally interested. Trap or Ferry Car Service Charges, 34 I. C. C. 516, 527.

(i) The distribution of terminals tends to prevent undue concentration of industries and consequent concentration of population, thus aiding the solution of one of our social problems. Car Spotting Charges, 34 I. C. C. 609, 619.

(j) The public interest is served in many ways by permitting carriers to use tracks of industrial plants as a part of their terminal facilities. Car Spotting Charges, 34 I. C. C. 609, 619.

(k) Arguments of hardship and inconvenience to carriers should not be given too great weight to the exclusion of the interests of the employees and of the public. Extension of Time to Comply with Safety Appliance Acts, 36 I. C. C. 370, 375.

(l) The movement in carloads also results in economy of transportation facilities, and is therefore greatly to be desired in the interests of the public as well as the carriers. Brunswick-Balke Collender Co. v. C. G. W., 56 I. C. C. 340, 342.

(m) In the absence of a showing that the public interest would not suffer by routing traffic through a specified point, a carrier should be allowed to handle traffic in its possession over its own line as far as it can. Routing Coal from Western Maryland Mines to Eastern Destinations, 74 I. C. C. 127.

ALL OTHER CITATIONS

Commercial Club of Superior v. G. N. Ry. Co., 24 I. C. C. 96, 102; In re Wharfage Charges at Galveston, 26 I. C. C. 695, 704; Haverhill Box Board Co. v. B. & A. R. R. Co., 28 I. C. C. 336, 338; Chicago Lighterage Charges, 28 I. C. C. 390, 395; Industrial Railways Case, 29 I. C. C. 212, 214, 218; Railroad Commission of Arkansas v. M. & N. A. R. R. Co., 30 I. C. C. 488, 491; Richmond

Chamber of Commerce v. S. A. L. Ry., 30 I. C. C. 552, 558; Five Per Cent Case, 32 I. C. C. 325, 330; Lumber Rates Southern Ry. Points to Eastern Points, 31 I. C. C. 244, 253; Five Per Cent Case, 31 I. C. C. 351, 359; R. R. Comrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641, 653; New York Dock Ry. v. B. & O. R. R. Co., 32 I. C. C. 568, 573; Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, 619; Cancellation of Routes in Connection with Wool and Mohair to Eastern Points, Unrep. Op. A-844; Markley & Co. v. C. L. R. R. Co., Unrep. Op. A-845; Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 271; Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co., 35 I. C. C. 460, 464; Iron Ore Rate Cases, 41 I. C. C. 181, 193; Baltimore Chamber of Commerce v. B. & O. R. R., 45 I. C. C. 40, 51; The Fifteen Per Cent Case, 45 I. C. C. 302, 316; Whiteville Lumber Co. v. A. C. L. R. R., 46 I. C. C. 622, 624; In the Matter of Private Cars, 50 I. C. C. 652, 676; Boston Wool Trade Asso. v. B. & A. R. R. Co., 78 I. C. C. 178, 185.

§44¾. Public Records.

See Supra §39.

IMPORTANT CASES SINCE 1908

(a) Any public record which contains matter relevant to the issues may be introduced in evidence in any hearing before the Commission. And division sheets or statements that are filed with the Commission must be considered public records. Filing Divisions on Railway Fuel Coal, 38 I. C. C. 169, 170.

§45. Profit to Shipper.

See Infra §62; Advanced Rates §6 (6) §13; Express Companies §24; Reasonableness §27.

CASES 1887-1908

(a) The rate of compensation which railroad companies may lawfully receive for transportation services cannot be so limited that the shipper may in all cases realize the actual cost of production. In the Matter of Alleged Excessive Freight Rates and Charges on Food Products. 3 I. C. C. 93, 101.

(b) The cost of the production of pig iron at a furnace situated like that of petitioner on the Hudson River in the State of New York is much greater than at Youngstown, Ohio, or Birmingham, Alabama, or at other points in the west and south; and while the aggregate rate charged petitioner to New England mills is a great deal lower than the aggregate rate charged on these western and southern irons to the same mills, yet it is not sufficiently so to overcome the difference in the cost of production; and the consequence is that petitioner finds itself at a serious disadvantage in competing with these western and southern irons in the markets and mills of the New England States where there is a very great demand for this class of property. Pougekeepsie Iron Co. v. N. Y. C. & H. R. Co., 3 I. C. R. 248.

(c) Where the market price yields but a scant return for the labor and expense of production, the cost of transportation needs to be as moderate as may be consistent with justice to the carrier. Newland, Hauschild & Reeder v. N. P. R. Co., 4 I. C. C. 474, 481.

(d) In passing upon the reasonableness of rates, the question whether they afford the carrier a proper return for the service rendered is to be considered as well as the result of the business to the shipper or producer of the traffic. Loud v. South Carolina R. Co., 4 I. C. C. 205, 211.

(e) Where the market price yields but a scant return for the labor and expense of production, the cost of transportation needs to be as moderate as may be consistent with justice to the carrier. Evans v. U. P. R. Co., 6 I. C. C. 520, 547.

(f) The varying cost to shippers in delivering freight to the carrier for shipment can have no bearing in a case which has sole reference to what are unlawful rates from the carriers stations. Chicago Fire Proof Covering Co. v. C. & N. W. R. Co., 8 I. C. C. 316, 330.

(g) A rate adjustment by a carrier in favor of a mine owned by it is not justified, as against an independent coal operator, by the fact that the output of the carrier's mine has less value for domestic purposes, where its cost of mining is much less. McGrew v. Missouri P. R. Co., 8 I. C. C. 630.

IMPORTANT CASES SINCE 1908

(h) A railway may not impose unreasonable rates merely because the business of the shipper is so profitable he can pay it. R. R. Com. of Kans. v. A. T. & S. F. Ry. Co., 22 I. C. C. 407, 410.

(i) The profit accruing to the shipper

on traffic hauled is not a recognized basis in the fixing of a rate. Newport Mining Co. v. C. & N. W. Ry. Co., 33 I. C. C. 645, 656.

(j) And reasonableness of rates on low-grade commodities is not to be gauged by the ability or inability of shippers to market their products with profit. Nashville Tie Co. v. L. & N. R. R. Co., 40 I. C. C. 377, 381.

(k) If it is true that the Commission may find existing rates unjust and unreasonable and require that they be reduced below what would be justified by standards heretofore recognized, because an industry is not prospering, then the converse must be true, that at times when the industry prospers the Commission may find justified rates higher than those which under accepted standards would be just and reasonable. The foundations of what is just and reasonable are not set on such shifting sands. National Live Stock Shippers' League v. A., T. S. F. Ry. Co., 63 I. C. C. 107, 116.

ALL OTHER CITATIONS

Great Western Portland Cement Co. v. A. T. & S. F. Ry. Co., Unrep. Op. 454; Hitchman Coal & Coke Co. v. B. & O. R. R. Co., 16 I. C. C. 512, 519; Florida Fruit & Vegetable Ass'n. v. A. C. L. R. R. Co., 17 I. C. C. 552, 560; Jennison Co. v. G. N. Ry. Co., 18 I. C. C. 113, 121; Commercial Club of Omaha v. A. & S. R. R. Co., 19 I. C. C. 419, 421; Portland Chamber of Commerce v. O. R. R. & N. Co., 19 I. C. C. 265, 280; City of Spokane v. N. P. Ry. Co., 19 I. C. C. 162, 170; Truck Growers' Ass'n. v. A. C. L. R. R. Co., 20 I. C. C. 190, 195; In Re Investigation of Advances in Rates on Grain, 21 I. C. C. 22, 35; Florida Fruit & Veg. Shippers v. A. C. L. R. R. Co., 22 I. C. C. 11, 14; In re Advances on Flaxseed, 25 I. C. C. 337, 341; Superior Commercial Club v. G. N. Ry. Co., 25 I. C. C. 342, 348; Wichita Board of Trade v. A. T. & S. F. Ry. Co., 25 I. C. C. 625, 632; Bartelsville Salvage Co. v. M. K. & T. Ry., 25 I. C. C. 672, 673; National Wool Growers Assn. v. O. S. L. R. R. Co., 25 I. C. C. 675, 678; Oklahoma-Colorado Potato Rates, 28 I. C. C. 298, 300; Grain Rates in C. F. A. Territory, 28 I. C. C. 549, 559; Hide Rates to Los Angeles, Calif., 31 I. C. C. 633, 635; Northbound Rates on Hardwood, 32 I. C. C. 521, 528; Eastern Fruit Growers Asso. v. B. & O. R. R. Co., 33 I. C. C. 343, 345; San Toy Coal Co. v. A., C. & Y. Ry. Co., 34 I. C. C. 93, 98; Bascom-Porter Co. v. A. T. & S. F. Ry. Co., Unrep. Op. 2091; Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 283; Rock Springs Distilling Co. v. L. H. & St. L. Ry. Co., 36 I. C. C. 35, 36; Brown Paper Co. v. B. & A. R. R., 37 I. C. C. 586; Tallahatchie Lum. Co. v. Y. & M. V. R. R., 38 I. C. C. 501; Indiana and Illinois Coal, 40 I. C. C. 603, 608; Transit at Kansas Points, 40 I. C. C. 358, 364; New England Milk Case, 40 I. C. C. 699, 726; Southeastern Lumber, 42 I. C. C. 548, 558; American National Live Stock Asso. v. O. S. L. R. R. Co., 43 I. C. C. 247, 248; South Mississippi Dairymen's Asso. v. I. C. R. R., 44 I. C. C. 297, 299; Bituminous Coal to C. F. A. Territory, 46 I. C. C. 66, 142; Grain Transit at Kansas Stations, 48 I. C. C. 59, 60; Anaconda Copper Mining Co. v. Director General, 57 I. C. C. 723, 732; National Live Stock Shippers' League v. A., T. & S. F. Ry. Co., 63 I. C. C. 107, 117; Standard Oil Co. v. Director General, 66 I. C. C. 37, 40.

§46. Rate to Carrier as Shipper or Consignee.

See Discrimination §6.

IMPORTANT CASES SINCE 1908

(a) If carriers insist upon making preferential rates to each other they may confidently expect such voluntary action on their part will be accepted and taken as evidence of unreasonableness of higher rates which they may undertake to enforce against other shippers. Hitchman Coal & Coke Co. v. B. & O. R. R. Co., 16 I. C. C. 512.

§47. Rate via Competing Carrier.

See Comparative Rates; Equalization of Rates §4 (2); Rate Via Competing Line; Reasonableness of Rate §27½, §27¾; Reparation §11; Routing and Misrouting §4½, §5, §5½; Through Routes and Joint Rates §15½.

CASES 1887-1908

(a) A carrier operating parallel lines and accepting lower rates on one line should make corresponding charges on other line. Board of Trade Union v. Chicago, M. & St. P. R. Co., 1 I. C. R. 608.

(b) Rates and charges in force on lines of rival companies or on different branches or lines of the same company

are entitled to consideration in connection with the question of reasonable charges for transportation services rendered under like conditions. C. O. Morrel v. Union Pacific Ry. Co., 6 I. C. C. 121.

IMPORTANT CASES SINCE 1908

(c) The rate of one comepting line is not necessarily the measure of reasonableness of the rate of another competing line. Ryland & Brooks Lumber Co. v. C. & O. Ry. Co., 21 I. C. C. 520, 521; Simon Cooke Co. v. W. R. R. Co., 21 I. C. C. 563, 564.

(d) A lower rate via a longer route is no measure of reasonableness, in absence of other evidence, of higher rate via shorter route. Carstens Packing Co. v. U. P. R. R. Co., 22 I. C. C. 8, 10.

(e) Nor is the subsequent reduction of the rate over the particular route sufficient to establish the unreasonableness of the previous rate. Tallahatchie Lumber Co. v. Y. & M. V. R. R. Co., 38 I. C. C. 501, 502.

(f) The mere fact that the rate between two points is higher over one route than over others does not of itself establish that the higher rate is unreasonable. Roxana Petroleum Company of Oklahoma v. Director General, 68 I. C. C. 77, 80.

(fa) The existence of a lower rate over another route or routes is insufficient to establish the unreasonableness of the rate applicable over route of movement. Shafer Lumber Co. v. Director General, 88 I. C. C. 472, 473.

(g) The fact that two roads use same tracks does not follow same rate applies. Hedden-Clark Lumber Co. v. B. & O. R. R. Co., Unrep. Op. A-301.

ALL OTHER CITATIONS

Central Commercial Co. v. I. C. R. R. Co., Unrep. Op. 571; Chattanooga Medicine Co. v. P. R. R. Co., Unrep. Op. 546; Paragould Lumber Co. v. M. P. Ry. Co., Unrep. Op. 485; Sallisaw Cotton Oil Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. 484; American Milling Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 384; American Milling Co. v. M. St. P. & S. Ste. M. Ry. Co., Unrep. Op. 282; Hammond Packing Co. v. A. T. & S. F. Ry. Co., Unrep. Op. 120; Ketchum & Gaston Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 28; Olive-Sternenberg Lumber Co. v. T. & N. O. R. R. Co., Unrep. Op. 2; Palmer & Miller v. L. E. & W. R. R. Co., 15 I. C. C. 107; DeCamp Bros. v. So. Ry. Co., 16 I. C. C. 144; South Canon Coal Co. v. C. & S. Ry. Co., 17 I. C. C. 286; Menefee Lumber Co. v. T. & P. Ry. Co., 15 I. C. C. 49, 50, 51; Snyder-Malone-Donahue Co. v. C. B. & Q. R. R. Co., 18 I. C. C. 498; Pankey & Holmes v. C. N. E. Ry. Co., 18 I. C. C. 578; Ohio Iron & Metal Co. v. Wabash R. R. Co., 18 I. C. C. 299, 300; Colorado Bedding Co. v. C. B. & Q. R. R. Co., 18 I. C. C. 403, 404; Southern Cotton Oil Co. v. A. C. L. R. R. Co., 18 I. C. C. 275, 276; Delray Salt Co. v. M. C. R. R. Co., 18 I. C. C. 247; Webster Grocery Co. v. C. & N. W. Ry. Co., 19 I. C. C. 493, 495; Georgia-Carolina Brick Co. v. S. Ry. Co., 20 I. C. C. 148, 149; Iola Portland Cement Co. v. M. K. & T. R. R. Co., 20 I. C. C. 91; McLean Lumber Co. v. L. & N. R. R. Co., 22 I. C. C. 349, 352; Lagomarcino-Grupe Co. v. C. B. & Q. R. R. Co., Unrep. Op. A-63; Young & Son v. C. V. Ry. Co., Unrep. Op. A-53; Paine Lumber Co. v. C. C. C. & St. L. Ry. Co., 24 I. C. C. 626, 628; Ball Lumber Co. v. T. & P. Ry. Co., 25 I. C. C. 437, 438; L. & N. R. R. Coal and Coke Rates, 26 I. C. C. 20, 26; Mansfield Hardwood Lumber Co. v. T. & G. R. R., 26 I. C. C. 138, 139; Birge-Forbes Co. v. M. K. & T. Ry. Co., 28 I. C. C. 409; Lindsay & Co., Ltd., v. C. M. & St. P. Ry. Co., Unrep. Op. A-219; Lindsay Bros. v. C. B. & Q. R. R. Co., Unrep. Op. A-230; Vehicle Supply Co. v. L. Ry. & N. Co., Unrep. Op. A-252; Matthiessen & Hegeler Zinc Co. v. C. & N. W. Ry. Co., Unrep. Op. A-273; Stewart v. M. K. & T. Ry. Co., Unrep. Op. A-297; West Co. v. I. & G. N. R. R. Co., Unrep. Op. A-317; Steinhardt & Co. v. T. & P. Ry. Co., Unrep. Op. A-325; Lagomarcino-Grupe Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A-352; Templeton & Sons v. C. I. & S. R. R. Co., Unrep. Op. A-362; Standard Oil Co. v. P. Co., Unrep. Op. A-485; Helmers Mfg. Co. v. C. R. I. & P. Ry. Co., Unrep. Op. A-542; Brittain v. N. C. & St. L. Ry. Co., Unrep. Op. A-581; Kalamazoo Tank & Silo Co. v. M. C. R. R. Co., Unrep. Op. A-601; Railroad Commrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641, 648; Norcross-West Marble Co. v. Rutland R. R. Co., Unrep. Op. A-713; North American Smelting Co. v. B. & O. R. R. Co., Unrep. Op. A-804; Plymouth Clay Products Co. v. Ft. D. D. M. & S. R. R. Co., Unrep. Op. A-833; Caudle v. U. P. R. R. Co., Unrep. Op. A-870; Woolworth Co. v. Old Dominion S. S. Co., Unrep.

Op. A-901; Trostel & Sons Co. v. L. V. R. R. Co., Unrep. Op. A-932; Alexandria Traffic Bureau v. M. L. & T. R. R. & S. S. Co., Unrep. Op. A-955; Duluth Log Co. v. M. St. P. & S. S. M. Ry. Co., 38 I. C. C. 338, 339; Holverscheid & Co. v. L. V. R. R. Co., 38 I. C. C. 495, 496; Hammer v. A. C. L. R. R. Co., 38 I. C. C. 621, 622; Julius Seidel Lum. Co. v. M. P. Ry., 39 I. C. C. 670; Lumber from Louisiana Points, 40 I. C. C. 268, 270; Riegel Sack Co. v. C. R. R. Co. of N. J., 39 I. C. C. 222, 223; Fish to New York, N. Y., 39 I. C. C. 333, 334; Utah Wholesale Grocery Co. v. N. & W. Ry. Co., 39 I. C. C. 345, 346; Siedel Lumber Co. v. M. P. Ry. Co., 39 I. C. C. 670; Anderson-Tully Co. v. A. & V. Ry. Co., 39 I. C. C. 734; Waddell-Williams Lumber Co. v. M. L. & T. R. R. & S. S. Co., 40 I. C. C. 402; Armour & Co., v. C. & N. W. Ry. Co., 40 I. C. C. 609, 610; Terhune Lumber Co. v. S. P. Ry. of Miss., 42 I. C. C. 317, 318; Ross Bros. v. F. W. & D. C. Ry., 41 I. C. C. 423; White Lumber Co. v. G. & S. I. R. R., 43 I. C. C. 132; Omaha Alfalfa Mill Co. v. U. P. R. R. Co., 43 I. C. C. 264, 265; Duluth Log Co. v. M., St. P. & S. S. M. Ry. Co., 43 I. C. C. 415, 416; Harrison Bros. & Co. v. B. & O. R. R., 45 I. C. C. 85; Globe Lumber Co. v. S. L. B. & S. Ry., 45 I. C. C. 135, 136; Cadillac Lumber Exchange v. A. A. R. R., 44 I. C. C. 750; Hollingshead & Blei Co. v. N. Y. & P. Ry., 45 I. C. C. 169; Brunswick-Balke-Collender Co. v. M. M. & S. E. Ry., 45 I. C. C. 175, 176; Sunderland Bros. Co. v. M. P. Ry., 45 I. C. C. 193, 194; Wyllie China Co. v. C. & N. W. Ry., 49 I. C. C. 29; Hollingshead & Blei Co. v. K. C. S. Ry., 49 I. C. C. 62; American Lumber & Export Co. v. L. & N. R. R., 50 I. C. C. 259; Allentown Portland Cement Co. v. B. & O. R. R. Co., 49 I. C. C. 502, 507; Sunderland Bros. Co. v. M. P. Ry., 49 I. C. C. 135; International Paper Co. v. D. & H. Co., 50 I. C. C. 75; Martin Brokerage Co. v. S. P. Co., 51 I. C. C. 91, 93; Dewey Bros. Co. v. S. Ry., 51 I. C. C. 160; Syracuse Chamber of Com. v. N. Y. C. R. R., 51 I. C. C. 197, 198; Jennings-Jarrett Co. v. Director General, as Agent, 59 I. C. C. 93; Western Stoneware Co. v. C. B. & Q., 63 I. C. C. 215, 216; South Chester Tube Co. v. M. K. & T. Ry., 64 I. C. C. 78, 80; Pfeister & Vogel Leather Co. v. Director General, 64 I. C. C. 437, 438; Great Lakes Dredge & Dock Co. v. Director General, 68 I. C. C. 274, 276; Salem Glass Works v. Director General, 68 I. C. C. 643, 644; Midland Linseed Products Co. v. Director General, 69 I. C. C. 753, 756; Warren Oil Co. of Pa. v. Director General, as Agent, 73 I. C. C. 745; Northwestern Traffic & Service Bureau v. C. & N. W. Ry. Co., 80 I. C. C. 81 Matthews & Sons v. G., M. & N. R. R. Co., 80 I. C. C. 99; Kempner v. Director General, as Agent, 80 I. C. C. 347.

§48. Rebates.

See Crimes.

IMPORTANT CASES SINCE 1908

(a) The granting of a rebate does not raise a presumption that the lawfully established rate is unreasonable by the amount of the concession. Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 15 I. C. C. 370, 373.

(b) The fact that rebates were granted has no very direct bearing upon the reasonableness of the rate. In Re Transportation of Wool, Hides and Pelts. 23 I. C. C. 151, 163.

(c) Long continued granting to allied coal companies concessions from and offsets against established tariff rates, presents strong evidence that rates are excessive. Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 283.

§48½. Repair of Equipment.

See Cars and Car Supply §32⅛.

IMPORTANT CASES SINCE 1908

(a) Upon the resumption of corporate control and operation, the Pennsylvania R. R. Co. awarded to the Baldwin Locomotive Works a contract for the repair of 200 locomotives, while maintaining shops on its own line for such work. Upon investigation, the cost to the carrier was over $3,000,000 in excess of the cost at which the work might have been done in its own shops, and included work paid for twice in some instances. Such work could have been done in the carrier's own shops within a reasonable time by an appropriate coordination of efforts and reasonable added exertion. Construction and Repair of Ry. Equipment: Penn. R. R. Co., 66 I. C. C. 694.

(b) Report relates to locomotive equipment of the Chicago & Northwestern Ry. and is pursuant to an investigation, instituted upon motion of the Commission, to determine whether common carriers by railroad subject to the act

have caused or are causing certain of their locomotives or other equipment to be constructed or repaired at construction or repair shops other than their own, or have purchased or are purchasing from or through such shops material and supplies used in such construction or repair, at costs in excess of those for similar work in their own shops, including material and supplies therefor, in disregard of efficient and economical management, resulting in unreasonable expenditures, or otherwise contrary to law. At the beginning of federal control respondent owned 1,991 locomotives, of which number 175 or 8.79 percent were out of service awaiting classified or unclassified repairs. March 31, 1920, the total ownership had increased to 2,045, of which 386 or 18.87 percent were similarly out of service. This was when federal control ended. In 1919, with the approval of the railroad administration, 30 locomotives were sent to the American Locomotive Co., and in 1920, 15 more were forwarded. Respondents seven shops were undermanned, and persistent efforts to increase the machinist and other shop forces met with little success. Needed repair material was difficult to obtain. Respondent has refused to pay the bills of the American, covering the last 35 locomotives repaired deeming them excessive, and litigation will no doubt follow. HELD, the record abundantly establishes the critical condition of respondents motive power and respondents inability to cope with the situation in its own shops, and, subject to the possibility that preliminary estimates might have resulted in better terms, fully justifies the resort to outside shops for assistance. Construction and Repair of Railway equipment, C. & N. W. Ry., 69 I. C. C. 143.

(c) This report relates to locomotive equipment of respondent Seaboard Air Line Ry. and is pursuant to an investigation to determine whether common carriers by railroad subject to the act have caused or are causing certain of their locomotives or other equipment to be constructed or repaired at construction or repair shops other than their own, or have purchased or are purchasing from or through such shops material and supplies used in such construction or repair, at costs in excess of those for similar work in their own shops, including material and supplies therefor, in disregard of efficient and economical management resulting in unreasonable expenditures or otherwise contrary to law. No question concerning the construction of locomotives is here involved but, beginning soon after the end of federal control, respondent entered into various contracts with industrial concerns under which 51 of their locomotives were given class repairs, at an aggregate cost of $813,424.41. Testimony of respondent is that the motive power was returned at the end of federal control in a condition much inferior to that in which it had been taken over by the Government. The shop records indicate that, with the exception of those made at the Baldwin plant, the contract repairs were generally lighter than the same class of repairs on the same classes of locomotives in respondents shops, while those at the Baldwin plant were average class E. repairs. The determinative facts in the record are few. There were more locomotives on the line at the end than at the beginning of federal control, which increased respondents capacity to move traffic, but all were actively engaged and likewise increased the demands upon the shops by so much. The figures also indicate that the shops were so fully utilized from the time private control was resumed and the striking increase in traffic on the line began that no substantial increase in the output would have been reasonably possible. HELD, it does not appear that the awards of the contracts were unjustified. Construction and repair of Ry. equipment, S. A. L. Ry., 69 I. C. C. 151.

ALL OTHER CITATIONS

Construction and Repair Equipment, A. C. L. R. R. Co., 66 I. C. C. 727; Construction and Repair of Railway Equipment, N. Y. C. R. R. Co., 66 I. C. C 732.

§19. Reproduction Value of Road.

See Reasonableness of Rates §26.

CASES 1887-1908

(a) While the value of the property transported is an important element in rate making, there are others, such as the cost of the service, net revenue of the carriers from the traffic involved, character of the goods as being perishable and liable to breakage, and others matters. Duncan v. A. T. & S. F. R. Co., 4 I. C. C. 385, 393.

(b) The value of the entire property of a road can shed but little, if any, light upon the question whether the rate on one among thousands of articles of traffic yields its proper proportion of a fair return upon that value, and, moreover, the voluminous and conflicting testimony in this case on that subject does not enable the Commission to determine the value of defendant's respective properties. Central Yellow Pine Asso. v. Illinois C. B. Co., 10 I. C. C. 505.

(c) The value of the entire property of a road employed in the public convenience can shed but little, if any, light upon the question whether the rate on one among thousands of articles of traffic yields its proper proportion of a fair return upon that value. Central Yellow Pine Asso. v. I. C. R. R. 10 I. C. C. 505, 538.

IMPORTANT CASES SINCE 1908

(d) The cost of reproduction may be considered in determining the reasonableness of a rate. City of Spokane v. N. P. Ry. Co., 19 I. C. C. 162, 170; Portland Chamber of Commerce v. O. R. R. & N. Co., 19 I. C. C. 265, 280.

(e) Work by the Commission has not as yet sufficiently advanced to afford definite knowledge of the true value of railroad properties involved in this proceeding. The Commission has been obliged to determine the justice and the reasonableness of rates without having available for its use authoritative valuations of the carriers' property. 1915 Western Rate Advance Case, 35 I. C. C. 497, 504.

(f) In establishing rates for the two-year period prescribed by paragraph (3) of section 15a, the Commission has no discretion as to the amount of fair return except that it may add to the per centum provided by law "a sum not exceeding one-half of 1 per centum of such aggregate value . . ." Having determined the per cent, the Commission is called upon to perform the administrative task of establishing rates that will yield in the aggregate, as nearly as may be that per cent until March 1, 1922. Increased Rates, 1920, 58 I. C. C. 220, 226.

(g) But while the valuation of railroads under section 19a is still incomplete, the work has progressed so far that the results are of value and informative in reaching the determination the Commission is now required to make, and consideration given thereto. Increased Rates, 1920, 58 I. C. C. 220, 228.

ALL OTHER CITATIONS

Boileau v. P. & L. E. R. R. Co., 22 I. C. C. 640, 652; City of Spokane v. N. P. Ry. Co., 15 I. C. C. 376, 403, 415; Lum. v. G. N. Ry., 33 I. C. C. 541, 549, 552; Lum. v. G. N. Ry. Co., 33 I. C. C. 541, 551, 553; City of Astoria v. S. P. & S. Ry. Co., 38 I. C. C. 16, 21; Railroad Commission of Louisiana v. A. H. T. Ry. Co., 41 I. C. C. 83, 154; City of East Liverpool, Ohio, v. S. E. L. & B. V. T. R. R., 51 I. C. C. 563, 566, 567; Increased Rates, 1920, 58 I. C. C. 220, 229; Constructive Mileage over Poughkeepsie Bridge, 66 I. C. C. 230, 232;

§50. Return on Investment.

See Supra §36; Infra §51; Advanced Rates §6.

CASES 1887-1908

(a) That railroad investments may be as secure as other property, the reasonable rates should be liberal until earnings are sufficiently large for a fair return on actual expenditure. Newland v. Northern Pacific R. Co., 4 I. C. R. 474.

(b) Railroad companies have the right to earn a proper return upon some investment; just what has not been very definitely determined; but in earning such return they must operate their properties in accordance with the provisions of the statute forbidding discrimination between localities and charging more for the short haul than for the long haul. Brewer & Hanleiter v. L. & N. R. Co., 7 I. C. C. 224, 225, 238.

(c) The fact that a rate over a road or line in one direction is materially higher than the rate on the same class of traffic over the same road or line and between the same points in the opposite direction does not, as in case of hauls over the same line in the same direction, establish prima facie the unreasonableness of the higher rate. MacLoon v. B. & M. R. R., 9 I. C. C. 642, 645.

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(d) Granting that those who assume great risks are entitled to commensurate rewards if their ventures prove successful, one can not ignore the fact that where a risk assumed by carriers has been richly compensated in the past, when the original investment has been returned several times, and the property

greatly improved out of earnings, this element of risk should not be considered for the future. Lum. v. G. N. Ry., 33 I. C. C. 541, 556.

(e) Transcontinental railroads can fairly expect such consideration as will permit them to continue to earn a reasonable return upon their property devoted to public use. Transcontinental Rates, 46 I. C. C. 236, 269.

(f) By "profit" is meant a return upon investment in the proportion that is devoted to the service. Reconsignment Case, 47 I. C. C. 590, 600.

(g) Carriers have a right to demand and it is the duty of the Commission to approve, just and reasonable rates sufficient to yield fair returns upon the value of the property devoted to public use after necessary expenditures for wages, fuel, and supplies. Unification of Railroad Operation, 47 I. C. C. 757, 759.

(h) But the law neither provides nor contemplates that short lines shall receive compensation out of line-haul rates that will yield a return upon the value of the carrier property. They are certainly not entitled to such returns from that source upon the value of facilities which are not used by or open to the public generally. Wyandotte Southern Ry. Co., 61 I. C. C. 756, 760.

(i) It has been held by the courts that a rate may not lawfully be fixed by a regulatory tribunal which is based alone on the out-of-pocket costs ascribable to that particular traffic, but that to be lawful the rate must be sufficient to cover a ratable proportion of the average cost of freight traffic generally, including a return on the property devoted to public service. To hold otherwise would compel the performance of a certain specified kind of service at less than average cost. The extension of this principle to other classes of traffic, if pursued far enough, would bankrupt the road. Transcontinental Cases of 1922, 74 I. C. C. 48, 69.

(j) In the opinion of the Commission each branch of the service should contribute its share of the cost of operation and of return upon the property devoted to the service of the public. Express Rates 1922, 89 I. C. C. 297, 304.

ALL OTHER CITATIONS

City of Spokane v. N. P. Ry. Co., 19 I. C. C. 162, 173; Nashville Switching, 40 I. C. C. 474, 480; Stonega Coke & Coal Co., v. L. & N. R. R. Co., 39 I. C. C. 523, 541, 542; Reconsignment Case, 47 I. C. C. 590, 600; Advances on Coal within Chicago Switching District, 53 I. C. C. 442, 452; Solvay Process Co. v. D. L. & W. R. R., 55 I. C. C. 280, 287; Fares of the Washington-Virginia Ry. Co., 62 I. C. C. 200, 203; Reduced Rates 1922, 68 I. C. C. 676, 680.

§51. Revenue of Road.

See Supra §36; Advanced Rates §5 (4), §7 (7), §6 (6), §15; Express Companies §24; Reasonableness of Rates §11, §30, §36.

CASES 1887-1908

(a) A fundamental rule of equity as well as of the statute is that all business done by a carrier must yield some profit, so that other business is not made to bear a burden that does not belong to it. Lehmann Higginson & Co. v. S. P. Co., 3 I. C. C. 80, 89.

(b) That railroad investments may be as secure as other property, the reasonable rates should be liberal until earnings are sufficiently large for a fair return on actual expenditure. Newland v. Northern P. R. Co. (Conn.), 4 I. C. R. 474.

(c) That railroad investments may be as secure as other property, the reasonable rates should be liberal until earnings are sufficiently large for a fair return on actual expenditure. A. S. Newland v. Northern Pacific R. R. Co., et al, 6 I. C. C. 131.

(d) The financial necessities and conditions of a carrier should be given proper weight in fixing rates, but are not controlling to the extent that, independent of other circumstances, any rates are reasonable until the earnings are sufficient to operate the road and meet all the obligations of the carrier. Jerome Hill Cotton Co. v. Missouri, K. & T. R. Co., 6 I. C. C. 601.

(e) The financial necessities and conditions of the carrier should be considered and given proper weight in fixing rates, but are not controlling to the extent that independent of other circumstances any rates are reasonable until the earnings are sufficient to operate the road and meet all the obligations of the company. Jerome Hill Cotton Co. v. M. K. & T. R. Co., 6 I. C. C. 601, 622.

(f) Railroad companies have the right to earn a proper return upon some investment; just what has not been very

definitely determined; but in earning such return they must operate their properties in accordance with the provisions of the statute forbidding discrimination between localities and charging more for the short than for the long haul. Brewer & Hanleiter v. Louisville & N. R. Co., 7 I. C. C. 224.

(g) Transportation charges should be liberal until the earnings are fully sufficient for a fair return on actual investment, but it does not follow that rates long maintained and grossly discriminative must be continuous or may be lawfully exacted year by year. Cary v. Eureka Springs R. Co., 7 I. C. C. 286.

(h) If a rate is so high as to yield a large profit to a carrier and to deprive its patrons of any profit and make their business ruinous then the interests of its patrons and the general public interest as well require the carrier to remit a portion of its profits and accept a rate more equitable both to carrier and public. This is indispensable to make a rate reasonable and just. Board of Railroad Commissioners of South Carolina v. Florence R. Co., 8 I. C. C. 1, 19.

(i) The rate on one article of traffic may be reasonably high and the carrier fail to earn a fair return on the value of the entire property employed for the public convenience because of unreasonably low rates on other traffic, and, vice versa, the rate on one article of traffic may be unremunerative or unreasonably low and the return to the carrier for its entire business may be fair and reasonably high, the deficiency under the rate on the one article of traffic being made up by the rate on the balance of the traffic. Society of American Florists and Ornamental Agriculturists v. United States Express Company, 12 I. C. C. 121, 126.

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(j) The ultimate test of reasonableness of rates with the carrier itself is the return for the use of its equipment and facilities. National Hay Ass'n v M. C. R. R. Co., 19 I. C. C. 34, 48.

(k) The question of revenue must play a not inconsiderable part in determining reasonableness of rates. In Re Advances in Rates—Western Case, 20 I. C. C. 307, 315.

(l) A railroad furnishing part of refrigeration service, the ice haulage, and still turning over entire refrigeration revenue to refrigerator company with which it is not associated in interest would seem to indicate that it is not properly conserving its revenues. R. R. Comm. of California v. A. G. S. R. R. Co., 32 I. C. C. 17, 21.

(m) The Commission is interested in the maximum rather than the minimum earnings of industrial roads and sees that their earnings as a whole and on particular descriptions of traffic do not exceed a fair return for the services performed. Johnstown, Pa., Switching, 43 I. C. C. 654, 660.

(n) Individual carriers in their own interests are not free to jeopardize the revenues of carriers generally. Iron and Steel Articles from New Orleans Group Points to Texas, 74 I. C. C. 146, 152.

(o) In N. P. Ry. Co. v. North Dakota, 236 U. S. 585, and Vandalia R. R. v. Schnull, 255 U. S. 113, the court held that a carrier can not be required to haul any class of traffic at rates which fail to yield it a reasonable return even though its business as a whole is remunerative. Neither directly nor by implication do the cases lay down the principle that rates on each particular class of traffic must be fixed at amounts which will yield not more than a stated percentage of the value of the carrier's property used in transporting that particular traffic. Adriatic Mining Co. v. C. & N. W. Ry., 78 I. C. C. 611, 631.

(p) Congress in enacting section 15a of the act, directing that rates should be so fixed as to give carriers as a whole a fair return on the aggregate value of their railway property, recognized the right of individual carriers to earnings in excess of that return in permitting them to retain one-half of their excess income above 6%. Adriatic Mining Co. v. C. & N. W. Ry., 78 I. C. C. 611, 632.

(q) Impracticability of using revenue on all freight as yardstick by which to measure rates on a particular commodity is obvious. Wood Iron & Steel Co. v. P. R. R. Co., 83 I. C. C. 503, 506.

ALL OTHER CITATIONS

Black Mountain Coal Land Co. v. S. Ry. Co., 15 I. C. C. 286, 292; Association of Unionmade Garment Manufacturers v. C. & N. W. Ry. Co., 16 I. C. C. 405, 409; Florida Fruit & Vegetable Ass'n v. A. C. L. R. R. Co., 17 I. C. C. 552, 564; Minneapolis Threshing Machine Co. v. C. St. P. M. & O. Ry. Co., 17 I. C. C. 189, 192; Commercial Club of Salt Lake City v. A. T. & S. F. Ry. Co., 19 I. C. C. 218, 222; In Re Advances in Rates—Eastern Case, 20 I. C. C. 243, 247; Railroad Com-

missioners of Iowa v. I. C. R. R. Co., 20 I. C. C. 181, 186; In Re Transportation of Wool, Hides, and Pelts, 23 I. C. C. 151, 164; Anadarko Cotton Oil Co. v. A. T. & S. F. Ry. Co. 24 I. C. C. 327, 329; Lindsay Bros. v. P. M. R. R. R., 25 I. C. C. 368, 369; Memphis Freight Bureau v. L. & N. R. R. Co., 26 I. C. C. 402, 405; Lumber from Louisiana to North Atlantic Points, 26 I. C. C. 186, 192; Union Tanning Co. v. S. Ry. Co., 26 I. C. C. 159, 164; Pittsburgh Steel Co. v. L. S. & M. S. Ry. Co., 27 I. C. C. 173, 181; In re Break Bulk Rates on Grain, 27 I. C. C. 78, 80; Mayor and Council of Douglas v. A. B. & A. R. R. Co., 28 I. C. C. 445, 453; Fourth Section Violations in the Southeast, 30 I. C. C. 153, 175, 176, 177; Break-Bulk Rates on Grain, 30 I. C. C. 357, 358; Railroad Commission of Arkansas v. M. & N. A. R. R. Co., 30 I. C. C. 488, 491; Five Per Cent Case, 31 I. C. C. 351, 361, 362, 363; Railroad Comrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641, 651; Five Per Cent Case, 32 I. C. C. 325, 328; Proportional Commodity Rates between Kerper and Wilson, Ohio, Unrep. Op. A-893; Public Utilities Commission of Idaho v. O. S. L. R. R. Co., 33 I. C. C. 103, 105; Rates on Asphaltum, Barley, Beans and Canned Goods, 33 I. C. C. 480, 486; Transit Rates on Logs and Stabes from Alexandria, La., 34 I. C. C. 169, 171; Moore & Thompson Paper Co. v. B. & M. R. R., 34 I. C. C. 323, 325; Goldfield Cases, 34 I. C. C. 360, 373; Rates on Lumber from Southern Points, 34 I. C. C., 652, 658, 677; Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 233, 272, 274, 277, 279, 280; Excelsior from St. Paul, Minn., 36 I. C. C. 349, 365; Western Passenger Fares, 37 I. C. C. 1, 11; Official Classification Ratings, 37 I. C. C. 166, 172; Rates via Rail-and-Lake Routes, 37 I. C. C. 302, 313, 314; Stonega Coke & Coal Co. v. L. & N. R. R. Co., 39 I. C. C. 523, 541, 542; Class rates from Chestnut Ridge Railway Stations, 41 I. C. C. 62, 67; Wisconsin & Arkansas Lumber Co. v. St. L. I. M. & S. Ry. Co., 41 I. C. C. 642, 644; Hutchinson Traffic Bureau v. C. R. I. & P. Ry., 43 I. C. C. 689, 693; Northern Points Traffic Asso. v. C. & A. R. R., 44 I. C. C. 426, 429; C. F. A. Class Scale Case, 45 I. C. C. 254, 274; The Fifteen Per Cent Case, 45 I. C. C. 303, 318; C. F. A. Territory Milk and Cream Rates, 46 I. C. C. 601, 604; Western Pine Mfrs. Asso. v. C. I. & W. R. R., 46 I. C. C. 650, 652; The Southeastern Sugar Cases, 48 I. C. C. 739, 742; Phelps Dodge Corp. v. Director General, 57 I. C. C. 714, 718; Local Fares on Hudson & Manhattan R. R., 58 I. C. C. 270, 272, 274; Rates, Fares and Charges of N. Y. C. R. R. Co., 59 I. C. C. 290, 294; New England divisions, 62 I. C. C. 513, 565; Holmes & Hallowell Co. v. G. N. Ry. Co., 60 I. C. C. 687, 702; Limitations of Liability in Transmitting Telegrams, 61 I. C. C. 541, 550; Reduced Rates, 1922, 68 I. C. C. 676, 732; Iron and Steel Articles from New Orleans, 74 I. C. C., 146, 152; Commodity Rates from Jacksonville to Miami, 83 I. C. C. 207, 310.

§52. Risk of loss or damage.

See Infra §6, §61; Classification §9; Reasonableness of Rates §32.

CASES 1887-1908

(a) The danger from transportation of oil to Washington through the city of Pittsburgh is not sufficient to justify a rate of 50 cents per barrel as against 40 cents for an equal distance to other places. Brady v. Pennsylvania R. R. Co. (Com.), 2 I. C. R. 78.

(b) The danger from transportation of oil through Pittsburgh when apportioned upon all the business is deemed so unimportant as not to materially affect the rates which should be charged. Brady v. Pennsylvania R. Co., 2 I. C. R. 78.

(c) The liability of a carrier as an insurer of freight against all loss except such as is occasioned by the act of God or of the public enemy is elemental and the greater the value the greater the risk. Howell v. N. Y. L. E. & W. Ry., 2 I. C. C. 163, 172.

(ca) To the extent that loss or damage is peculiar to a particular kind of traffic that fact may be properly recognized in the rate. but charges of transportation should not be advanced to make good the negligence of the carrier itself. New Orleans Live Stock Exchange v. T. & P. R. Co., 10 I. C. C. 327, 331.

(d) Cotton goods easily damaged. Riverside Mills v. Southern Ry. Co., 12 I. C. C. 388.

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(e) Rates cannot be made solely with reference to loss and damage claims arising from transportation. National Hay Ass'n v. M. C. R. R. Co., 19 I. C. C. 34, 47.

(f) Carriers are fairly entitled to a moderate margin over cost as an allowance for the factors of hazard and profit. Perishable Freight Investigation, 56 I. C. C. 449, 522.

(g) The Commission has the impression that the inherent qualities of the commodities should also be taken into consideration in determining the charges for protective service against cold. The element of hazard apparently varies materially with the commodity. Carnation Milk Products Co. v. A. T. & S. F., 63 I. C. C., 60, 63.

(h) The amount of loss and damage claims normally accruing in the course of transportation is a factor which is properly taken into account in the fixation of the rates for transportation. Rates on Grain, Grain Products and Hay, 64 I. C. C. 85, 93.

ALL OTHER CITATIONS

In Re Investigation of Advances in Rates on Grain, 21 I. C. C. 22, 30; In Re Advances in Rates—Western Case, 20 I. C. C. 307, 355; Commercial Club of Omaha v. B. & O. R. R. Co., 19 I. C. C. 397, 400; Morgan Grain Co. v. A. C. L. R. R. Co., 19 I. C. C. 460, 469; Goldfield Consolidated Mines Co. v. S. P. Co., Unrep. Op. 593; Bancroft-Whitney Co. v. C. N. O. & T. P. Ry. Co., 24 I. C. C. 557, 558; Commercial Club of Superior v. G. N. Ry. 24 I. C. C. 96, 118; Bagley & Co. v. P. M. R. R. Co., 25 I. C. C. 698, 699; In re Advances on Flaxseed, 25 I. C. C. 337, 340; Norris v. St. L. & S. F. R. R. Co., 25 I. C. C. 416, 423; Western Classification Case, 25 I. C. C. 442, 473, 478; Lumber from Louisiana to North Atlantic Points, 26 I. C. C. 186, 191; Union Tanning Co. v. S. Ry. Co., 26 I. C. C. 159, 163; United States v. W. & N. R. R. Co., 26 I. C. C. 309, 311; Gottron Bros. Co. v. G. & W. R. R. Co., 28 I. C. C. 38, 43; Keats Auto Co. v. O. W. R. R. & N. Co., 28 I. C. C. 412, 413; Klauer Mfg. Co. v. A. T. & S. F. Ry. Co., 28 I. C. C. 508, 509; Minneapolis Brewing Co. v. A. T. & S. F. Ry. Co., 28 I. C. C. 688, 691; Flynn v. C. I. & L. Ry. Co., Unrep. Op. A-257; Goldfield Consolidated Mines Co. v. S. P. Co., Unrep. Op. A-266; Lowenberg & Going Co. v. O. W. R. R. & N. Co., Unrep. Op. A-361; Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co., 30 I. C. C. 597, 603; Dunnage Allowances, 30 I. C. C. 538, 542; Lake Superior Paper Co., Ltd., v. D. S. S. & A. Ry. Co., 30 I. C. C. 403, 408; Pacific Fruit Exchange v. S. P. Co., 31 I. C. C. 159, 164; Rates on Beer and Other Malt Products, 31 I. C. C. 544, 545; Barnhardt Mfg. Co. v. S. Ry. Co., Unrep. Op. A-698; Lebow v. A. T. & S. F. Ry. Co., Unrep. Op. A-704; Leavitt & Co. v. L. S. & M. S. Ry. Co., Unrep. Op. A-708; Miller & Co., v. C. & N. W. Ry. Co., Unrep. Op. A-746; Portland Chamber of Commerce v. C. M. & St. P. Ry. Co., 32 I. C. C. 188, 190; Tanners' Supply Co. v. L. & N. R. R. Co., 32 I. C. C. 394, 402; Kansas-California Flour Rates, 32 I. C. C. 602, 604; Myers v. C. B. & Q. R. R. Co., Unrep. Op. A-818; Boardman Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-835; The Cummins Amendment, 33 I. C. C. 682, 689; Lindsay & Co. v. N. P. Ry. Co., 33 I. C. C. 150, 155; Regulations Restricting the Shape of Baggage, 33 I. C. C. 266, 268; Anson, Gilkey & Hurd Co. v. S. P. Co., 33 I. C. C. 332 ,339; Eastern Fruit Growers Asso. v. B. & O. R. R. Co., 33 I. C. C. 343, 345; The Cummins Amendment, 33 I. C. C. 682, 689, 695, 697; Blackburn-Warden Co. v. I. C. R. R. Co., 34 I. C. C. 58, 59; Parlin & Orendorff Co. v. I. C. R. R. Co., 34 I. C. C. 90, 92; Transcontinental Refrigeration Charges, 34 I. C. C. 140, 143; Drain Tile from Illinois Points, 35 I. C. C. 83, 84; Regulations as to Storage of Dairy Products, 35 I. C. C. 469, 473; Belknap Glass Co. v. G. N. Ry. Co., 36 I. C. C. 322, 323; Oklahoma Traffic Assn. v. A. & S. Ry. Co., 36 I. C. C. 329, 343; Morris & Co. v. U. P. R. R. Co., 36 I. C. C. 540, 541; Lookout Refining Co. v. L. & N. R. R. Co., 36 I. C. C. 667, 668; Official Classification Ratings, 37 I. C. C. 166, 170, 171; Eagle Ice Co. v. C. M. & St. P. Ry. Co., 37 I. C. C. 250, 256, 257; American Steel & Wire Co. v. A. & V. Ry. Co., 37 I. C. C. 525, 526; Official Classification Rates on Paper, 38 I. C. C. 120, 144; Utah-Idaho Millers & Grain Dealers Asso. v. D. & R. G. R. C., 42 I. C. C. 648, 650; Northern Mercantile Co. v. A. E. R. R. Co., 42 I. C. C. 290, 293; Petroleum to Kentucky Stations, 43 I. C. C. 35, 40; Molding Sand to Nashville, Tenn., 43 I. C. C. 108, 110; Fruits and Vegetables, 43 I. C. C. 291, 331; National Poultry, Butter & Eggs Asso. v. B. & O. S. W. R. R. Co., 43 I. C. C. 392, 403, 404; Southeastern Cotton Goods, 43 I. C. C. 530, 533; Scully Syrup Co. v. A. G. S. R. R. Co., 43 I. C. C. 567, 575; Silk Asso. of America v. P. R. R. Co., 44 I. C. C. 578, 580; Vegetable Oils Transportation, 46 I. C. C. 674, 675; Dimmitt-Caudle-Smith Live Stock Comm. Co. v. C. B. & Q. R. R., 47 I. C. C. 287, 299; Fidelity Cotton Oil Co. v. A. & V. Ry., 47 I. C. C. 542, 547; Shreveport-Texas Cattle, Lignite, Wood and Tanbark, 48 I. C. C. 283, 288; R. R. Comm. of La. v. A. H. T. Ry., 48 I. C. C. 312, 343; Claims for Loss and Damage of Grain, 48 I. C. C. 530, 573; Tonies v. S. Ry., 48 I. C. C. 681, 683; Adams v. A. B. & A. R. R., 49 I. C. C. 415, 418; Reed

Tobacco Co. v. C. & O. Ry., 51 I. C. C. 201, 202; Goodyear Tire & Rubber Co. v. A., C. & Y. Ry. Co., 53 I. C. C. 389, 395; Tobacco Products Corporation v. Director General, 55 I. C. C. 69, 70; National Council of Farmers Assna. v. Director General, 56 I. C. C. 399, 403; Perishable Freight Investigation, 56 I. C. C. 449, 540, 539; Pneumatic Scales Corp. v. A. & R. R. R. Co., 57 I. C. C. 308, 309; Climax Molybdenum Co. v. Director General, as Agent, 61 I. C. C. 369, 373; Dodge Bros. v. Director General, as Agent, 62 I. C. C. 689, 691; Indian Packing Corporation v. Director General, 64 I. C. C. 205, 208; Export Bill of Lading, 64 I. C. C. 347, 354; Birmingham Packing Co. v. Director General, as Agent, 69 I. C. C. 44, 46 Waste Resinous Wood, 77 I. C. C. 448, 450; Acme Cement Plaster Co. v. A., C. & Y. Ry. Co., 77 I. C. C. 691, 696; National Veneer & Panel Asso. v. A. & R. R. R. Co., 81 I. C. C. 227, 234; American Asphalt Roof Corp. v. A., T. & S. F. Ry. Co., 81 I. C. C. 522, 523; General Motors Corp. v. Director General, as Agent, 83 I. C. C. 479, 480; Fairbanks, Morse & Co. v. Director General, as Agent, 83 I. C. C. 496.

§52½. River crossings.

See River Crossings.

CASES 1887-1908

(a) The location of Cincinnati, north of the Ohio river, and the fact that railroads to the south must cross the river upon expensive bridges, for which allowance is charged or made in the division of rates, justify a higher differential from Cincinnati in respect to rates from Louisville on the south bank of the river to points in the region surrounding Montgomery, Alabama, and points between such region and the Mississippi river. Freight Bureau v. Cincinnati, N. O. & T. P. R. Co., 7 I. C. C. 180.

(b) A difference in rate is justified by the different location between Council Bluffs on the east bank of the Missiuri river and Omaha on the west side, as to traffic with points in Iowa, although the rates to all other points are substantially the same, in view of the tolls upon the expensive bridge connecting the two cities. Commercial Club v. Chicago & N. W. R. Co., 7 I. C. C. 386.

IMPORTANT CASES SINCE 1908

(c) The fact that the net revenues of a carrier from its ownership of a bridge on which an arbitrary is charged for passengers and freight carried across the same may be greater than the returns on ordinary business enterprises is not sufficient in itself to justify a holding that the bridge tolls are excessive. Bridges are and have been regarded as precarious property. They may be damaged or entirely swept away by floods and erection of other bridges nearby may draw away their tenants, and thus seriously affect their earning capacity. The net revenues have an undoubted and also an important bearing upon the question of the reasonableness of rates, but the value of the service to the shipper and the other elements so often referred to as entering into the reasonableness of rates must also be taken into consideration. A railroad company may be operated with a less return than it ought to enjoy, or even at a loss, but neither condition of affairs would justify the exaction by it of rates that are higher than they reasonably should be for service performed, all things being considered. So also the fact that the net earnings of a carrier may be large does not of itself justify the Commission fixing a rate at less than is reasonable for the service, all other things being considered. Railroad Commissioners of Iowa v. I. C. R. R. Co., 20 I. C. C. 181, 186.

(d) The difference in density of population, volume of traffic and other conditions affecting railroads operating in southern territory and in c. f. a. and trunk line territories are sufficient to warrant higher rates south of the Ohio River than north thereof. Commercial Club of Carrollton, Ky., v. Director General, 55 I. C. C. 697, 700.

ALL OTHER CITATIONS

Constructive Mileage over Poughkeepsie Bridge, 66 I. C. C. 230; Memphis-Southwestern Investigation, 77 I. C. C. 473, 483.

§52½a. Seasonal rates.

CASES 1887-1908

(a) A railway company may make a different rate upon coal during the summer months from that charged for the winter months. Interstate Commerce Commission v. Louisville & N. R. Co. (C. C. M. D. Tenn.), 5 I. C. R. 656.

§53. Size of community.

IMPORTANT CASES SINCE 1908

(a) San Pedro, a city of 6,000 or 7,000 population, situated on the harbor of San Pedro, pays a rate from the east of the through rate to Los Angeles, which is twenty-two miles inland, plus the local rate from Los Angeles to San Pedro. Los

Angeles has a population of about 300,000. HELD, the difference in the importance of the two communities cannot in law be accepted as a justification for an undue discrimination in rate. Harbor City Wholesale Co. v. S. P. Co., 19 I. C. C. 323, 331.

(b) The fact that two communities may be one, from a commercial point of view, does not necessarily make them one for transportation and rate making purposes. The Illinois Coal Cases, 32 I. C. C. 659, 680.

§54. Size of load.

See Evidence §53.

IMPORTANT CASES SINCE 1908

(a) The fact that certain traffic is hauled in trainload lots, while complainant's traffic moved in carloads, cannot be made the basis of a difference in rates. Rickards v. A. C. L. R. R. Co., 23 I. C. C. 239, 240.

ALL OTHER CITATIONS

Bentley & Olmstead Co. v. L. S. & M. S. Ry. Co., 17 I. C. C. 56; Virginia-Carolina Chemical Co. v. St. L. I. M. & S. Ry. Co., 18 I. C. C. 1; Anaconda Copper Mining Co. v. C. & E. R R. Co., 19 I. C. C. 592, 596; Amer. Round Bale Press Co. v. A. T. & S. F. Ry. Co., 32 I. C. C. 458, 463.

§54½. Speed of Train.

IMPORTANT CASES SINCE 1908

(a) Speed of milk trains to New York City and that of trains to Boston, is an element which has been considered in fixing rates on milk. New England Milk Case, 40 I. C. C. 699, 718.

ALL OTHER CITATIONS

Shreveport-Texas Cattle, Lignite, Wood and Tanbark, 48 I. C. C. 283, 287.

§55. Standard of lines.

See Advanced Rates §15; Reasonableness of Rates §32.

CASES 1887-1908

(a) A classification of railroads as those which have been in operation for a certain length of time and those which have been recently built and limiting the rates which may be charged on the old roads is not an arbitrary classification denying such roads the equal protection of the laws, nor does it make the statute invalid as class legislation. Ames v. Union Pacific R. Co. 4 I. C. R. 835.

IMPORTANT CASES SINCE 1908

(aa) In determining rates between two points, neither that railroad which can afford to handle traffic at the lowest rate nor that whose necessities might justify the highest rate should be exclusively considered City of Spokane v. N. P. Ry. Co., 15 I. C. C. 376, 415.

(b) And rates are not to be fixed without reference to all lines operating in the territory. Atlanta Freight Bureau v. N. C. & St. L. Ry., 29 I. C. C. 476, 485.

(c) The needs of certain weak lines can not justify a course of action that is unwarranted by the condition of the larger number of strong and successful lines. The Fifteen Per Cent Case, 45 I. C. C. 303, 315.

(d) It is not alone the line that can handle the traffic with the least cost that determines the question whether proposed rates are justified. Bituminous Coal to C. F. A. Territory, 46 I. C. C. 66, 115.

(e) Rates over standard-gauge lines are not comparable, with those over narrow-gauge lines. Chaney Co. v. G. N. Ry., 50 I. C. C. 332, 336.

(f) Rates to sections served by several lines of railroad should not necessarily be based upon the short line distance or established with regard to either the weakest or strongest line but should be determined with reference to all reasonably direct lines. South Dakota Railway Commissioners v. A. & W. Ry., 74 I. C. C. 295, 306.

ALL OTHER CITATIONS

Bluefield Shippers' Assn. v. N. & W. Ry. Co., 22 I. C. C. 519, 528; Receivers & Shippers' Assn. of Cincinnati v. C. N. O. & T. P. Ry. Co., 18 I. C. C. 440, 464; Commercial Club of Salt Lake City v. A. T. & S. F. Ry. Co., 19 I. C. C. 218, 222; Commercial Club of Superior v. G. N. Ry. Co., 24 I. C. C. 96, 102, 110; Coke Producers' Assn. of Connellsville v. B. & O. R. R. Co., 27 I. C. C. 125, 150; Watson v. K. & T. Ry. Unrep. 102, 110; Watson v. K. & T. Ry. Unrep. Op. A-689; Kentucky Distilleries & Warehouse Co. v. L. & N. R. R. Co., 36 I. C. C. 293, 300; Railroad Commission of Louisiana v. A. H. T. Ry. Co., 41 I. C. C. 83, 103; Bay State Milling Co. v. G. L. T. Corp., 43 I. C. C. 338, 346; R. R. Comm. of La. v. A. H. T. Ry., 48 I. C. C. 312, 367; Proposed Increases in New England, 49 I. C. C. 421, 430, 431, 460; Rio Grande Chamber of Commerce v. St. L., B. & M. Ry. Co., 81 I. C. C., 703, 712; Commodity Rates from Jacksonville to Miami, 83 I. C. C. 207, 210.

§56. Standard of rates.

See Supra §55; Advanced Rates §15; Branch Lines §4; Discrimination §5 II; Reasonableness of Rates §32.

CASES 1887-1908

(a) When a carrier, acting in good faith, has adopted an exceptional rate, not unreasonable in itself, on a portion of its line, because that rate has been forced upon it by an independent state railroad company in direct competition with it and not subject to the Act to Regulate Commerce, the reasonableness and justness of rates on other portions of the carrier's line, extending into a far interior region of the country where no such conditions exist, cannot be measured, alone, by the standard thus furnished, but must be governed by considerations which fairly and justly apply to them. Business Men's Asso. v. Cg. St. P. M. & O. R. C., 2 I. C. R. 41.

(b) Exceptional cases of rates made lower than other rates by a carrier on one portion of its line by the action of a competitor, and in which it is without fault itself, under the operation of the Act to Regulate Commerce can not be adopted as the standard as to other rates upon a far distant portion of its line where no such exceptional conditions exist and the reasonableness of its rates must be determined by altogether different considerations. Business Men's Asso. v. Cg. & N. W. R. Co. 2 I. C. R. 48.

(c) If a carrier can profitably make a low rate for the purpose of obtaining traffic in existence which would otherwise pass over a competing line then it may profitably under some circumstances, make a low rate for the purpose of bringing into existence traffic which would not otherwise pass over any line. Grain Shippers' Asso. v. I. C. R. Co., 8 I. C. C. 158, 177.

(d) The defendant's rates on potatoes in carloads from Mankato and Good Thunder to Washington, Scranton, and other eastern destinations are unreasonable and unjust, and the St. Paul rate may be used, for the purposes of this case, as a standard of comparison. Hoerr v. Chicago, M. & St. P. R. Co., 11 I. C. C. 547.

(e) From St. Paul to Boston via Lake Michigan ports, a reasonable basis for fixing rates for service rendered in transporting shipment between same points via Duluth. American Grass Twine Co. v. St. Paul, M. & O. R. Co., 12 I. C. C. 141.

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(f) There is no exact standard by which the reasonableness of a rate can be measured. National Wool Growers' Asso. v. O. S. L. R. R. Co., 25 I. C. C. 675, 677,.

(g) If the Commission should dispose of rate questions and controversies by resort alone or mainly to comparative distances, ton-mile earnings, and estimated relative earnings above the estimated so-called "out-of-pocket" cost to the carrier for each service performed, there are always to be found standards for the reduction of their rate to the basis of the loss, whatever may have compelled or induced its establishment. For the Commission to adopt such a course would inevitably lead to a continuous process of reducing the carriers' revenue, a result which would be detrimental to the public interest as well as unjust to the carriers. Union Tanning Co. v. S. Ry., 26 I. C. C. 159, 164.

(h) Rates fixed by the carrier from no other motive than to obtain a fair compensation for the service rendered are entitled to greater weight than rates which the carrier admits were fixed by it from other motives. Augusta Cotton Exchange and Board of Trade v. S. Ry. Co., 30 I. C. C. 704, 706.

(i) It should not be necessary to tear a rate apart in order to determine what proportion of it was intended as compensation for each distinct service performed. Iron Ore Rate Cases, 41 I. C. C. 181, 203.

(j) Where rates are higher, distance considered, than those generally prevailing from near-by points to the same destinations or to points in that vicinity, over the same or other routes, whether they are unreasonable or unduly prejudicial can not be determined from that standpoint alone, but consideration must be given to all the circumstances and conditions surrounding the traffic. National Fireproofing Co. v. Director General, as Agent, 62 I. C. C. 49, 55.

(k) In considering individual rates mere method of construction or of applying increases does not screen from scrutiny the measure of such rates. National Petroleum Asso. v. Director General, as Agent, 78 I. C. C. 711, 716.

ALL OTHER CITATIONS

Southwestern Missouri Millers' Club v.

M. K. & T. Ry. Co., 22 I. C. C. 422, 427; In Re Advances on Cattle and Sheep, 23 I. C. C. 7, 12; National Refining Co. v. M. K. & T. Ry. Co., 23 I. C. C. 527, 528; Corporation Com. of Oklahoma v. A. T. & S. F. Ry., 31 I. C. C. 532, 543; Lum. v. G. N. Ry., 33 I. C. C. 541, 555; Boise Lumber Co. (Ltd.) v. P. & I. N. Ry. Co., 33 I. C. C. 109, 115; Lum. v. G. N. Ry. Co., 33 I. C. C. 541, 554; Newport Mining Co. v. C. & N. W. Ry. Co., 33 I. C. C. 645, 656; R. R. Comrs. of Iowa v. A., T. & S. F. Ry. Co., 34 I. C. C. 111, 113; City of Charlotte, N. C., v. S. R. R. Co., 34 I. C. C. 120, 133; Corp. Comm. of Oklahoma v. A., T. & S. F. Ry. Co., 34 I. C. C. 292, 297; Lighterage and Storage Regulations at New York, 35 I. C. C. 47, 61; Lebanon Commercial Club v. L. & N. R. R. Co., 35 I. C. C. 204, 213; 1915 Western Rate Advance Case, 35 I. C. C. 497, 536, 540; Kentucky Distilleries & Warehouse Co. v. L. & N. R. R. Co., 36 I. C. C. 293, 300; Big Basin Lum. Co. v. S. P. C., 37 I. C. C. 730, 734; Holmes & Hallowell Co. v. G. N. Ry. Co., 37 I. C. C. 627, 647; Black Mountain Corp. v. L. & N. R. R. Co., 39 I. C. C. 153, 160; The Missouri River-Nebraska Cases, 40 I. C. C. 201, 256; Pillsbury Flour Mills Co. v. G. N. Ry. Co., 39 I. C. C. 353, 359; Sioux City Live Stock Exchange v. C. St. P. M. & O. Ry. Co., 40 I. C. C. 418, 420; Southeastern Lumber, 42 I. C. C. 548, 556; Boston-NewYork Proportional Rates No. 2, 43 I. C. C. 203, 205; Harrison Bros. & Co. v. B. & O. R. R., 45 I. C. C. 85, 86; Milk and Cream to New York City, 45 I. C. C. 412, 415; Coal to South Dakota, 47 I. C. C. 750, 752; Private Wire Contracts, 50 I. C. C. 731, 760; Pacific Lumber Co. v. N. W. P. R. R., 51 I. C. C. 738, 757, 769; Pioneer Pole & Shaft Co. v. Director General, as Agent, 64 I. C. C. 744, 746. Inland Empire Paper Co. v. S. I. Ry. Co., 81 I. C. C. 603, 606; Kansas Public Utilities Co. v. A., T. & S. F. Ry. Co., 83 I. C. C. 105; Wood, Iron and Steel Co. v. P. R. R. Co., 83 I. C. C. 503, 506; Cairo Board of Trade v. A. G. S. R. R. Co., 83 I. C. C. 761, 765.

§56½ Statistical Tables.

See Accounting §3 (1).

IMPORTANT CASES SINCE 1908

(a) Statistical tables showing the percentage division of all traffic among different ports are of little value in determining whether one port is being deprived of its just share of tonnage from a particular territory by reason of unfair rate adjustments. Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co., 24 I. C. C. 55, 67.

(b) The commission sees no impropriety in making use of the information contained in the special reports submitted by the carriers or in other exhibits to which objection was made, and must regard the data contained therein as properly of record and a part of the evidence in the case. Sections 10 and 20 of the Act cited for authority. Lake Cargo Coal Rates, 46 I. C. C. 159, 183, 184.

(c) Statistics contained in the annual or other reports of the carriers made to the Commission under Section 16, are competent evidence. Lake Cargo Rates, 46 I. C. C. 159, 184.

(d) Rates (including dock service charge) on iron ore from Mesabi, Vermillion, and Cuyuna Ranges in Minnesota to vessels at Two Harbors and Duluth, Minn., and Allouez Bay and Superior, Wis., found not unreasonable, discriminatory, or unduly prejudicial. Evidence consists of statistics and cost studies of operation on roads controlled by U. S. Steel Corporation, upon doubtful assumption that such statistics are representative of all roads considered herein. Fact that Steel Corporation roads earn in excess of return prescribed in the act does not prove discrimination or prejudice or preference, and general reductions of 1922, applied to ore rates, seem to have been fairly proportionate to decreased costs of operation. Adriatic Mining Co. v. C. & N. W. Ry. Co., 78 I. C. C. 611, 617, 634.

§57 Surplus.

See Advanced Rates §6 (4); Express Companies §25; Reasonableness of Rates §33.

IMPORTANT CASES SINCE 1908

(a) Carriers in Official Classification territory increased all class rates and about half their commodity rates. They contended they should be allowed to invest in improvements and additions to the property an amount equal to that paid by way of dividends to stockholders. In the year 1910 railroad dividends aggregated $405,131,650. HELD, that inasmuch as every dollar thus added to the value of the property justifies, according to the claim of the defendants, an added net return, the Commission cannot properly permit an advance in rates with the intent to produce an accumulation of

surplus for this purpose, until the status of the surplus is determined by legislative actions or judicial interpretation. In Re Advances in Rates—Eastern Case 20 I. C. C. 243, 270.

§57½ System Line Haul.

See Branch Lines §2, §3.

CASES 1887-1908

(a) When a railroad company in establishing its charges on the different branches of its road so adjusted them as to divert trade and business to one locality, such unreasonable preference for one place is not excused by the fact that the rates are the result of competition with other carriers. Raymond v. Chicago, M. & St. P. R. Co., 1 I. C. R. 627.

(b) The service of carriers may be rendered under such dissimilar circumstances as to make it lawful to charge more for the same distance on one line or branch than on another line or branch of the same road. Northwestern Iowa Grain & Stock-Shippers' Asso. v. Chicago & N. W. R. Co. (Com.), 2 I. C. R. 431.

(ba) The acquisition and consolidation by a rail carrier under one system of management of different competing lines of road serving the same territory in the carriage of competitive traffic to the same markets, cannot create a right on the part of the carrier to take advantage of the consolidation to deprive the public of the benefits of fair competition, nor afford warrant for oppressive discrimination with a view to its own interests, such as equalizing profits from its several divisions, by making rate and charges for one division that give profitable markets to a portion of its patrons, and higher rates and charges for another division that are destructive to the pursuits of other patrons who are competitors in the same business; but its duty to the public requires that its service must be alike to all who are situated alike. Rice Robinson & Witherop v. W. N. Y. & P. R. Co. 3 I. C. R. 162.

(c) Rates and charges in force on lines of rival companies or on different branches or lines of the same company are entitled to consideration in connection with the question of reasonable charges for transportation services rendered under like conditions. Morrell v. Union Pacific R. Co., 4 I. C. R. 469.

(d) Where a road or system of roads leased and made the road of another company a part of the system, HELD, That the agreed rental cannot be accepted as the amount which the leased property must earn and the lessee may retain before any reduction can be made in the rates over the leased lines. Newland v. Northern Pacific R. Co., 4 I. C. R. 474.

(e) A departure from equal mileage rates on different branches or divisions of a road is not conclusive that the rates are unlawful, but the burden is on the company making such departure to show its rates to be reasonable when disputed. James & Abbott v. C. P. R. Co., 4 I. C. C. 274, 280.

(f) A company operating a system of railways cannot attack as unjust a limitation of rates which deprives it of the ability to make a profit on the business of one branch only of its system. Missouri Pacific R. Co. v. Smith, 5 I. C. R. 348.

IMPORTANT CASES SINCE 1908

(g) What may be a proper rate as between separate railroads may become unreasonable and unjust when these railroads are absorbed by a large system serving an extensive territory. Black Mountain Coal Land Co. v. S. Ry. Co., 15 I. C. C. 286, 292.

(h) A carrier can not claim the right to earn a net profit from every mile, section or other part into which its road may be divided. Stonega Coke & Coal Co. v. L. & N. R. R. Co., 39 I. C. C. 523, 542.

(i) Where two railroads are operated as one property the reasons and justification for different theories of rate making on the two lines are not readily apparent in the absence of a showing of dissimilar transportation conditions. Lamb-Fish Lumber Co. v. A. C. & Y. Ry., 49 I. C. C. 187, 193.

(j) Arbitraries for hauls over two or more lines should not be added where such lines are under the same control and management. Hudson Mule Co. v. L. & N. R. R. Co., 63 I. C. C. 6, 14.

(k) A carrier's business must be considered as an entirety and the company can not claim the right to earn a net profit from every section into which its road might be divided. Abandonment of Branch by Pere Marquette, 72 I. C. C. 303, 306.

(l) In determining application of single-line and joint-line scales, the commission has in numerous cases found that

lines under common control and management, though owned by separate corporations, shall be deemed single units for rate-making purposes. Commercial Club of Superior, Wis., 24 I. C. C., 96, 111; Shreveport Chamber of Commerce, 39 I. C. C. 296, 301; North Vernon Lumber Co., 61 I. C. C., 355, 361; Arizona Packing Co., 81 I. C. C., 115, 125. U. S. War Department v. A. & S. Ry. Co., 83 I. C. C. 742, 744.

ALL OTHER CITATIONS

Coal Rates from Virginia Mines, 30 I. C. C. 635, 648; Capital City Oil Co. v. Y. & M. V. R. R. Co., 39 I. C. C. 141, 146; Shreveport Chamber of Commerce v. K. C. S. Ry. Co., 39 I. C. C. 296, 301; Henderson Cotton Mills v. L. & N. R. R. Co., 39 I. C. C. 399, 405; Oklahoma Cottonseed Crushers' Asso. v. M. K. & T. Ry. Co., 39 I. C. C. 497, 502, 511; The Missouri River-Nebraska Cases, 40 I. C. C. 201, 257; Pacific Creamery Co. v. S. P. Co., 42 I. C. C. 93, 96; S. P. Co. Ownership of Atlantic S. S. Lines, 43 I. C. C. 168, 173; North Vernon Lumber Co. v. I. C., 61 I. C. C. 355, 361; Barrett v. Director General, 61 I. C. C. 401, 402; Arizona Corporation Commission, 64 I. C. C. 758; Smith v. I. C. R. R. Co., 68 I. C. C. 427, 433; Holmes & Hallowell Co. v. G. N. Ry. Co., 69 I. C. C. 11, 17, 18; Boston Wool Trade Asso. v. Director General, as Agent, 69 I. C. C. 282, 293; Hillebrand Co. v. Director General, as Agent, 69 I. C. C. 740, 743; Kansas Rock Salt Co. v. A. T. & S. F. Ry. Co., 69 I. C. C. 745, 751; Control of Big Four by New York Central, 72 I. C. C. 96, 98; Peters Cartridge Co. v. Director General, as Agent, 73 I. C. C. 311, 313; Klamath County Chamber of Commerce v. S. P. Co., 74 I. C. C. 207, 213; Louisville & Nashville v. United States, 242 U. S., 60 Detroit Board of Trade v. W. Ry. Co., 80 I. C. C. 717, 722; Graham & Gila Counties Traffic Asso. v. A. E. R. R. Co., 81 I. C. C. 134, 142; Tovrea & Co. v. Director General, as Agent, 81 I. C. C. 583, 585, 586.

§57½ (a) Taxes.

IMPORTANT CASES SINCE 1908

(a) When a part of a railway system fails to earn operating expenses, the taxing authorities, in the public interest, may well give consideration to the possibility of affording relief to the extent of their authority. Abandonment of Line by Colorado & Southern Ry., 72 I. C. C. 315, 319.

§57¾ Terminal Facilities.

See Terminal Facilities.

IMPORTANT CASES SINCE 1908

(a) The number of carloads to divide into the terminal expenses is obtained by dividing the loaded freight car miles by the average haul per ton. This manifestly overstates the number of carloads of revenue freight, and tends to understate the assignment of the terminal expenses to each carload of revenue freight. The effect of assigning too large a proportion of total expenses to terminal service is to understate the operating expenses for hauls longer than the average. California Citrus League v. Director General, 58 I. C. C. 373, 390.

(b) Terminal service does present one of the greatest problems which now confront the railroads of the country. Greater economies have been made in train operation than in terminal service. New England divisions, 62 I. C. C. 513, 564.

ALL OTHER CITATIONS

Memphis Southwestern Investigation, 55 I. C. C. 515, 530; Brunswick-Balke-Collender Co. v. C. G. W., 56 I. C. C. 340, 342; National Tube Co. v. L. T. R. R., 55 I. C. C. 469, 482, 484; Reduced Rates 1922, 68 I. C. C. 676, 683; National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co., 68 I. C. C. 213, 232; Reciprocal Switching at Kansas City, 68 I. C. C. 591, 600.

§58 Ton-Mile Revenue.

See Supra §20, §36; Advanced Rates §18 (1); Comparative Rates; Evidence §20; Mileage Scale; Reasonableness of Rates 36.

CASES 1887-1908

(a) As a rule in the transportation of freight by railroads while the aggregate charge is continually increasing the further the freight is carried, the rate per ton per mile is constantly growing less all the time, making the aggregate charge less in proportion every hundred miles after the first, arising out of the character and nature of the service performed and the cost of the service; and thus staple comodities and merchandise are enabled to bear the charges of this mode of transportation from and to the most distant portions of the country. The Act to Regulate Commerce so far from tnrowing hampering restrictions or obstacles in the way of operation of this salutary rule, gives it all the aid of its sanction and safeguards by proving that the carrier shall be en-

titled to receive a reasonable compensation for the service performed upon open published rates, against which no competitor can take advantage by allowing shippers secret rebates and drawbacks in order to get the business. Farrar & Co. v. E. Tenn., Va. & Ga. R. Co., 1 I. C. R. 764, 767.

(b) The method of testing the freight rates of a railroad by the rate per ton per mile is one by which these rates may be brought down to the narrowest point of scrutiny, and in this sense is valuable, but it is like looking at them with a microscope, for it ignores all other tests except that which it alone furnishes, and does not take into consideration any of the surrounding circumstances and conditions that enter into the making of the rate, no matter how compulsory or imperious these may be, and for this reason it cannot be considered a controlling rule in determining the reasonableness of rates. Business Men's Asso. v. Chicago, St. P. M. & O. R. Co., 2 I. C. R. 41, 47.

(c) One feature of the transportation of freight by railroads in long hauls on joint rates, or what is usually called through rates, unless there be exceptional conditions which modify the rule, is that the rate per ton per mile grows less in proportion to the greater distance, while the aggregate of the rate increases in proportion to such greater distance; but this is not found to exist in the case of the local rates of a railroad, where the stations are occasionally grouped, but more usually graded according to distance, except as an incident of rare and highly exceptional conditions of the transportation service. Business Men's Asso. v. Chicago, St. P. M. & O. R. Co., 2 I. C. R. 41.

(d) The Act to Regulate Commerce was not enacted to destroy competition, and the establishment of the rule of the rate per ton per mile, insisted upon by the complainant, would have very much the effect of practically making the rates charged for a long distance at the stations along the line of the defendant and its great rivals, the Chicago, Milwaukee & St. Paul Railway and the Minneapolis & St. Louis Railway, in the nature of strict mileage rates, thereby destroying competition to a large extent at these stations, unsettling the business of their shippers, conferring upon them no practical benefits, and loading the business of the carrier and the shipper at every such station with a multitude of infinitesimal fractions nowhere known in the business of railroads. Business Men's Asso. v. Cg. St. P. M. & O. R. Co., 2 I. C. R. 41.

(e) The rule of the rate per ton per mile decreasing for the greater distance while the rate is increasing in the aggregate, examined and discussed by the Commission in its application to the present proceeding, and held to be inapplicable. Business Men's Asso. v. Cg. & N. W. R. Co., 2 I. C. R. 48.

(f) Complainant attacked as unjust and preferential rates on classes from Chicago, Ill., to Janesville, Minn., as compared with rates from Chicago, Ill., to points west of Janesville, Minn., in that the rate per ton per mile increased according to the length of the haul instead of decreasing. The defendant can charge no more than it does charge to Janesville and Mankato on account of the charges made by other competing railroads running through the same section of the country between Chicago, St. Paul, Minneapolis and Lake Superior ports. As to the country west of this territory the evidence shows that this is a new line, expensive to operate, runs through a sparsely settled country, and is not governed by competition of other lines. HELD, the rate per ton per mile increases as the distances gets greater, but as the rates beyond St. Peter, Minn., are not controlled by the same competition east of that point, and as they are reasonable in and of themselves, complaint dismissed. Business Men's Asso. of Minnesota v. C. & N. W. Ry., 2 I. C. C. 48.

(g) The application of the principle that with the increase of distance the ratio of the rate shall decrease, is affected by the fact that the rate for the shorter distance is of itself, alone, often too low to be treated as a fair criterion for points beyond, so that a long line, met at a given point by a short line, and compelled to accept a scarcely remunerative rate, when the point is passed may fairly increase its charges with some consideration of the absolute distance by its own line from the originating point in a ratio more rapid than if it had been able to grade its own rates continuously throughout its line. Water competition and other controlling causes produce a like effect, and a situation upon a navigable river is to be considered, although it does not at present afford active competition with the

railroad. Lincoln Board of Trade v. B. & M. River R. R., 2 I. C. C. 95, 98.

(h) That under like conditions freight can be carried proportionally lower for long than short distances is as nearly settled as anything relating to railroad charges can be. Equal mileage rates would often prevent legitimate competition and give a monopoly in transportation to the best and shortest road. New Orleans Cotton Exchange v. Cincinnati, N. O. & I. P. R. Co., 2 I. C. R. 289.

(i) Transportation charges now made on corn and oats between the Mississippi River and eastern cities, based on twenty cents per hundred pounds from Chicago, and twenty-three cents from East St. Louis, to New York City, are less than 4 4-10 mills per ton per mile and are not excessive. Rates and Charges on Food Products v. 3, I. C. R. 93.

(j) The general recognized principle that cost of carriage is in inverse ratio to distance, and that therefore the charge per ton per mile should diminish with distance, is not a rule required by the statute, and is subject to qualifications and exceptions. Manufacturers and Jobbers Union of Mankato, Minn. v. M. & St. L. R. Co., 3 I. C. C. 115, 118.

(k) Parties at a point beyond a distributing point are not entitled to the same rates per ton per mile from such distributing point that are charged from shipping points at a distance to the distributing point, under the provisions of the interstate commerce act prohibiting discrimination in rates between places under the same conditions and circumstances. Interstate Commerce Commission v. Alabama M. R. Co. (C. C. M. D. Ala.), 5 I. C. R. 308.

(l) Ordinarily the rate per ton per mile diminishes with increasing length of haul, and it does not follow that Sioux Falls rates from Chicago should be 108 per cent of Sioux City rates because the short line distance from Chicago to Sioux Falls is 108 per cent of the short line distance to Sioux City. Daniels v. Chicago, R. I. & P. R. et al, 6 I. C. C. 458.

(m) On complaint that rates charged by defendants for the transportation of melons in carloads from shipping points in South Carolina to New York and other points in northern and northeastern states were unjust and unreasonable, it appeared that the rates were lower than those in force between the same points on cotton and general merchandise, although greater speed and some other exceptional facilities are involved in the transportation of melons from South Carolina; and that the rates per ton per mile afforded by the melon rates ranged from 7.6 mills to 1.1 cents, and for most of the defendant roads were less than the average receipts per ton per mile from all freight. The evidence was sufficient to warrant an estimate of the cost of production or the results of sales during the shipping season. HELD, That the rates complained of were not shown to be unjust or unreasonable, and that the petitions should be dismissed without prejudice. Board of R. R. Commissioners v. Florence R. Co., 8 I. C. C. 1.

(n) The rate per ton per mile brings rates down to the narrowest point of scrutiny, and for that purpose is valuable; but it excludes consideration of other circumstances and conditions which enter into the making of rates, no matter how compulsory or imperious they may be, and it cannot, therefore, be accepted as controlling in determining the reasonableness of rates. Gustin v. A. T. & S. F. R. Co., 8 I. C. C. 277, 288.

(o) The rule that while the aggregate rate should increase, the rate per ton mile should decrease as distance increases, is not one required by the statute, and is subject to qualifications and exceptions. Hilton Lumber Co. v. Wilmington & Weldon R. Co., 9 I. C. C. 17.

(p) The rate per ton per mile is not always the measure of a reasonable rate, as that measure rigidly applied would make distance alone the gauge for transportation charges; but it affords a valuable basis of comparison for relative rate burdens. Farrar v. Southern Ry., 11 I. C. C. 640, 649.

(q) While the revenue per ton per mile over other routes on other lines and to other destinations is often suggestive in arriving at a proper estimate of the reasonableness of a rate over a route complained of, it is by no means conclusive. Varying conditions existing on different lines must of necessity justify differences in rates for hauls of the same distance. The real question in any such complaint is the reasonableness of a particular rate on the particular line between the particular points in question. In testing such a rate the rates on the same or adjacent lines in the immediate

territory where the same conditions exist are of much greater significance and afford a much more accurate basis for the Commission's action. Dallas Freight Bureau v. G. C. & S. F. Ry., 12 I. C. C. 223, 226.

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(r) Per-ton-per-mile comparisons are often helpful in reaching a conclusion in respect to the reasonableness of rates, but to take that as the sole test would be a scrutiny from the narowest viewpoint, which would deny consideration to many other potent and frequently controlling forces which must be given due weight in a proper determination. Muskogee Traffic Bureau v. A. T. & S. F. Ry. Co., 17 I. C. C. 169, 173.

(s) Ton-mile statistics, reflecting as they do neither car loading, train tonnage, nor car or train mileage, are far from being infallable guides in fixing freight rates. A high average ton-mile revenue may be due to short hauls, a preponderance of which occasions the traffic manager much uneasiness, while it has been repeatedly shown that traffic low in ton-mile earnings may, because of its farther carriage and greater density, be the most remunerative. Per-car earnings, with distance considered, are much more reliable. Where the comodity moves in trainloads the earnings per train mile furnish the best criterion, not only the car loading, but also such physical conditions as grades, etc., being here reflected. Comparison of any kind, however, to be effective must be analogous or nearly so; that is, the rate charged or gross earnings derived on any basis for the transportation of a given commodity between two points furnishes a guide in arriving at the rate to be charged the same or nearly the same comodity between two other points similarly circumstanced. Traffic Bureau of Nashville, Tenn. v. L. & N. Ry. Co., 28 I. C. C. 533, 535.

(t) It is a well recognized principle that freight rates should yield a lower revenue per ton-mile as distance increases. However, various circumstances may modify the application of this principle. The amount of traffic carried; character of country traversed; whether there is a main line or a branch line service, and other conditions, are to be considered. It does not follow, merely because the rate to one point yields slightly more than that to another point from the same points of origin, that the former is unduly prejudicial within the meaning of the statute. Beatrice Commercial Club v. C. B. & Q. R. R. Co., 31 I. C. C. 173, 177.

(u) Ton mile earnings alone are not controlling as competition between shippers, cities, and railroads may often force and justify departures from a mathematical decrease in ton mile earnings as the hauls increase. Decker & Sons v. Director General, 68 I. C. C. 34, 36.

(v) Ordinarily, ton-mile revenues should decrease as distance increases, but where the more distant points are in regions of lower traffic density than regions in which the intermediate points are located, a departure from this principle may be justified. South Dakota Railway Commissioners v. A. & W. Ry., 74 I. C. C. 295, 303.

(w) Ton-mile earnings which increase as distances increase found contrary to usually accepted principle of rate making that such earnings should decrease as distances increase. Western Coal Rates, 80 I. C. C. 383, 432, 433.

(x) The ton-mile rate is an element considered in determining the reasonableness of a rate. Wisconsin Bridge & Iron Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 582.

ALL OTHER CITATIONS

Bulte Milling Co. v. C. & A. R. R. Co., 15 I. C. C. 351, 362; Montain Ice Co. v. D. L. & W. R. R. Co., 15 I. C. C. 305, 320; Grand Junction Mining & Fuel Co. v. Colo. Mid. Ry. Co., 16 I. C. C. 452, 457; Cedar Hill Coal & Coke Co. v. C. & S. Ry. Co., 16 I. C. C. 387, 393; Board of Trade of Winston-Salem v. N. & W. Ry. Co., 16 I. C. C. 12, 16; Receivers & Shippers' Asso. of Cincinnati v. C. N. O. & T. P. Ry. Co., 18 I. C. C. 440, 446; Delray Salt Co. v. M. C. R. R. Co., 18 I. C. C. 268, 270; Rainey & Rogers v. St. L. & S. F. R. R. Co., 18 I. C. C. 88, 90; National Hay Ass'n v. M. C. R. R. Co., 18 I. C. C. 34, 47; Danville Brick Co. v. C. N. W. Ry. Co., 20 I. C. C. 239, 241; In Re Investigation of Advances in Rates on Grain, 21 I. C. C. 22 33,, 34; In Re Advances in Coal to Lake Ports, 22 I. C. C. 604, 620; Elk Cement & Lime Co. v. B. & O. R. R. Co., 22 I. C. C. 84, 88; Ashgrove Cement Co. v. A. T. & S. F. Ry. Co., 23 I. C. C. 519, 524; Southern Illinois Millers' Asso. v. L. & N. R. R. Co., 23 I. C. C. 672, 673; Nebraska State Ry. Commission v. C. B. & Q. R. R. Co., 23 I. C. C. 121,

126; Arkansas Fertilizer Co. v. St. L. I. M. & S. Ry. Co., 25 I. C. C. 645, 648; In Re Advances on Hay, 25 I. C. C. 680, 684; City of Crawford v. C. & N. W. Ry. Co., 25 I. C. C. 259, 263; In Re Advances on Potatoes, 25 I. C. C. 247, 248; Farrar Lumber Co. v. N. C. & St. L. Ry., 25 I. C. C. 22; Mixon-McClintock Co. v. St. L. I. M. & S. Ry. Co., 25 I. C. C. 8, 9; In Re Advances on Flaxseed, 25 I. C. C. 337, 340; Norris v. St. L. & S. F. R. R. Co., 25 I. C. C. 416, 423; Standard Vitrified Brick Co. v. C. B. & Q. R. R. Co., 25 I. C. C. 669, 671; Bartlesville Salvage Co. v. M. K. & T. Ry. Co., 25 I. C. C. 672, 673; Holcker-Elberg Mfg. Co. v. C. R. I. & P. Ry. Co., 25 I. C. C. 212, 213; Evens & Howard Fire Brick Co v. St. L. I. M. & S. Co., 25 I. C. C. 141, 150; Wharton Steel Co. v. D. L. & W. R. R. Co., 25 I. C. C. 303, 305; Board of Improvement, Waterworks, District No. 1, Fort Smith, Ark. v. St. L. & S. F. R. R. Co., 26 I. C. C. 541, 542; Rates on Linseed Oil, 26 I. C. C. 265, 269; Board of Trade of Winston-Salem v. N. & W. Ry. Co., 26 I. C. C. 146, 150; Coal Rates to Davenport, Iowa, 26 I. C. C. 140, 141, 143; Rates on Clay oducts from Brickland, N. Mex., 26 I. C. C. 8, 9; New England Investigation, 27 I. C. C. 560, 572, 573; Wisconsin Steel Co. v. P. & L. E. R. R. Co., 27 I. C. C. 152, 162; Jubitz v. S. P. Co., 27 I. C. C. 44, 45, 46; Lumber Rates from Texas, Louisiana and Arkansas, 28 I. C. C. 471, 475; Gottron Bros. Co. v. G. & W. R. R. Co., 28 I. C. C. 38, 45; In Re Advances on Barley, 24 I. C. C. 664, 666, 670; Bahrenburg Bro. & Co. v. A. C. L. R. R. Co., 24 I. C. C. 560, 566; In Re Advances on Sand and Gravel, 24 I. C. C. 249, 252; Lumbermen's Exchange of St. Louis v. A. S. R. R. R. Co., 24 I. C. C. 220, 223; Marian Coal Co. v. D. L. & W. R. R. Co., 24 I. C. C. 140, 142; Ford Mfg. Co. v. I. C. R. R. Co., 25 I. C. C. 432, 433; Switzer Lumber Co. v. K. C. S. Ry. Co., 25 I. C. C. 611, 612; Taylor v. N. & W. Ry. Co., 25 I. C. C. 613, 615, 616; Grotton Bros. v. G. & W. R. R. Co., 28 I. C. C. 38, 45; Boston Chamber of Commerce v. A. T. & S. F. Ry. Co., 28 I. C. C. 230, 232; Kansas-Iowa Brick Rates, 28 I. C. C. 285, 287; Brick Rates from Ohio Points to Huntington, W. Va., 28 I. C. C. 292, 295; Lumber Rates, Texas etc., to Oklahoma and Missouri, 28 I. C. C. 471, 475; Scrap Iron Rates Between Chicago and Milwaukee, 28 I. C. C. 525, 526; Von Vetren Mfg. Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A-173; Homer Lumber Co. v. S. Ry. Co., Unrep. Op. A-204; Lumber Rates from the Southwest to Points North, 29 I. C. C. 1, 13; Wichita Board of Trade v. A. & S. Ry. Co., 29 I. C. C. 376, 377; Pardee Works v. C. R. R. Co. of N. J., 29 I. C. C. 500, 502; Interior Iowa Cities Case, 29 I. C. C. 536, 537; Colorado Mfrs. Assn. v. A. T. & S. F. Ry. Co., 29 I. C. C. 544, 545; Hammerschmidt & Franzen Co. v. C. & N. W. Ry. Co., 30 I. C. C. 71, 78; Brownsville (Tex.) Class and Comodity Rates, 30 I. C. C. 479, 485; Malt Rates to Texas Points, 30 I. C. C. 385, 386; National Petroleum Assn. v. A. T. & S. F. Ry. Co., Unrep. Op. A-401; Rates on Beer and Other Malt Products, 31 I. C. C 544, 546; The Five Per Cent Case, 31 I. C. C. 351, 430 (Dissenting Opinion); Adleta Paper Co. v. C. & N. W. Ry. Co., 31 I. C. C. 347, 348; The Five Per Cent Case, 31 I. C. C. 351, 373, 374, 392, 419; Packing-house Products from Iowa Points, 31 I. C. C. 308, 310; Phoenix Printing Co. v. M. K. & T. Ry. Co., 31 I. C. C. 291, 292; Stuart's Draft Milling Co. v. S. Ry. Co., 31 I. C. C. 623, 627; Weatherford Cham. of Commerce v. M. K. & T. Ry. Co., 31 I. C. C. 665, 668; Fourth Section Violations in the Southeast, 30 I. C. C. 153, 176; Class and Commodity Rates to Salt Lake City, Utah, 32 I. C. C. 551, 556; Empire Coke Co. v. B. & S. R. R. Co., 31 I. C. C. 573, 578; Douglass & Co. v. I. C. R. R. Co., 31 I. C. C. 587, 598; Colonial Salt Co. v. C. B. & Q. R. R. Co., 31 I. C. C. 559, 568; R. R. Comrs. of Montana v. B. A. & P. Ry. Co., 31 I. C. C. 641, 649; Lebow v. A. T. & S. F. Ry. Co., Unrep. Op. A-704; Coffeyville Merc. Co. v. M. K. T. R. R., 33 I. C. C. 122, 124; Northern Pine Mfrs. Asso. v. C. & N. W. Ry. 33 I. C. C. 360, 369; Lumber Rates from Helena, Ark., and Other Points, 33 I. C. C. 297, 300; Northbound Rates on Hardwood, 32 I. C. C. 521, 529; Reshipping Rates on Grain from Omaha, 32 I. C. C. 590, 593; Montrose & Delta Counties Frt, Rate Asso. v. D. & R. G. R. R., 34 I. C. C. 400, 404; Public Utilities Commission of Idaho v. O. S. L. R. R. Co., 33 I. C. C. 103, 104; Coffeyville Mercantile Co. v. M. K. & T. Ry. Co., 33 I. C. C. 122, 124; Lumber Rates from Helena, Ark., and other Points, 33 I. C. C. 297, 300; Northern Pine Mfrs. Asso. v. C. & N. W. Ry. Co., 33 I. C. C. 360, 369; Coffeyville Mercantile Co. v. M. K. & T. Ry. Co., 34 I.

C. C. 231, 232; Montrose & Delta Counties Freight Rate Asso. v. D. & R. G. R. R. Co., 34 I. C. C. 400, 404; Pulp & Paper Mfrs. Traffic Asso. v. C., M. & St. P. Ry. Co., 34 I. C. C. 500, 507; Rates on Lumber from Southern Points, 34 I. C. C. 652, 659; 1915 Western Rate Advance Case, 35 I. C. C. 497, 510, 611; Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 264; Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co., 35 I. C. C. 460, 467; Export Grain Case, 37 I. C. C. 190, 192; McCormick & Co. v. S. P. Co., 37 I. C. C. 234, 237; New Orleans-Texas Rates, 38 I. C. C. 1, 6; Dressed Beef from New York, N. Y., 38 I. C. C. 51, 53; Duffney Brick Co. v. B. & M. R. R., 39 I. C. C. 118, 124; Capital City Oil Co. v. Y. & M. V. R. R. Co., 39 I. C. C. 141, 146; Black Mountain Corp. v. L. & N. R. R. Co., 39 I. C. C. 153, 160; Providence Fruit & Produce Exchange v. M. St. P. & S. S. M. Ry. Co., 40 I. C. C. 45, 47; Swift & Co., v. L. & N. R. R. Co., 40 I. C. C. 56, 58; Export Grain Products from Missouri River Points, 40 I. C. C. 195, 197; Tennessee Copper Co. v. S. Ry. Co., 41 I. C. C. 336, 344, 345; Sioux City Commercial Club v. C. B. & Q. R. R. Co., 41 I. C. C. 518, 520; Beaver Valley Milling Co. v. A., T. & S. F. Ry. o., 41 I. C. C. 533, 537; Eastern & Western Lumber Co. v. O. W. R. R. & N. Co., 41 I. C. C. 545, 551; Lumber Rates from Helena, Ark., and Other Points, 41 I. C. C., 565, 573, 574; Balfour Quarry Co. v. S. Ry. Co., 41 I. C. C. 610, 611; American Beet Sugar Co. v. S. P. Co., 41 I. C. C. 631, 636; Kornfalfa Feed Milling Co. v. A., T. & S. F. Ry. Co., 41 I. C. C. 668, 670; Sulphuric Acid from New Orleans, La., 42 I. C. C. 200, 203; Northern Merc. Co. v. A. E. R. R., 42 I. C. C. 290, 292; Rice from Calif., 42 I. C. C. 437, 439; Lumber from Oklahoma, 42 I. C. C. 567, 570; National Poultry, Butter & Eggs Asso. v. B. & O. S. W. R. R. Co., 43 I. C. C. 392, 407; Rates on Dairy Products, 43 I. C. C. 700, 707, 708; Business Men's League of St. Louis v. A. T. & S. F. Ry., 44 I. C. C. 308, 329; Muskogee Produce Co. v. St. L. & S. F. R. R., 47 I. C. C. 239, 241; National Wool Growers' Asso. v. B. G. R. R., 48 I. C. C. 587, 588; Thropp v. B. & L. E. R. R., 49 I. C. C. 43, 47; World Publishing Co. v. Director General, 53 I. C. C. 491, 497; Omaha Grain Exchange v. C. R. I. & P. Ry., 53 I. C. C. 249, 266; Allegheny Ore & Iron Co. v. C. & O., 53 I. C. C. 415, 421; Beaumont Chamber of Commerce v. A. & V. Ry. Co., 57 I. C. C. 189, 195; Corporation Commission of North Carolina v. Director General, 57 I. C. C. 523, 533; Phelps Dodge Corp. v. Director General, 57 I. C. C. 714, 717; Anaconda Copper Mining Co. v. Director General, 57 I. C. C. 723, 730; Mont. Oil Co. v. A. T. & S. F. Ry., 58 I. C. C. 85, 88; Decker & Sons, 59 I. C. C. 67; Holmes & Hallowell Co. v. G. N. R. R. Co., 60 I. C. C. 687, 702; P. & W. V. Ry. Co. v. P. & L. E. R. R. Co., 61 I. C. C. 272, 283; Opp. Coal Co. v. Director General, as Agent, 68 I. C. C. 349; United Light & Ry. Co. v. Director General, as Agent, 69 I. C. C. 414, 420; Mayer & Co. v. C. M. & St. P. Ry. Co., 69 I. C. C. 519, 522; Natchez Chamber of Commerce v. St. L. I. M. & S. Ry., 69 I. C. C. 666, 668; Silica Sand Producers' Asso. v. M. P. R. R. Co., 74 I. C. C. 471; Humphrey Brick & Tile Co. v. Director General, as Agent, 74 I. C. C. 684; Henry W. Somers v. N. Y. O. & W. Ry., 78 I. C. C. 243; Boston Wool Trade Association v. Director General, 78 I. C. C. 341, 345; Adriatic Mining Co. v. G. & N. W. Ry. Co., 78 I. C. C. 611, 629; Western Coal Rates, 80 I. C. C. 383, 432, 433; Ohio-Michigan Coal Cases 80 I. C. C. 663, 685; Grimes & Friedman v. A., T. & S. F. Ry. Trade v. A. G. S. R. R. Co., 83 I. C. C. 761, 764.

§59 Two-or-Three-Line Haul

See Advanced Rates §15½; Comparative Rates; Discrimination §11¼; Mileage Scale; Reasonableness of Rates §37.

IMPORTANT CASES SINCE 1908

(a) A commodity rate to one point over one line affords no basis of comparison with a higher class rate to a longer distance point over two lines. Wells- Higman Co. v. St. L. I. M. & S. Ry. Co., 18 I. C. C. 175, 176.

(b) Each carrier participating in a two-line haul will find that operating expenses for its portion of that haul are less than they would be if only a one-line haul to the junction point were involved, and instead of either delivering the car or receiving it from a connecting carrier, it were necessary to deliver it to the consignee or receive it from the consignor. The one-line haul involves two distinct terminal services. Each carrier's share of a two-line haul involves but one distinct terminal service, plus a switching movement from one-carrier to the other. The entire two-line haul

involves two distinct terminal services, plus the switching movement from one line to the other. In large cities where the terminal of one carrier is far removed from that of the other, switching from one to the other often involves much greater expenditures than in the present case. However, it involves less expenditure than the terminal service of delivering to consignee or receiving from consignor at that station. But where the physical connection between connecting carriers is as simple as in these small western towns, involving no expensive terminal service, the additional cost due to the switching movement is very small, so small, in fact, that it may not properly be made the basis of an additional charge for a two-line haul of substantial length. Sheridan Chamber of Commerce v. C. B. & Q. R. R. Co., 26 I. C. C. 638, 649.

(c) Under the United States scales, the rate for a two-line haul is the sum of the rates for each line separately, minus 10 per cent. Memphis Freight Bureau v. I. C. R. R. Co., 27 I. C. C. 507, 517.

(d) The fact that a two-line haul is to be considered in determining the reasonableness of a rate. Clinton Mfrs. & Shippers' Assn. v. C. & A. R. R. Co., 27 I. C. C. 230, 233; Memphis Freight Bureau v. I. C. R. R. Co., 27 I. C. C. 507, 517.

(e) It is just and reasonable to charge a somewhat higher rate for a two-line haul than would be deemed reasonable for a single-line haul of equal distance. Meridian Fertilizer Factory v. A. & S. Ry. Co., 33 I. C. C., 160, 163.

(f) When the distances of over 500 miles are involved the fact that the service is by two lines is largely negligible. Calivada Fertilizer Co. v. S. P. Co., 73 I. C. C. 496, 504.

(g) While the principle that the rate for a two-line haul, especially for short distances, should exceed rates for single-line hauls for comparable distances has been applied in numerous instances, reasonableness of the higher charge for a two-line haul must be determined from the facts and circumstances, and not from application of that principle alone. Sand and Gravel from Lafayette, Ind., 77 I. C. C. 719, 721.

(h) Carriers may justify a reasonably higher rate for a two-line than for a one-line haul. But the mere fact that one haul is two line and another one line does not of and in itself justify a higher charge for the two line haul. The reasonableness of the higher rate depends solely upon the facts an circumstances made to appear which show an increased cost or some other fact or circumstance which would warrant a higher charge. Henry W. Somers v. N. Y. O. & W. Ry., 78 I. C. C. 243, 245.

ALL OTHER CITATIONS

Cedar Hill Coal & Coke Co. v. C. & S. Ry. Co., 17 I. C. C. 479, 485; Snyder-Malone-Donahue Co. v. C. B. & Q. R. R. Co., 18 I. C. C. 498, 499; Ontario Iron Ore Co v. N. Y. C. & H. R. R. R. Co., 21 I. C. C. 204, 206; Maricopa County Commercial Club v. S. P. Co., 22 I. C. C. 429, 431; In Re Investigation of Rates on Meats, 22 I. C. C. 160, 165; In Re Investigation of Alleged Unreasonable Rates on Meat, 23 I. C. C. 656, 661; Briggs & Turivas v. L. S. & M. S. Ry. Co., Unrep. Op. A-71; Lumberman's Exchange of St. Louis v. A. & S. R. R. R. Co., 24 I. C. C. 220, 225; Consolidated Fuel Co. v. A. T. & S. F. Ry. Co., 24 I. C. C. 213, 215; Wichita Board of Trade v. A. T. & S. F. Ry. C., 25 I. C. C. 625, 633; Baker Commercial Club v. O. W. R. R. & N. Co., 25 I. C. C. 281, 283; Wharton Steel Co. v. D. L. & W. R. R. Co., 25 I. C. C. 303, 308; Sheridan Chamber of Commerce v C. B. & O. R. R. Co., 26 I. C. C. 638, 647; Rates from Walsenburg Coal Field, 26 I. C. C. 85, 89; American National Live Stock Assn. v. S. P. Co., 26 I. C. C. 37, 41; Washington Milling Co. v. N. & W. Ry. Co., 27. I. C. C. 546, 547; Mississippi River Case, 28 I. C. C. 47, 59; Boston Cham. of Com. v. A. T. & S. F. Ry. Co., 28 I. C. C. 230, 232; Sheridan Cham. of Com. v. C. B. & Q. R. R. Co., 28 I. C. C. 250, 264; Memphis Freight Bur. v. B. & O. R. R. Co., 28 I. C. C. 543, 547; Iowa State Board of R. R. Com'rs. v. A. E. R. R. Co., 28 I. C. C. 563, 567; Waverly Oil Works v. P. R. R. Co., 28 I. C. C. 621, 631; Omaha Grain Exchange v. N. P. Ry. Co., 30 I. C. C. 572, 576, 577; Hughes Creek Coal Co. v. K. & M. Ry. Co., 29 I. C. C. 671, 678; Arkansas Short Leaf Lumber Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-435; Hughes Creek Coal Co. v. K. & M. Ry. Co., 31 I. C. C. 10, 13; Wichita Business Asso. v. C. & O. Ry. Co., 31 I. C. C. 323, 326; Weatherford Chamber of Comerce v. M. K. & T. Ry. Co. 31 I. C. C. 665 666; Rea-Patterson Milling Co. v. M. P. Ry. Co. Unrep. Op. A-608; United States Gypsum Co. v. C. R. I. & P. Ry. Co. Unrep. Op. A-760; Mound City Roofing Tile Co. v.

B. & O. S. W. R. R. Co., Unrep. Op. A-762; Schultz & Cowen Co. v. C. M. & St. P. Ry. Co. Unrep. Op. A-823; Meridan Fertilizer Factory v. A. & S. Ry. Co. 33 I. C. C. 160 163; Ladd & Co. v. Gould S. W. Ry. Co. 36 I. C. C. 179 183; Paducah Board of Trade v. A. & S. Ry., 37 I. C. C. 760, 764; Hayden Bros. Coal Corp. v. D. & S. L. R. R. Co., 39 I. C. C. 94, 106, 114; Duffney Brick Co v. B. & M. R. R., 39 I. C. C. 118, 124; Brush Creek Mining & Mfg. Co. v. L. & N. R. R. Co., 39 I. C. C. 449, 454; Oklahoma Cottonseed Crushers' Asso. v. M. K. & T. Ry. Co., 39 I. C. C. 497, 511; Stonega Coke & Coal Co. v. L. & N. R. R. Co., 39 I. C. C. 523, 551, 552; Chattanooga Implement & Mfg. Co. v. L. & N. R. R. Co., 40 I. C. C. 146, 148; Lutcher & More Lum. Co. v. T. & N. O. R. R. Co., 42 I. C. C. 88, 91; Pacific Creamery Co. v. S. P. Co., 42 I. C. C. 93, 96; Northwestern Cooperage & Lumber Co. v. M. St. P. & S. Ste. M. Ry., 43 I. C. Co. 629, 632; Ind. Ice, Feed & Fuel Co. v. S. P. L. A. & S. L. R. R. Co., 44 I. C. C. 666, 669; Interior Iowa Cases, 46 I. C. C. 39, 43; Vulcanite Portland Cement Co. v. C. R. R. Co. of N. J., 46 I. C. C. 483, 486; Laird v. T. & N. Ry. Co., 48 I. C. C. 733, 736; Royster Guano Co. v. A. C. L. R. R., 50 I. C. C. 34, 43; Coal from Sewell Valley R. R. Stations, 58 I. C. C. 261, 265; Monroe Chamber of Commerce v. A. & S. Ry. Co., 58 I. C. C. 685, 688; Coakley v. Director General, 59 I. C. C. 141, 144; Southern Fuel Co. v. Director General, as Agent, 60 I. C. C. 457; Hollingshead Co. v. Director General, as Agent, 62 I. C. C. 147, 149; Douglas Chamber of Commerce v. A. T. & S. F. Ry., 64 I. C. C. 405, 411; Aetna Explosives Co. (Inc.) v. C. & E. I. R. R. Co., 64 I. C. C. 635; Kansas Rock Salt Co. v. A. T. & S. F. Ry. Co., 69 I. C. C. 745, 751; Memphis-Souhtwestern Investigation, 77 I. C. C. 473, 516; Orange Rice Mill Co. v. Director General, as Agent, 81 I. C. C. 285.

§59½ Unearned Increment.

See Advanced Rates §6 (2)

§60 Unpublished Rate.

See Evidence §60; Interstate Commerce Commission §13; Reparation §15; Unpublished Rates.

IMPORTANT CASES SINCE 1908

(a) Rates of a water carrier not filed with the Commission are not lawful factors to be considered by the Commission in determining the reasonableness of a joint rate to which such water carrier is a part. Milburn Wagon Co. v. L. S. & M. S. Ry. Co., 18 I. C. C. 144, 146.

§60½ Use of Commodity.

See Classification §10.

CASES 1887-1908

(a) Upon investigation had in a proceeding instituted by the Commission on its own motion, it appeared that the respondent had in force over its line to Nashville a special rate on coal when used for manufacturing purposes by persons named upon the manufacturers' lists prepared by the railroad company. These lists were furnished to dealers who, on selling coal to such manufacturers, issued certificates which entitled them to obtain a refund from the railroad company amounting to the difference between the regular and special rates. Pending investigation the respondent discontinued the "manufacturers rate" and put in force a new coal tariff to Nashville whereby coal "run of mines, nut and slack," is given a rate of $1.00 per ton the year round, and "screened" coal a rate of $1.15 per ton, April to September, and for the remainder of the year a rate of $1.40 per ton. The rate from the same mines to Memphis, a point affected by water competition for coal traffic, is $1.40 per ton on all coal the year round, and respondent buys coal at the mines and sells it in the Memphis market, HELD,

1. That the practice abandoned by the respondent common carrier of arbitrarily determining what persons should receive the so-called "manufacturers rate" was a clear violation of the Act to Regulate Commerce.

2. That the rate of $1.00 per ton charged by respondent upon coal, "run of mine, nut and slack," is not unreasonably low, nor disproportionate to the rate of $1.40 per ton to Memphis; neither, in view of circumstances affecting coal traffic at Memphis, is a rate of $1.15 on screened coal to Nashville relatively unreasonable as compared with the Memphis rate, but so long as the Memphis rate does not exceed $1.40, rates on said kinds of coal from the mines to Nashville should not during any portion of the year exceed $1.00 or $1.15, respectively, and any reduction in the Memphis rate should be accompanied by proportionate reductions in rates on said different kinds of coal to Nashville. Re Louisville & Nashville R. Co. v. 4 I. C. R. 157.

IMPORTANT CASES SINCE 1908

(b) Carriers can not maintain rates based upon the use to which a commodity is to be devoted. Nagase & Co. v. Director General, as Agent, 62 I. C. C. 422, 425.

(c) When the description of commodity given by shipper, and the rating applied by carrier's inspector are in conflict, the disposition of the commodity may properly be considered, but such evidence is not controlling, particularly when shipments clearly come within description contained in aplicable tariffs. Western Cartridge Co. v. Director General, as Agent, 74 I. C. C. 654, 655.

(d) Where certain grades of a commodity made and sold for common grades are not mere by-products of the production of higher grades and otherwise fully conform to description and loading requirements of common grades, incidental final use by purchaser of a selected few thereof for better purposes should not be regarded as affecting their essential character for rate-making purposes, although exclusive or predominant use of grades for a given purpose is a circumstance to be considered, along with other facts, in determining proper description to be applied. National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co., 80 I. C. C. 179, 183.

(e) The measure of rates is not dependent upon the use to which a commodity is put. Mangelsdorf Seed Co. v. A. T. & S. F. Ry., 88 I. C. C. 120, 125.

ALL OTHER CITATIONS

D'Arcy Spring Co. v. Director General, as Agent, 62 I. C. C. 129; Sanford v. P. R. R. Co., 81 I. C. C. 730, 731.

§61. Value of Commodity.

See Supra §31; Advanced Rates §18 (4), §18 (5); Classification §9, §10, §11, §17; Discrimination §5; Reasonableness of Rates §30; Released Rates.

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(a) The element of value in the commodity transported forms a proper consideration to be taken into account in the establishment of a rate, since the greater the value the greater the carrier's liability as an insurer of freight. Howell v. New York, Lake Erie & Western R. Co., 2 I. C. R. 162.

(aa) Pig iron is one of the lowest classes of freight. Pougekeepsie Iron Co. v. N. Y. C. & H. R. Co., 3 I. C. R. 248.

(b) Taking into consideration the difference in value of the unfinished and finished cheap bedroom sets involved in this case and the greater tonnage per carload which can be hauled of the former, and having in view the interests of both carrier and shipper, it is held, that the rate on unfinished cheap bedroom sets as shipped by complainant from Lansing, Mich., to Oakland, Cal., should not exceed 85 per cent of whatever rate may be adopted for such sets in a finished condition. Potter Manufacturing Co. v. Chicago & G. J. R. Co., 4 I. C. R. 223.

(c) While the value of the service of transportation and the extent of the carrier's risk are measured by, among other things, the value of the property transported, and this is an important factor in rate making, it is to be noted that as shipments of goods of the same kind or class vary greatly in value, for the same weight, some being many times more valuable than others, a uniform rate per hundred weight for any commodity or class of traffic can not bear the same proportion to the value of each shipment of such goods. The carrier can only be expected in establishing uniform class or commodity rates to take into consideration the estimated average value of shipments of the class or commodity to which the rates are applied. Duncan v. A. T. & S. F. R. Co., 4 I. C. C. 385, 393.

(d) The equitable rule doubtless is that rates should bear a fair and reasonable relation to the average cost of the traffic as delivered to the carrier for transportation, and the average market price the freight will command or as it is termed the commercial value of the property. Board of Raidroad Commissioners of South Carolina v. Florence R. Co., 8 I. C. C. 1, 18.

(e) While value is a most important element to be considered in fixing rates, it plainly can not be made an arbitrary standard independent of all other considerations. Grain Shippers' Asso. of Northwest Iowa v. I. C. R. Co., 8 I. C. C. 158, 175.

(f) Transportation by rail is a quasi-public service, not to be sold to the highest bidder, and the charges therefor are not controlled by the law of supply and demand. Freight rates do not rise and fall with changes in the market prices of commodities, though they are often affected by commercial conditions;

and when reductions have been made on account of commercial depression it is difficult to see why corresponding advances may not properly be made with the return of business prosperity. Re Proposed Advances in Freight Rates v. 9 I. C. C. 382.

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(g) The value of a commodity is one of the material considerations in the adjustment of rates, and it is just as unsound to say that the rates upon carloads of equal tonnage and equal cost of movement, one of a low-grade, cheap commodity, and the other of a high-grade and valuable commodity, should be made the same, except for the difference that might be allowed for the single item of increased risk, as it is to say that every commodity should be charged all it can stand or bear. It is alike in the public interest and just to the carriers, having regard to their entire business and their right to an opportunity to earn a fair return upon the property in addition to the cost of service, that in the adjustment of rates due weight be given to differences in value of the respective commodities carried, and that such differences be unlimited by the mere measure of difference in risk. Otherwise one of two results would of necessity follow: The rates as a whole would be such that it would be impossible for the carriers to earn what they reasonably might, and, in fact, what they of necessity should, in order to enable them to perform their services, or the rates on many low-grade commodities would have to be such that they would be prohibitory of any movement. Union Tanning Co. v. S. Ry. Co., 26 I. C. C. 159, 163.

(h) While value is an element to be considered in the fixing of a rate, consideration of the profit accruing to the shipper on the traffic hauled is not a recognized basis, and cannot be, since such consideration would lead to the charging of a different rate to different individuals for the identical service where it appeared that one shipper was not able to make as much profit out of his shipment as some other shipper more fortunately circumstanced. Newport Mining Co. v. C. & N. W. Ry., 33 I. C. C. 645, 656.

(i) Value is not the sole controlling element in classification or rate making; and in the absence of a showing that the rating and rates complained of are unreasonable the contention that a schedule of rates, graduated according to value should be established is without merit. Western Felt Works v. Wabash R. R. Co., 40 I. C. C. 7, 8.

(j) Range of prices, depending upon the percentage of purity and method of production of a particular commodity, is inconclusive evidence of impropriety or unreasonableness in the classification or the rates on such commodity. Du Pont de Nemours & Co. v. Director General, as Agent, 73 I. C. C. 129, 131.

(k) Manure is a very low-grade commodity. It moves in any kind of equipment, loss and damage claims are seldom filed, and if such traffic is to move by rail it must necessarily be accorded relatively low rates. Manure from New Orleans, 73 I. C. C. 400, 402.

(l) The Commission has condemned rates on raw materials higher than on the products manufactured therefrom. Crown Willamette Paper Co. v. Director General, 78 I. C. C. 273, 277.

(m) Value is not the only factor to be considered in making rates. N. & G. Taylor Company v. Director General, 81 I. C. C. 663, 664.

(n) The needs of commerce can not be met if rates are to fluctuate with market prices of commodities, but this would not apply to any permanent or long persistent shift of price levels. The element of value of a commodity and the principle of what the traffic will bear would be given due weight in such a case. Kansas Public Utilities Commission v. A. T. & S. F. R. R. Co., 83 I. C. C. 105, 112.

(o) An element of importance in fixing of rates is the value of the article shipped, for that affects the value of the service to the shipper, and within certain limits it is not only proper but necessary that the carrier should consider the value of the article offered for transportation. Graniteville Mfg. Co. v. Director General, 87 I. C. C. 541, 542.

ALL OTHER CITATIONS

Sunderland Bros. Co .v. C. & N. W. Ry. Co., Unrep. Op. 445; Post Co. v. D. L. & W. Ry. Co., Unrep. Op. 425; Acme Cement Plaster Co. v. P. M. R. R. Co., Unrep. Op. 345; In the Matter of Released Rates, 13 I. C. C. 550, 564; Mountain Ice Co. v. D. L. & W. R. R. Co., 15 I. C. C. 305, 319; Darling & Co. v. B. & O. R. R. Co., 15 I. C. C. 79, 81; James & Abbott Co. v. B. & M. R. R., 17 I. C. C. 273, 274; League of Southern Idaho Commercial

Clubs v. O. S. L. R. R. Co., 18 I. C. C. 562, 564; In Re Reduced Rates on Returned Shipments, 19 I. C. C. 409, 418; National Hay Ass'n v. M. C. R. R. Co., 19 I. C. C. 34, 47; In Re Advances in Rates—Western Case, 20 I. C. C. 307, 355; Maritime Exchange v. P. R. R. Co., 21 I. C. C. 81, 85; In Re Investigation of Advances in Rates on Grain, 21 I. C. C. 22, 35; R. R. Com. of Kan. v. A. T. & S. F. Ry. Co., 22 I. C. C. 407, 410; Minneapolis Traffic Ass'n v. C. & N. W. Ry. Co., 23 I. C. C. 432, 437; In Re Transportation of Wool, Hides and Pelts, 23 I. C. C. 151, 159; Sunderland Brothers v. St. Louis & S. F. R. R. Co., 23 I. C. C. 259, 262; Bancroft-Whitney Co. v. C. N. O. & T. P. Ry. Co., 24 I. C. C. 557, 558; In re Advances on Sand and Gravel, 24 I. C. C. 249, 252; In Re Rates on Salt, 24 I. C. C. 192, 193; Bartlesville Salvage Co. v. M. K. & T. Ry. Co., 25 I. C. C. 672, 673; Philadelphia Veneer & Lumber Co. v. C. R. R. Co. of N. J., 25 I. C. C. 653, 655; Wichita Board of Trade v. A. T. & S. F. Ry. Co., 25 I. C. C. 625, 629; Michigan Copper & Brass Co. v. D. S. S. & A. Ry. Co., 25 I. C. C. 357, 363; Bernheim & Co. v. O. R. R. & N. Co. 251 I. C. C. 156, 158; National Lumber Exporters Assn. v. K. C. S. Ry., 25 I. C. C. 78, 81; Farrar Lumber Co. v. N. C. & St. L. Ry., 25 I. C. C. 22, 24, 25; Rates on Sand to Houston, Tex., 26 I. C. C. 677, 679; Waukesha Lime & Stone Co. v. C. M. & St. P. Ry. Co., 26 I. C. C. 515, 517; R. R. Commissioners of Montana v. N. P. Ry. Co., 26 I. C. C. 482, 483; Blue Grass Lumber Co. v. L. & N. R. R .Co., 26 I. C. C. 438, 444; Diamond Crystal Salt Co. v. M. C. R. R. Co., 26 I. C. C. 434, 437; Little Rock Chamber of Commerce v. St. L. I. M. & S. Ry. Co., 26 I. C. C. 341, 343; Sims v. M. & W. R. R. R., 26 I. C. C. 275, 277; Rates on Fuel Wood, Sawdust and Shavings, 26 I. C. C. 254, 255; Meridian Fertilizer Factory v. Vicksburg, Shreveport & P. Ry. Co., 26 I. C. C. 224; Lumber from Louisiana to North Atlantic Points, 26 I. C. C. 186, 191, 192; Rates on Sash, Doors and Blinds into Texas, 26 I. C. C. 116, 120; In re Rates on Empty Beer Packages, Returned, 26 I. C. C. 4, 5; Dixie Dairymen's Assn. v. Y. & M. V. R. R. Co., 27 I. C. C. 618; Lumber Rates from Memphis and Other Points to New Orleans, 27 I. C. C. 471, 480; Pittsburgh Steel Co .v. L. S. & M. S. Ry. Co., 27 I. C. C. 173, 186; Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co., 27 I. C. C. 165, 167; Producers Assn. of Connellsville v. B. & O. R. R. Co., 27 I. C. C. 125, 132, 147; Pulp and Paper Mfrs. Traffic Assn. v. C. M. & St. P. Ry. Co., 27 I. C. C. 83, 96; Boldt Co. v. C. R. I. & P. Ry. Co., 27 I. C. C. 11, 13; In re Express Rates, 28 I. C. C. 132, 138; Boston Chamber of Commerce v. A. T. & S. F. Ry. Co., 28 I. C. C. 230, 233; Brick Rates from Ohio Points to Huntington, W. Va., 28 I. C. C. 292, 297; Acme Portland Cement Co. v. Am. Exp. Co., 28 I. C. C. 316; Schmidt & Peters, Inc., v. A. T. & S. F. Ry. Co., 28 I. C. C. 376, 378; Scrap-Iron Rates Between Chicago, Ill., and Milwaukee, Wis., 28 I. C. C. 525; Balfour Quarry Co. v. S. Ry. Co., Unrep Op. A-138; Rulofson & Co. v. P. Co., Unrep. Op. A-153; Stevens, Fryberger & Co. v. C. B. & Q. R. R. Co., Unrep. Op. A-237; Puget Sound Iron & Steel Works v. C. R. I. & P. Ry. Co., Unrep. Op. A-249; Flynn v. C. I. & L. Ry. Co., Unrep. Op. A-257; Scully Syrup Co. v. P. R. R. Co., Unrep. Op. A-360; Colonial Salt Co. v. C. B. & Q. R. R. Co., 31 I. C. C. 559, 566; Chamber of Commerce of Macon v. C. N. O. & T. P. Ry. Co., 30 I. C. C. 477, 478; Meridian Fertilizer Factory v. L. & N. R. R. Co., 30 I. C. C. 494, 495; Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co., 30 I. C. C. 597, 600, 601; Molasses Rates to Knoxville, Tenn., 30 I. C. C. 613; Card Lumber Co. v. C. N. O. & T. P. Ry. Co., Unrep. Op. A-591; Alabama Chemical Co. v. M. & O. R. R. Co., Unrep. Op. A-602; R. R. Com. of California v. A. G. S. R. R. Co., 32 I. C. C. 17, 33; Nebraska State Ry. Com. v. C. V. Ry. Co., 32 I. C. C. 41, 47; Union Trim & Lumber Co. v. G. R. & I.Ry. Co., Unrep. Op. A-716; Sonken-Galamba Iron and Metal Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-718; Florida Cypress Co. v. L. & N. R. R. Co. Unrep. Op. A-725; Boise Lumber Co. v. P. & I. N. Ry., 33 I. C. C. 109, 115; Westbound Lake-and-Rail Knit Goods Commodity Rates, 32 I. C. C. 54, 57; Chamber of Commerce, Houston, Tex. v. I. & G. N. Ry. Co., 32 I. C. C. 247, 259; Underwood Veneer Co. v. A. A. R. R. Co., 32 I. C C. 265, 267; Swift & Co. v. S. A. L. Ry.. Unrep. Op. A-787; Sulzberger & Sons Co. v. S. P. Co., Unrep. Op. A-790; Mogul Motor Truck Co. v. C. B. & Q. R. R. Co.. Unrep. Op. A-797; Boardman Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-835; Peck & Co. v. N. Y. N. H. & H. R. R. Co., Unrep. Op. A-850; Newport Mining Co. v. C. & N. W. Ry., 33 I. C. C. 645, 646; Boise Lumber Co. (Ltd.) v. P. & I. N. Ry. Co., 33 I. C. C.

109, 115; Rates on Tomatoes from Jacksonville to Kansas City, 33 I. C. C. 145, 148; Anson, Kilkey & Hurd Co. v. S. P. Co., 33 I. C. C. 332, 333; Northern Pine Mfrs. Asso. v. C. & N. W. Ry. Co., 33 I. C. C. 360, 364; Minimum Charges on Bulky Articles, 33 I. C. C. 378, 381; Newport Mining Co. v. C. & N. W. Ry. Co., 33 I. C. C. 645, 656; The Cummins Amendment, 33 I. C. C. 682, 695; Brantley Co. v. A. C. L. R. R. Co., 34 I. C. C. 21, 23; Montrose & Delta Counties Freight Rate Asso. v. D. & R. G. R. R. Co., 34 I. C. C. 400; Pacific Creamery Co., 34 I. C. C. 586, 595; Coal and Coke Rates in the Southeast, 35 I. C. C., 187, 203; Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 222, 224, 230; 1915 Western Rate Advance Case, 35 I. C. C. 497, 563, 606, 632; Straw Rates from St. Louis to Anderson, Ind., 36 I. C. C. 30, 33; Iowa Railroad Commissioners v. A. T. & S. F. Ry. Co., 36 I. C. C. 79, 83; Midcontinent Oil Rates, 36 I. C. C. 109, 128; Classification of Chairs, 36 I. C. C. 243, 245; Excelsior from St. Paul, Minn., 36 I. C. C. 349, 354; Carroll v. G. N. Ry. Co., Unrep. Op. 2109; Cairo Milling Co. v. M. & O. R. R. Co., Unrep. Op. 2119; Bartledes Seed Co. v. A. T. & S. F. Ry. Co., Unrep. Op. 2152; Mengel & Bro. Co. v. B. & O. R. R. Co., Unrep. Op. 2166; Centennial School Supply Co. v. C. I. & S. R. R. Co., Unrep. Op. 2206; Official Classification Ratings, 37 I. C. C. 166, 170, 188; Drake Marble & Tile Co. v. N. P. Ry. Co., 37 I. C. C. 512, 515; Brown-Roberts Hdwe. & Supply Co. v. A. & V. Ry. Co., 37 I. C. C. 671, 673; Eagle Ice Co. v. C. M. & St. P. Ry. Co., 37 I. C. C. 396, 397; Stone from Illinois Points, 38 I. C. C. 389, 390; Beekman Sawmill Co. v. St. L. I. M. & S. Ry. Co., 39 I. C. C. 215, 216; Bibb Brick Co. v. C. of G. Ry. Co., 39 I. C. C. 625, 626; National Society of Record Assos. v. A. & R. R. R. Co., 40 I. C. C. 347, 352, 353, 356; Nashville Tie Co. v. L. & N. R. R. Co., 40 I. C. C. 377, 379; Hydraulic-Press Brick Co. v. P. Co., 40 I. C. C. 669, 672; Tennessee Copper Co. v. S. Ry. Co., 41 I. C. C. 336, 343; Sulphuric Acid from New Orleans, La., 42 I. C. C. 200, 205; Champion Fibre Co. v. S. Ry. Co., 42 I. C. C. 311; Illinois Steel Co. v. C. & N. W. Ry. Co., 42 I. C. C. 383; Export Grain Storage Charges, 42 I. C. C. 530, 538; Du Pont de Nemours Powder Co. v. P. & R. Ry. Co., 43 I. C. C. 1, 2, 3; Molding Sand to Nashville, Tenn., 43 I. C. C. 108, 110; Western Trunk Line Rate Increases, 43 I. C. C. 481, 484; Cement-Plaster from Plasterco, Tex., 43 I. C. C. 615, 617; Pierce Oil Corp. v. M. K. & T. Ry., 44 I. C. C. 279, 283; Drewes Sugar Co. v. S. P. Ry., 44 I. C. C. 533, 539; Aluminum Mfg. Co. v. A. T. & S. F. Ry., 44 I. C. C. 562, 563; Silk Asso. of America v. P. R. R., 44 I. C. C. 578, 580; Silk Asso. of America v. P. R. R., 44 I. C. C. 578, 581; The Alaska Investigation, 44 I. C. C. 680, 691; Baltimore Chamber of Commerce v. B. O. R. R., 45 I. C. C. 40, 52; Harison Bros. & Co. v. B. & O. R. R., 45 I. C. C. 85; Wichita Traffic Bureau v. A. T. & S. F. Ry., 45 I. C. C. 143, 145; Wing Seed Co. v. B. & O. R. R., 45 I. C. C. 160; Coca-Cola Co. v. A. T. & S. F. Ry., 45 I. C. C. 461, 462; Coca-Cola Co. v. A. T. & S. F. Ry., 45 I. C. C. 461, 464; Great Western Sand & Gravel Co. v. C. M. & St. P. Ry., 45 I. C. C. 529, 530; Daugherty McKey & Co. v. A. C. L. R. R., 45 I. C. C. 535, 536; Sall Mountain Co. v. Southern S. S. Co., 45 I. C. C. 573, 574; Bituminous Coal to C. F. A. Teritory, 46 I. C. C. 66, 90; Lewis Co. v. L. & B. R. R. R., 47 I. C. C. 79, 80; California Pine Box & Lumber Co. v. S. P. Co., 47 I. C. C. 372, 376; American Glue Co. v. B. & M. R. R., 48 I. C. C. 19; Oriental Textile Mills v. A. & V. Ry., 48 I. C. C. 31, 32; Western Cement Rates, 48 I. C. C. 201, 230; West Virginia Rail Co. v. C. & O. Ry., 48 I. C. C. 600, 602; Montgomery, Ala., Jackson, Miss. Grain Products, 48 I. C. C. 615, 617; Eastbound Transcontinental Canned Goods (No. 2), 50 I. C. C. 62, 66; Monarch Paint Co. v. C. B. & Q. R. R., 49 I. C. C. 367, 368; Morava Construction Co. v. A. T. & S. F. R. R., 49 I. C. C. 534, 537; National Confectioners' Asso. v. A. & R. R. R., 49 I. C. C. 566, 579; State of Marylyand v. B. C. & A. Ry., 49 I. C. C. 681, 689; Merrell-Soule Co. v. B. & O. R. R., 49 I. C. C. 733, 735; Sisal from New Orleans, La., 50 I. C. C. 13, 15; Meridian Fertilizer Factory v. B. R. R. & C. Co., 50 I. C. C. 379, 383; Ash Products Co. v. V. R. R., 50 I. C. C. 283, 284; Knopke Bros. v. C. & A. R. R., 50 I. C. C. 465, 467; Independent Cooperative Lumber Co. v. L. W. R. R., 51 I. C. C. 557, 559; Memphis Frt. Bureau v. C. & O. Ry., 51 I. C. C. 731, 733; Clark-Davis Coal Co. v. Director General, 53 I. C. C. 357, 359; Consolidated Classification Case, 54 I. C. C. 1, 32; Inland Steel Co. v. Director General, 55 I. C. C. 462, 466; Pure Oil Co. v. Director General, 56 I. C. C. 218, 222, 223; National Council Farmers' Asso v. Director General, 56 I. C. C. 339, 409;

Illinois Coal Traffic Bureau v. Director General, 55 I. C. C. 426 429; Anaconda Copper Mining Co. v. Director General, 57 I. C. C. 723, 731; Silica Sand Products Assn. v. Director General 58 I. C. C. 459, 551; Live Poultry & Dairy Shippers' Asso. v. Director General, as Agent, 60 I. C. C. 284, 286; Lafayette Gravel Co. v. D. & E. I. R. R. Co., 62 I. C. C. 729, 731; Link Belt Co. and Diamond Chain & M. F. G. Co. v. P. C. C. & St. L R. R., 64 I. C. C. 195, 196; Reservoir Heights Stock Ranch v. Director General, as Agent, 64 I. C. C. 57, 58; Rates on Grain, Grain Products and Hay. 64 I. C. C. 85, 89, 91; Nat'l Paving Brick Mfrs. Asso. v. A. & V. Ry. Co., 68 I. C. C. 213, 221, 238; Amalgamated Sugar Co. v. Director General, as Agent, 68 I. C. C. 328, 329; Reduced Rates, 1922, 68 I. C. C. 676, 734; Nat'l Asso. Waste Materials Dealers v. A. A. R. R. Co., 68 I. C. C. 748, 751, 752; Ohio Box Board Co. v. Director General, as Agent, 74 I. C. C. 129; Kansas City Hay Dealers' Asso. v. A. T. & S. F. Ry. Co., 74 I. C. C. 352, 354; Steel & Tube Co. of America v. Director General, as Agent, 74 I. C. C. 689, 690; American Woolen Co. v. Director General, 78 I. C. C. 416, 419; Kellogg & Sons v. D., L. & W. R. R. Co., 77 I. C. C. 249, 250; Waste Resinous Wood, 77 I. C. C. 448, 450; Memphis-Southwestern Investigation, 77 I. C. C. 473, 558, 569; Lissberger & Co. v. P. R. R. Co., 78 I. C. C. 469, 470; French Battery & Carbon Co. v. C. & N. W. Ry. Co., 80 I. C. C., 344, 346; General Motors Corp. v. Director General, as Agent, 83 I. C. C. 479, 480.

§62. Value of service.

See Supra §45; Advanced Rates §6 (6); Reasonableness of Rates §39.

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(a) Charges for transportation service should have reasonable relation to cost of production and to the value of the service to the producer and shipper, but should not be so low on any as to impose a burden on other traffic. In the Matter of Alleged Excessive Freight Rates and Charges on Food Products. 3 I. C. C. 93, 104.

(b) If the rate is so high as to yield a large profit to a carrier and to deprive its patrons of any profit and make their business ruinous, then the interests of its patrons and the general public interests as well require the carrier to remit a portion of its profits, and accept a rate more equitable both to the carrier and patron. This is indispensable to make a rate reasonable and just. Delaware State Grange v. N. Y. P. & N. R. Co., 3 I. C. C. 554, 562.

(c) Where the market price yields but a scant return for the labor and expense of production, the cost of transportation needs to be as moderate as may be consistent with justice to the carrier. A. S. Newland v. Northern Pacific R. R. Co., et al, 6 I. C. C. 131.

(d) Fairness to the shipper requires that under no circumstances should he be forced to pay a rate greater than the value of the service rendered to him by the carrier, and this involves a determination of the value to him individually of the carriage and also of the cost to the carrier of the particular carriage. Society of American Florists and Ornamental Agriculturists v. United States Express Company, 12 I. C. C. 121, 126.

(e) Carriers may not establish prohibitive rates on any commodity, on the ground that it is not desirable traffic. Poor Grain Co. v. C. B. & Q. R. Co., 12 I. C. C. 418.

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(f) The doctrine however, of charging what the traffic will bear is not accepted by the Commission. In Re Transportation of Wool, Hides and Pelts, 23 I. C. C. 151, 156.

(g) Where bare expenses are covered by the rate and an increase would kill the traffic, commercial necessities may make the rate the best paying rate on the commodity which the carriers can obtain. 1915 Western Rate Advance Case, 35 I. C. C .497, 562.

(h) The value of the service is generally regarded as the most important factor in fixing rates. It furnishes theoretically, at least, a foundation for an equitable apportionment that takes into account all interests, those of the carriers, the owners of the property carried, and the public, as well as the dissimilarities of merchandise. The value of the service to a shipper in a general sense is the ability to reach a market and make his commodity a subject of commerce. Allegheny Ore & Iron Co. v. C. & O., 53 I. C. C. 415, 418.

(i) On each raw material the freight charge must be properly apportioned to the service performed. Trunk Line and

Ex Lake iron ore rates 69 I. C. C. 589 601.

(j) The Commission is to administer, and, as far as possible, give force and life to all the provisions of the Act. Section 1 requires that no more than just and reasonable rates for transportation be exacted, and in determining what is just and reasonable it has always been recognized that, among other factors, not only the cost of the service, but its value to the user, must be considered. Public Utilities Commission of Kansas v. A. T. & S. F. R. Co., 83 I. C. C. 105, 108.

ALL OTHER CITATIONS

Memphis Cotton Oil Co. v. I. C. R. R. Co., 17 I. C. C. 313, 318; National Hay Ass'n. v. M. C. R. R. Co., 19 I. C. C. 34, 47; Bituminous Coal Operators v. P. R. R. Co., 23 I. C. C. 385, 389; Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co., 24 I. C. C. 55, 71; New England Investigation, 27 I. C. C. 560, 571; Union Tanning Co. v. S. Ry. Co., 26 I. C. C. 159, 164; Pittsburgh Steel Co. v. L. S. & M. S. Ry. Co., 27 I. C. C. 173, 185; Coke Producers' Asso. of Connelsville v. B. & O. R. R. Co., 27 I. C. C. 125, 132; S. P. Co. v. U. S., 197 Fed. 167, 171; Scrap-Iron Rates Between Duluth and Chicago, 28 I. C. C. 467, 468; National Syrup Co. v. C. & N. W. Ry. Co., 28 I. C. C. 673, 674; Export Rates on Grain and Grain Products, 31 I. C. C. 617, 618; Northbound Rates on Hardwood, 32 I. C. C. 521, 528; American Round Bale Press Co. v. A. T. & S. F. Ry. Co., 32 I. C. C. 458, 466; Boise Lumber Co. (Ltd.) v. P. & I. N. Ry. Co., 33 I. C. C. 109, 114; Rates for Transportation of Anthracite Coal, 35 I C. C. 220, 222; Iowa Railroad Commissioners v. A. T. & S. F. Ry. Co., 36 I. C. C. 79, 84; New England Milk Case, 40 I. C. C. 699, 712, 720; Private Wire Contracts, 50 I. C. C. 731, 751; Helvetia Milk Condensing Co. v. A. & V. Ry., 51 I. C. C. 624; Rates on Grain, Grain Products and Hay, 64 I. C. C. 85, 98; Export Bill of Lading, 64 I. C. C. 347, 354; Utah State Automobile Association v. A. T. & S. F. Ry., 66 I. C. C. 8, 17; National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co., 68 I. C. C. 213, 238, 245, 246; Peninsular Portland Cement Co. v. Director General, as Agent, 73 I. C. C. 542; Penick & Ford v. Director General, as Agent, 80 I. C. C. 152, 156; Mid-Continent Equip. & Mach. Co. v. M. S. R. R. Co., 83 I. C. C. 393, 398.

§63. Volume of Traffic.

See Advanced Rates §5 (1½) §18 (3); Classification §4, §5; Reasonableness of Rates §10; Train Load Rates.

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(a) Although the traffic to Omaha from St. Louis, in relation to that to Lincoln, is much the largest, and upon a comparison of volume simply the expense of handling the Lincoln business may be two-and-three-fourths times that of handling the Omaha business, yet it is obvious that in such a matter many other things besides the mere volume of business must beconsidered, including the comparative length of the two pieces of road, the grades, crossings and bridges, and interest upon the cost, the facilities with which trains may be handled, and many other matters fairly material to render such a comparison useful. Lincoln Board of Trade v. Missouri Pac. R. Co., 2 I. C. R. 98.

(b) In the carriage of great staples, which supply an enormous business and which in market value and actual cost of transportation are among the cheapest articles of commerce, rates yielding only moderate profit to the carrier are both necessary and justifiable, and where the carriers frequently put in force and continue for considerable periods of time tariffs of rates and charges, it is a fair inference that such rates and charges are profitable. Rates and Charges on Food Products V. 3, I. C. R. 93.

(c) Relative quantity of freight shipped by different persons does not differentiate the service performed by common carrier. Kingsley v. Buffalo, N. Y. & Pa. R. Co., 3 I. C. R. 318.

(d) Defendants established rates on "ex-lake" grain from Buffalo, N. Y. to New York and Philadelphia, and points taking New York and Philadelphia rates, which were lower on so-called cargo lots of 10,000 bushels of oats and 8,000 bushels of other grain than on shipments of oats and such other grain in carload lots, but afterwards modified their tariffs so that, with few exceptions, the lower rates for cargo lots were restricted to export shipments. Such modification of tariffs removed the principal grievance complained of, and no evidence was offered concerning rates on shipments of grain for export. HELD, That the principle involved under lower rates for cargo or trainload quantities than for carload

shipments, whether for export or domestic use, violates the rule of equality and tends to defeat its just and wholesome purpose; and such purpose is not fully accomplished by making all cargo shippers pay the same rate and charging all carload shippers alike. That defendants should reconsider their grain tariffs with a view to amendment thereof in accordance with the opinion herein expressed, and that the case be held open for such further actions as may be deemed appropriate. Paine Brothers & Co. v. Lehigh Valley R. Co., 7 I. C. C. 218.

(e) In the carriage of great staples, which supply enormous business, and which in market value and actual cost of transportation are among the cheapest articles of commerce, rates yielding only moderate profit to the carriers are both necessary and justifiable; and although the defendant carriers may be at some greater expense to handle and transport hay than some other articles in the same freight classification, the character, value, volume, and use of that commodity are such as to require relatively low charges for its carriage. National Hay Asso. v. Lake Shore & Michigan S. R. Co., 9 I. C. C. 264.

(ea) If carriers are allowed to make differences in rates to equalize differences in the cost of transportation, and see fit to do so regardless of the effect upon shippers and localities, the ultimate result must be that the bulk of the traffic will be handled by comparatively few shippers and from and to large centers. The Commission can not believe such a result was either intended or desired by the framers of the Act. Glade Coal Co. v. B. & O. R. Co., 10 I. C. C. 226, 252.

(f) No rule is more firmly grounded in reason or more universally recognized by carriers than that the greater the tonnage of the article of traffic the lower should be the rate, and the defendants have made yellow pine lumber an exception to this rule. Central Yellow Pine Asso. v. Illinois C. B. Co., 10 I. C. C. 505.

(g) No rule is more firmly grounded in reason or more universally recognized by carriers than that the greater the tonnage of an article of traffic the lower should be the rate. Central Yellow Pine Asso. v. I. C. R. R., 10 I. C. C. 505, 546.

(h) Lumber rates should be relatively low, in view of the fact that it is inexpensive freight and but few other commodities furnish to carriers so large a tonnage; the lumber business is constant, yielding carriers revenue all the year; no special equipment is constructed or furnished for its carriage; it is loaded by shippers and unloaded by consignees; and where open cars are furnished the shipper is required, at considerable expense, to equip them so as to protect the lumber and the train; and there is small risk, and in case of accident the damage is insignificant. Central Yellow Pine Asso. v. Illinois C. B. Co., 10 I. C. C. 505.

(i) No rule is more firmly grounded than that the greater the tonnage of an article transported, the lower should be the rate. Tift v. Southern Ry., 10 I. C. C. 548, 583.

(j) A lower rate for a train load than for a carload is regarded unlawful; because it is in effect allowing lower rates upon a condition which only a few shippers can comply with, and consequently is an injustice to those unable to ship the required quantity. Planters Compress Co. v. C. C. C. & St. L. R. Co., 11 I. C. C. 382, 403.

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(k) Volume of traffic is considered in fixing passenger fares. Merchants & Mfrs. Ass'n. of Baltimore v. A. C. R. R. Co., 23 I. C. C. 129.

(l) Ackworth's formula that "the heavier the traffic, the lower (profits remaining equal) must be the rate," as an abstract principle in transportation economics may be sound. But it by no means follows that because the tonnage of a particular commodity, like wheat, is doubled, or even tripled, a corresponding increase in profit accrues upon the handling of that particular article. Railroad Corms. of Montana v. B. A. & P. Ry Co., 31 I. C. C. 641, 650.

(m) The Commission has declined in notable instances to allow economics of carriage to control in the matter of setting preferential rates. It has without exception refused not only to establish, but even to permit the establishment of rates available only for the shipment of a trainload. Though such shipment could be transported at a minimum of expense per unit of weight and carriers could well afford to make lower rates upon it, yet those rates would so discriminate in favor of the large shippers and tend to concentrate the business in their hands that proper

considerations have compelled disapproval. Logically extended, these considerations would lead to condemnation of the carload rates, but there are two distinctions that have resulted in a different disposition. The first is that the Commission, upon its constitution, found carload rates already an intregal part of the American rate structure; the second is that the shipment unit of these rates is of a size which a great part of the country's shippers is prepared to make, so that their discriminatory effect and tendency to concentrate business is comparatively slight. Consequently the Commission has in a multitude of cases permitted the establishment of such rates. American Round Bales Press Co. v. A. T. & S. F. Ry. Co., 32 I. C. C. 458, 463.

(n) It cannot be said that one who invents a machine which results in giving a greater density to a commodity is ipso facto entitled to a lower freight rate on the commodity, especially when the granting of the advantage would tend to disrupt a long-established system of production. Am. Round Bale Press Co. v. A. T. & S. F Ry. Co., 32 I. C. C. 458, 468.

(o) The mere fact that certain traffic is hauled in trainload lots does not authorize the application of a basis of rates different from that applied to trafic of the same kind in single carloads. 1915 Western Rate Advance Case, 37 I. C. C. 114, 155.

(p) The so-called wholesale theory has no proper place in the rates of common carriers; and in so far as charges for private-wire service are based upon this theory, the Commission finds that the classification is not just and reasonable. Private Wire Contracts, 50 I. C. C. 731, 757.

(q) Consideration must be given to the value of the service. If some commodities and the industries that use them can well stand rates that yield liberal profit to the carrier it can afford to transport at low rates other commodities that could not have moved except under low rates, and so the commerce and welfare of the country is promoted, as it must be, by the widest possible general diffusion and exchange of the products of the mine, the forest, the farm, the mill, the furnace, and the factory. Allegheny Ore & Iron Co. v. C. & O., 53 I. C. C. 415, 418.

(r) Volume of traffic is an important element in the determination of reasonable rates, but that element is only one of the many that must be considered. Southport Mill (Ltd.) v. Director General, 55 I. C. C. 154, 162.

(s) Differences in tonnage may in part be the product of the rate structure itself. Klamath County Chamber of Commerce v. S. P. Co., 74 I. C. C. 207, 214.

(t) The live-stock industry is not only an important but an essential industry in western territory and one which furnishes, both directly and indirectly, an immense volume of traffic to the carriers. South Dakota R. R. Commissioners v. C. & N. W. Ry. Co., 77 I. C. C. 451, 459.

(u) The commission has consistently disapproved maintenance of rates on traffic hauled in trainload lots different from that applied to traffic of same kind when shipped in single carloads. 1915 Western Rate Advance Case. Part II, 37 I. C. C., 114, 155, and cases there cited. Express Rates 1922, 83 I. C. C., 606, 671.

(v) It frequently occurs, when entering territory of sparse traffic density, that ton mile earnings diminish less rapidly than would be the case through territory of more uniform density. Circumstances may even justify no decrease whatever in ton mile earnings with increase of haul. Lake Dock Coal Case, 89 I. C. C. 170, 195.

ALL OTHER CITATIONS

Oregon & Washington Lumber Co. v. U. P. R. R. Co., 14 I. C. C. 18; Chicago Lumber & Coal Co. v. Tioga Southeastern Ry. Co., 16 I. C. C. 323, 328; Ozark Fruit Growers' Ass'n. v. St. L. & S. F. R. Co., 16 I. C. C. 134, 139; Railroad Commission of Wisconsin v. C. & N. W. Ry. Co., 16 I. C. C. 85, 90; Receivers & Shippers' Ass'n. of Cincinnati v. C. N. O. & T. P. Ry. Co., 18 I. C. C. 440, 458; Hydraulic Press Brick Co. v. M. & O. R. R. Co., 19 I. C. C. 530, 531; Commercial Club of Omaha v. B. & O. R. R. Co., 19 I. C. C. 397, 402; Commercial Club of Salt Lake City v. A. T. & S. F. Ry. Co. 19 I. C. C. 218, 223; National Hay Ass'n. v. M. C. R. R. Co., 19 I. C. C. 34, 47; Duncan & Co. v. N. C. & St. L. Ry., 21 I. C. C. 186, 193; In Re Advances on Flaxseed, 23 I. C. C. 272, 275; Rickards v. A. C. L. R. R. Co., 23 I. C. C. 239,

240; In Re Transportation of Wool, Hides and Pelts, 23 I. C. C. 151, 157, 166, 167; In Re Advances on Lemons, 23 I. C. C. 27, 28; Bancroft-Whitney Co. v. C. N. O. & T. P. Ry. Co., 24 I. C. C. 557, 558; Lumbermen's Exchange of St. Louis v. A. & S. R. R. R. Co., 24 I. C. C. 220, 225; Consolidated Fuel Co. v. A. T. & S. F. Ry. Co., 24 I. C. C. 213, 215; Philadelphia Veneer & Lumber Co. v. C. R. R. Co. of N. J., 25 I. C. C. 653, 654; In Re Advances on Flaxseed, 25 I. C. C. 337, 341. See also Western Classification Case, 25 I. C. C. 442, 473; Wharton Steel Co. v. D. L. & W. R. R. Co., 25 I. C. C. 303, 308; North Fork Cannel Coal Co. v. A. A. R. R. Co., 25 I. C. C. 241, 244; 245; In Re Advances on Potatoes, 25 I. C. C. 159, 163; In Re Advances on Live Stock, 25 I. C. C. 63, 64; Capital Electric Company v. B. & O. C. T. R. R. Co., 26 I. C. C. 472, 474; Meridian Fertilizer Factory v. T. & P. Ry. Co., 26 I. C. C. 351, 353; Tone Bros. v. I. C. R. R. Co., 26 I. C. C. 279, 281; Union Tanning Co. v. S. Ry. Co., 26 I. C. C. 159, 164; Hormel & Co. v. C. M. & St. P. Ry. Co., 26 I. C. C. 112, 115; Louisville & Nashville Railroad Coal and Coke Rates, 26 I. C. C. 20, 31; State of Kansas v. A. T. & S. F. Ry. Co., 27 I. C. C. 673, 690; New England Investigation, 27 I. C. C. 560, 617; Lumber Rates from Mempihs and Other Points to New Orleans, 27 I. C. C. 471, 481; Commercial Club of Omaha v. A. & S. R. Ry. Co., 27 I. C. C. 302, 317; Pittsburgh Steel Co. v. L. S. & M. S. Ry. Co., 27 I. C. C. 173, 179; Wisconsin Steel Co. v. P & L. E. R. R. Co., 27 I. C. C. 152, 164; Rates on Plaster and Gypsum Rock, 27 I. C. C. 67, 68; The Mississippi River Case, 28 I. C. C. 47, 55, 59; In Re Weighing of Freight by Carriers, 28 I. C. C. 7, 24; Rulofson Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-81; Commercial Club of Superior v. G. N. Ry. Co., 24 I. C. C. 96, 104; In Re Advances on Cooperage, 24 I. C. C. 656, 659; Woodward-Bennett Co. v. S. P. L. A. & S. L. Ry. Co., 29 I. C. C. 664, 665, 666; Gottron Bros. Co. v. G. & W. R. R. Co., 28 I. C. C. 38, 43; Mississippi River Case, 28 I. C. C. 47, 55; Taylor Dry Goods Co. v. M. P. Ry. Co., 28 I. C. C. 205, 208, 209; German Kali Works, Inc., v. A. T. & S. F. Ry. Co., 28 I. C. C. 223, 224; Sand-Stone, Minn.-Missouri River Building Stone Rates, 28 I. C. C. 269, 271; Schmidt & Peters, Inc., v. A. T. & S. F. Ry. Co., 28 I. C. C. 376, 377; Hull Vehicle Co. v. S. Ry. Co., 28 I. C. C. 619, 620; Marshall Oil Co. v. C. G. W. R. R. Co., 28 I. C. C. 707, 708; Nomsen Co. v. P. C. & St. L. Ry. Co., Unrep. Op. A-136; Board of R. R. Com'rs. of Mont. v. N. P. Ry. Co. Unrep. A-157; Heileman Brewing Co. v. C. B. & Q. R. R. Co., Unrep. A-233; Rates to North Carolina Points, 29 I. C. C. 550, 556, 557; Lumber Rates from the Southwest to Points North, 29 I. C. C. 1, 8; Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co., 29 I. C. C. 428, 437; Springfield Traffic Bureau v. St. L. & S. F. R. R. Co., 29 I. C. C. 600, 603; Hughes Creek Coal Co. v. K. & M. Ry., 29 I. C. C. 671, 674; National Petroleum Ass'n. v. A. T. & S. F. Ry. Co., Unrep. Op. A-410; Miller Brothers v. M. P. Ry. Co., Unrep. Op. A-413; Colonial Salt Co. v. C. B. & Q. R. R. Co., 31 I. C. C. 559, 567; Fourth Section Violations in the Southeast, 30 I. C. C. 153, 175; Malt Rates to Texas Points, 30 I. C. C. 385, 387; Lake Superior Paper Co., Ltd., v. D. S. S. & A. Ry. Co., 30 I. C. C. 403, 408, 411; New York Shippers' Protective Asso. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 437, 440; Chamber of Commerce of Macon v. C. N. O. & T. P. Ry. Co., 30 I. C. C. 477, 478; Decker & Sons v. C. M. & St. P. Ry. Co., 30 I. C. C. 547, 548; Low Moor Iron Co. of Virginia v. C. & O. Ry. Co., 30 I. C. C. 615, 618; Rates on Tropical Fruits from Gulf Ports, 30 I. C. C. 621, 627; Minneapolis Civic & Commerce Asso. v. C. M. & St. P. Ry. Co., 30 I. C. C. 663, 665; In Re Separation of Operating Expenses, 30 I. C. C. 676, 681; Alabama Chemical Co. v. M. & O. R. R. Co., Unrep. Op. A-602; Curry & Whyte Co. v. G. N. Ry. Co., Unrep. Op. A-645; Nebraska State Ry. Com. v. C. V. Ry. Co., 32 I. C. C. 41, 46; Underwood Veneer Co. v. A. A. R. R. Co., 32 I. C. C. 265, 267; Decatur Nav. Co. v. L. & N. R. R. Co., 31 I. C. C. 281, 285; Watson v. K. & T. Ry. Unrep. Op. A-689; Eastern Fruit Growers Asso. v. B. & O. R. R., 33 I. C. C. 343, 347; Lum. v. G. N. Ry., 33 I. C. C. 541, 546; R. R. Comm. of California v. A. G. S. R. R. Co., 32 I. C. C. 17, 25; Cement Rates from Points in Illinois, 32 I. C. C. 369, 372; Wesbound Transcontinental Rates on Buckwheat and Corn Flour, Unrep. Op. A-841; Valley Planning Mill Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-906; Glass Rates Between Stations in Louisiana, 33 I. C. C. 302, 304; Eastern Fruit Growers Asso. v. B. & O. R.

R. Co., 33 I. C. C. 343, 347; National Asso. of Ice Cream Mfrs. v. Adams Exp. Co., 33 I. C. C. 411, 413; Commutation Fares to and from Washington, D. C., 33 I. C. C. 428, 437; Commodity Rates to Pacific Coast Terminals, 34 I. C. C. 13, 17; Farmers' Cooperative Asso. v. C. B. & Q. R. R. Co., 34 I. C. C. 60, 62; Lumber Rates from Points in Arkansas, 34 I. C. C. 102, 104, 105; Pennsylvania Paraffine Works v. P. R. R. Co., 34 I. C. C., 179, 180; Eastbound Transcontinental Cotton Rates, 34 I. C. C. 248, 250; The Iron and Steel Cases, 36 I. C. C. 86, 94; Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 261; 1915 Western Rate Advance Case, 35 I. C. C. 497, 611; The Iron and Steel Cases, 36 I. C. C. 86, 94; Excelsior from St. Paul, Minn., 36 I. C. C. 349, 356; Eastern Live-Stock Case, 36 I. C. C. 675, 682; Grain from Manitowoc, Wis., 37 I. C. C. 549, 551; Wells Lum. Co. v. C. M. & St. P. Ry., 38 I. C. C. 464, 465; Lander County Live-Stock Co. v. S. P. Co., Unrep. Op. 2203; Western Passenger Fares, 37 I. C. C. 1, 34, 44; Official Classification Ratings, 37 I. C. C. 166, 171, 186; Corp. Comm. of Oklahoma v. A. T. & S. F. Ry. Co., 38 I. C. C. 33, 34; Balt. Chamber of Commerce v. B. & O. R. R. Co., 38 I. C. C. 326, 327; Wells Lumber Co. v. C. M. & St. P. Ry. Co., 38 I. C. C. 464, 465; Chamber of Commerce of Washington, D. C., v. P. R. R. Co., 38 I. C. C. 593, 596; Capital City Oil Co. v. Y. & M. V. R. R. Co., 39 I. C. C. 141, 145; Sioux City Live Stock Exchange v. C., St. P., M. & O. Ry. Co., 40 I. C. C. 418, 423; Lumber Rates from Helena, Ark., and Other Points, 41 I. C. C. 565, 573; Miller & Lux v. S. P. Co., 41 I. C. C. 617, 619; New England Plaster, 41 I. C. C. 687, 702; Coal from Pennsylvania Mines 42 I. C. C. 206 211; Lachman & Co. v. S. P. Co., 42 I. C. C. 440, 441; Southeastern Lumber, 42 I. C. C. 548, 556; Mebius & Drescher Co. v. C. C. T. Co., 42 I. C. C. 599, 601; Utah Idaho Millers & Grain Dealers Asso. v. D. & R. G. R. R. Co., 42 I. C. C. 648, 649; Diamond Lumber Co. v. C., M. & St. P. Ry. Co., 43 I. C. C. 65, 66; Boston-New York Proportional Rates, No. 2, 43 I. C. C. 203, 208; American National Live Stock Asso. v. O. S. L. R. R. Co., 43 I. C. C. 247, 248; Memphis Merchants Exchange v. I. C. R. R. C., 378, 380; National Poultry, Butter & Eggs Asso. v. B. & O. S. W. R. R. Co., 43 I. C. C. 392, 399; Business Men's League I. C. C. 308, 313; Wisconsin Rate Cases, of St. Louis v. A., T. & S. F. Ry., 44 44 I. C. C. 602, 626; Milk and Cream Rates to New York City, 45 I. C. C. 412, 417, 428; R. R. Comm. of Ala. v. C. of Ga. Ry., 45 I. C. C. 516, 520; Hopkins v. Ocean S. S. Co. of Savannah, 45 I. C. C. 568, 570; Commercial Club of Mitchell, S. Dak. v. A. & W. Ry., 46 I. C. C. 1, 9, 10; R. R. Com'rs. of Iowa v. A. T. & S. F. Ry., 46 I. C. C. 63, 65; Bituminous Coal to C. F. A. Territory, 46 I. C. C. 66, 105; Transcontinental Rates, 46 I. C. C. 236, 266; Direct Navigation Co., 46 I. C. C. 378, 379; Crown Cork & Seal Co. v. P. R. R., 46 I. C. C. 415, 416; Himmelberger-Harrison Lumber Co. v. St. L. & S. F. R. R., 46 I. C. C. 480, 485; Vulcanite, Portland Cement Co. v. C. R. R. Co. of N. J. 46 I. C. C. 483, S. F. Ry., 46 I. C. C. 495, 498; C. F. 485; Kanotex Refining Co. v. A. T. & A. Territory Milk and Cream Rates, 46 I. C. C. 601, 603; Western Pine Mfrs. Asso. v. C. I. & W. R. R., 46 I. C. C. 650, 652; Lewis Co. v. L. & B. R. R. R., 47 I. C. C. 79; Official Classification No. 44, 47 I. C. C. 91, 96; National Live Stock Exchange v. C. B. & Q. R. R., 47 I. C. C. 380, 385; Michigan Percentage Cases, 47 I. C. C. 409, 445; Western Cement Rates, 48 I. C. C. 201, 224; S. W. Class Case, 48 I. C. C. 379, 386, 388; Traffic Bureau of Knoxville, Tenn. v. B. & O. R. R., 49 I. C. C. 205, 217; Minneapolis Traffic Asso. v. C. B. & Q. R. R., 49 I. C. C. 308, 312; Kansas City Hay Dealers' Asso. v. C. R. I. & P. Ry., 49 I. C. C. 350; Proposed Increases in New England, 49 I. C. C. 421, 423, 434; Mayfield & Graves County Commercial Club v. I. C. R. R., 49 I. C. C. 521; National Confectioners' Asso. v. A. & R. R. R., 49 I. C. C. 566, 571; Newport News Shipbuilding & Dry Dock Co. v. P. R. R., 49 I. C. C. 622, 625; Private Wire Contracts, 50 I. C. C. 731, 758; Control of Water Carriers by Railroad Carriers, 51 I. C. C. 436, 437; Stein & Co. v. A. B. & A. Ry., 51 I. C. C. 533, 534; Goodyear Tire & Rubber Co. v. A. C. & Y. Ry. Co., 53 I. C. C. 389, 391; National Tube Co. v. Lake Terminal, 55 I. C. C. 469, 474; Memphis Southwestern Investigation, 55 I. C. C. 515, 536; Illinois Classification, 56 I. C. C. 202, 207; Brunswick-Balke-Collender Co. v. C. G. W., 56 I. C. C. 340, 342; Chamber of Commerce of Montgomery v. Director General, 57 I. C. C. 610, 619; Southport Mill (Ltd.) v. Director General, 55 I. C. C. 154, 161;

Perishable Freight Investigation, 56 I. C. C. 449, 458; Assets Realizing Mines Corp. v. A., T. & S. F. Ry. Co., 57 I. C. C. 39; United Verde Extension Mining Co. v. U. V. & P. Ry. Co., 57 I. C. C. 300, 302; Montgomery Chamber of Commerce v. Director General, 57 I. C. C. 610, 617; Wholesale Coal Trade Asso. v. Director General, as Agent, 58 I. C. C. 15, 22; Chicago Lake Shore & South Bend Ry. Co. v. Director General, 58 I. C. C. 135, 140; Live Stock Loading and Unloading Charges, 58 I. C. C. 164, 166; Du Pont de Nemours & Co., v. Director General, as Agent, 58 I. C. C. 427, 428; Tennessee Copper Co. v. Director General, as Agent, 59 I. C. C. 253, 257; Watson Co. v. Director General, 61 I. C. C. 719, 723; Galion Iron Works & Mfg. Co. v. Director General, as Agent, 60 I. C. C. 515, 517; Pillsbury Flour Mills Co. v. Director General, 64 I. C. C. 81; Rates on Grain, Grain Products and Hay, 64 I. C. C. 85, 89, 99; Rates to, from, and between Points South of Ohio River, 64 I. C. C. 306, 331; La Crosse Shippers' Asso. v. A. A. R. R. Co., 66 I. C. C. 371, 373; Du Pont de Nemours & Co. v. Director General, as Agent, 73 I. C. C. 129, 132; Bell & Zoller Coal Co. v. B. & O. S. W. R. R. Co., 74 I. C. C. 433, 442.

§64. Voluntary or Subsequent Reduction of Rate.

See Absorption of Charges §2; Advanced Rates §8 (2); Commodity Rates §4; Reasonableness of Rates §32½; Reparation §12, §16; Voluntary Rates.

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(a) A reduction in rates by a carrier is not per se evidence that the former rates were unreasonable, as such reduction may be accounted for because of a decrease in cost of transportation and an increase in the volume of traffic to which such rates apply. Loud v. South Carolina R. Co., 4 I. C. C. 205, 212.

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(b) It would be a manifestly harsh rule that would assume a rate now condemned as unreasonable to have been so for a period of two years, or that of the statute of limitations in the past as a basis for the payment of money by the carriers on past shipments, especially when no complaint had been made against them in that period. The law establishes that no such presumption nor is it a necessary sequence that the rate has been unreasonable for any period in the past. Neither does it seem that the bonafide action of the carriers in the necessary exercise of their judgment within reasonable limits should always be at their peril of liability for reparation for the difference between rates initiated upon their judgment and later changed upon the judgment of the Commission. The awarding of reparation by no means necessarily follows the reduction of a rate whether by the voluntary action of the carriers or by order of the Commission. Whatever may be the nature of the facts circumstances and conditions appearing in a particular case where reparation is involved, whether on account of excessive rates or unjust discrimination, there must be that degree of certainty and satisfactory conviction in the mind and judgment of the Commission as would be deemed necessary under the well established principles of law as a basis for a judgment in court. Anadarko Cotton Oil Co. v. A. T. & S. F. R. R. Co., 20 I. C. C. 43, 50, 51.

(c) The voluntary reduction of a rate is not of itself evidence of the unreasonableness of the rate so changed. When, however, a shipment for which no specific rate is in force moves under the so-called analogous article rule of the classification and as soon as practicable, after the defect is brought to the attention of the carrier, it establishes a lower rate than charged on such shipment, it is fair to assume that the rate so established and maintained affords just compensation to the carrier. Maxwell v. W. F. & N. W. Ry. Co., 20 I. C. C. 197, 198.

(d) A voluntary reduction in rates not satisfactory proof of the unreasonableness of the prior rate. National Refining Co. v. M. K. & T. Ry. Co., 23 I. C. C. 527, 530; Pierce v. P. & L. E. R. R., 23 I. C. C. 89, 91.

(e) Rates on logs from Facht, Calif., to Susanville, Calif., during Federal control, found not unreasonable or otherwise unlawful, except to extent they exceeded lower rate established subsequent to movement, upon which basis refund has already been made by the director general. Lassen Lumber & Box Co. v. Director General, as Agent, 73 I. C. C. 212.

(f) The existence of a lower rate to

nearby points and the subsequent establishment of that rate to the point under consideration do not, of themselves, warrant a condemnation of the rate charged. Hercules Powder Company v. A. T. & S. F. R. C., 81 I. C. C. 431, 432.

(g) The subsequent establishment of a lower rate is not equivalent to an admission by the carrier that the former rate was unreasonable. Midland Coal Co. v. C. R. I. & P. Ry., 87 I. C. C. 533, 534.

ALL OTHER CITATIONS

Alaska Lumber Co. v. G. N. Ry. Co., Unrep. Op. 564; Edison Portland Cement Co. v .D. L. & W. R. R. Co., Unrep. Op. 538; Godfrey & Sons v. N. Y. C. & H. R. R. R. Co., Unrep. Op. 503; Abeles & Co. v. St. L. S. W. Ry. Co., Unrep. Op. 326; Carstens Packing Co. v. M. K. & T. Ry. Co. of Tex., Unrep. Op. 323; Pabst Brewing Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 259; Hammond Packing Co. v. A. T. & S. F. Ry. Co., Unrep. Op. 120; Ottumwa Bridge Co. v. C. M. & St. P. Ry. Co., 14 I. C. C. 121, 125; Harlow Lumber Co. v. A. C. L. R. R. Co., 15 I. C. C. 501, 503; Commercial Coal Co. v. B. & O. R. R. Co., 15 I. C. C. 11, 14; Alphons Custodis Chimney Construction Co. v. S. Ry. Co., 16 I. C. C. 584, 586; Diehl v. C. M. & St. P. Ry. Co., 16 I. C. C. 190, 192; Armour Car Lines v. S. P. Co., 17 I. C. C. 461; Foster Lumber Co. v. G. C. & S. F. Ry. Co., 17 I. C. C. 385, 386; Stockyards Cotton & Linseed Meal Co v. M. K. & T. Ry. Co., 17 I. C. C. 295, 296; Kentucky Wagon Manufacturing Co. v. I. C. R. R. Co., 18 I. C. C. 360, 363; Coors v. S. P. Co., 18 I. C. C. 352, 353; Lamb Co. v. M. C. R. R. Co., 18 I. C. C. 279; Penn. Tobacco Co. v. Old Dominion S. S. Co., 18 I. C. C. 197, 199; Wabash Coating Mills v. Wabash R. R. Co., 18 I. C. C. 91; Pabst Brewing Co. v. C. M. & St. P. Ry. Co., 19 I. C. C. 584, 586; Ullman v. American Express Co., 19 I. C. C. 354, 355; Riverside Mills v. Ga. R. R. Co., 20 I. C. C. 423; Carstens Packing Co. v. S. P. Co., 20 I. C. C. 65, 166; American Cigar Co. v. P. & R. Ry. Co., 20 I. C. C. 81, 82; Independent Suply Co. v. C. & P. R. R. Co., 20 I. C. C. 66, 67; Riverside Mills v. G. R. R., 20 I. C. C. 423, 425; Steinfeld & Co. v. I. C. R. R. Co., 20 I. C. C. 12, 14; Roberts Cotton Oil Co. v. I. C. R. R. Co., 21 I. C. C. 248, 251; Victor Mfg. Co. v. S. Ry. Co., 21 I. C. C. 222, 226; Mountain Ice Co. v. D. L. & W. R. R. Co., 21 I. C. C. 45; Carter White Lead Co. v. N. & W. Ry. Co., 21 I. C. C. 41, 44; Fairmont Creamery Co. v. C. B. & Q. R. R. Co., 22 I. C. C. 252, 253; Portsmouth Steel Co. v. B. & O. R. R. Co., 23 I. C. C. 510, 511; Chamber of Commerce of Houston v. G. H. & S. A. Ry. Co., 23 I. C. C. 214, 217; Western Grain Products Co. v. P. M. R. R. Co., Unrep. Op. A-14; Bahrenburg Bros. & Co. v. A. C. L. R. R. Co., 24 I. C. C. 560, 565; Globe Milling Co. v. C. M. & St. P. Ry. Co., 24 I. C. C. 594, 597; Riverside Mills v. St. L. & S. F. R. R. Co., 24 I. C. C. 264; In Re Investigation and Suspension of Advances in Rates on Apples, 24 I. C. C. 38, 40; Coffins Box & Lumber Co. v. C. & N. W. Ry. Co., 25 I. C. C. 249, 250; Moore v. D. & G. R. R. Co., 25 I. C. C. 1, 4; Bernheim & Co. v. O. R. R. & N. Co., 25 I. C. C. 156, 158. See also Lewis v. C. B. & Q. R. R. Co., 25 I. C. C. 97, 99; Esson Granite Co. v. So. Ry. Co., 26 I. C. C. 449; Oklahoma Portland Cement Co. v. M. K. & T. Ry. Co., 27 I. C. C. 101, 104; Sheridan chamber of Commerce v. C. B. & Q. R. R. Co., 28 I. C. C. 250, 257; In Re Advances on Live Stock, 28 I. C. C. 332, 334; Atlanta Freight Bureau v. N. C. & St. L. Ry. Co., 29 I. C. C. 476, 484; National Petroleum Assn. v. A. T. & S. F. Ry. Co., Unrep. Op. A-405; Bayway Chemical Co. v. C. R. R. Co. of N. J., Unrep. Op. A-810; General Construction Co. v. A. T. & S. F. Ry. Co., Unrep. Op. A-812; Minnesota & Ontario Power Co. v. C. St. P. M. & O. Ry. Co., 39 I. C. C. 481, 482; American Refining Co. v. T. & P. Ry. Co., 39 I. C. C. 559 560; Chattanooga Sewer Pipe & Fire Brick Co. v. C. of G. Ry. Co., 39 I. C. C. 615; Forest Lumber Co. v .M. & K. R. R. Co., 39 I. C. C. 661, 663; Seidel Lumber Co. v. M. P. Ry. Co., 39 I. C. C. 670, 671; Mowry Co. v. N. Y., N. H. & H. R. R. Co., 40 I. C. C. 16; Pacific Coast-Southwest Lumber, 40 I. C. C. 387, 394; Inland Seed Co. v. O. W. R. R. & N. Co., 40 I. C. C. 517, 521; Western Chemical Mfg. Co. v. D. & R. R. Co., 40 I. C. C. 529, 530; Hungarian Milling & Flax Co. v. C. & E. I. R. A., 40 I. C. C. 610; Colorado Alfalfa Meal & Mfg. Co. v. M. P. Ry. Co., 41 I. C. C. 540, 543; Swift & Co. v. L. V. R. R. Co., 42 I. C. C. 47; Newport Sand Bank Co. v. C. & O. Ry. Co., 42 I. C. C. 51; Hallack & Howard Lumber Co. v. D. & R. G. R. R., 42 I. C. C. 591; Allen Mfg Co. v. L. & N. R. R. Co., 42 I. C. C. 254; Rosen-

blum v. N. Y., P. & N. R. R. Co., 43 I. C. C. 67, 68; Swift & Co. v. N. Y. C. R. R, 46 I. C. C. 356; Victor Chemical Works v. C. & E. I. R. R., 49 I. C. C. 599; Iola Cement Mills Traffic Asso. v. A. T. & S. F. Ry., 49 I. C. C. 609; Martin Brokerage Co. v. S. P. Ry., 51 I. C. C. 91; Winkle Terra Cotta Co v. Director General, 55 I. C. C. 172; Cosden Oil & Gas Co. v. Director General, as Agent, 59 I. C. C. 705; Ludlow Mfg. Association v. Director General, as Agent, 60 I. C. C. 441; Standard Oil Co. (Ky.) v. Director General, as Agent, 60 I. C. C. 449; Empire Cotton Co. v. Director General, as Agent, 60 I. C. C. 505; Proctor & Gamble Mfg. Co. v. Director General, as Agent, 60 I. C. C. 613; Old Dominion Co. v. Director General, 60 I. C. C. 44, 46; Empire Cotton Oil Co. v. Director General, 64 I. C. C. 71, 72; Best-Clymer Mfg. Co. v. L. & N. R. R. Co., 63 I. C. C. 207; West v. St. L. & S. F. Ry. Co., 64 I. C. C. 69; Union Traction Company of Indiana v. Director General, 66 I. C. C. 157, 158; Wofford Oil Co. v. Director General, 66 I. C. C. 509, 510; Victory Window Glass Co. v. A. T. & S. F. Ry. Co., 69 I. C. C. 51; Union Refining & Pipe Line Co. v. Director General, as Agent, 69 I. C. C. 79; Vickers Petroleum Company v. Director General, 69 I. C. C. 401; Grasseli Chemical Co. v. N. Y. C. R. R. Co., 69 I. C. C. 529, 530; Boston Woven Hose & Rubber Co. v. Director General, as Agent, 73 I. C. C. 13; Empire Refineries v. Director General, as Agent, 73 I. C. C. 221; Southern Cotton Oil Co. v. Director General, as Agent, 73 I. C. C. 372; Spinnler & Co. v. Director General, as Agent, 73 I. C. C. 611; Schultz & Co. v. Director General, as Agent, 73 I. C. C. 647; Du Pont de Nemours & Co. v. Director General, as Agent, 78 I. C. C. 12, 13; Cole Creamery Co. v. Director General, as Agent, 78 I. C. C. 91, 94; Magnolia Provision Co. v. Director General, as Agent, 78 I. C. C. 151, 153; California Packing Corp. v. Director General, as Agent, 78 I. C. C. 190, 196, 199, 200; Maine Power Sales Co. v. Director General, as Agent, 78 I. C. C. 207; Sunlight Milling Co. v. L. & N. R. R. Co., 78 I. C. C. 305; Bilrowe-Alloys Co. v. Director-General, as Agent, 78 I. C. C. 308; Roebling's Sons Co. v. W. M. Ry. Co., 78 I. C. C. 349; Wisconsin Dairy Products Co. v. Director General, as Agent, 78 I. C. C. 355; Armour & Co. v. Director General, as Agent, 78 I. C. C. 373; Dietz Lumber Co. v. Director General, as Agent, 78 I. C. C. 402, 407; Murray v. Director General, as Agent, 78 I. C. C. 465, 467; Alabama Co. v. Director General, as Agent, 78 I. C. C. 561, 563; Thorp v. Director General, as Agent, 80 I. C. C. 1; Hercules Powder Co. v. Director General, as Agent, 80 I. C. C. 219, 431, 432; Standard Portland Cement Co. v. Director General, as Agent, 81 I. C. C. 357; Aluminum Co. of America v. Director General, as Agent, 81 I. C. C. 599, 600; Atlas Portland Cement Co. v. C., B. & Q. R. R. Co., 81 I. C. C. 1, 8; Helmerichs Leaf Tobacco Co. v. C., L. & N. Ry. Co., 81 I. C. C. 184, 186; Wrought Iron Pipe and Iron Pipe Fittings, 81 I. C. C. 691, 692; Minimum Weights on Furniture, 83 I. C. C. 64, 66; Iron and Steel to Virginia Cities, 83 I. C. C. 82, 86.

§64½. Wages.

See Labor Board; Newlands Act; Reasonableness of Rates §40½; Wages.

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(a) In fixing coal rates it would seem that wages of miners and their standard of living should be kept in view and that great issues affecting them should not be decided without at least bringing their interests into the horizon of consciousness. Boileou v. P. & L. E. R. R. Co., 22 I. C. C. 640, 647.

(b) From the point of view of public policy and humanity, considerations such as the profits of the operators and the carriers, the wages and standard of living of the miners and the railway employees should not be ignored in the fixing of rates on coal. Boileau v. P. & L. E. R. R. Co., 22 I. C. C. 640, 647.

(c) Statements of increased cost of transportation by reason of greater wages paid employees can have little weight when presented in the abstract with no attempt to consider corresponding reductions resulting from greater efficiency. Hormel & Co. v. C. M. & St. P. Ry. Co., 26 I. C. C. 112, 114.

(d) Wages of employes, element to be considered in determining cost of handling traffic. Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co., 29 I. C. C. 428, 435.

(e) Charges assailed can not be found unreasonable merely because defendant's operating costs were in excess of what they would have been if it had paid wages lower than those found reasonable

by the Railroad Labor Board. Sugarland Industries v. Galveston Wharf Co., 80 I. C. C. 665, 657.

ALL OTHER CITATIONS

Northern Pine Mfrs. Asso. v. C. & N. W. Ry. Co., 33 I. C. C. 360, 362; Western Passenger Fares, 37 I. C. C. 1, 11; Coal from Pennsylvania Mines, 42 I. C. C. 206, 212; Lake Park Refining Co. v. Director General, as Agent, 60 I. C. C. 381, 383; New England Divisions, 66 I. C. C. 196, 199; Reparation as Relating to Increase of Rates, 68 I. C. C. 5, 7; Reduced Rates, 1922, 68 I. C. C. 676, 689.

§61¾. **Wagon Roads.**

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(a) The maintenance of good wagon roads is of material interest to the railroads. Rates on Crushed Stone, 30 I. C. C. 22, 28.

§64⅞. **War Conditions.**

See War Legislation; Demurrage §11½.

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(a) During the war it was held that Commission must recognize the fact that war in Europe exsits and the fact that by it the world's commerce has been thrown into confusion. Five Per Cent Case, 32 I. C. C. 325, 330.

(b) There is no justification for requiring carriers to bear a burden caused by the European war merely to afford relief to shippers. New Jersey Zinc Co. v. C. R. R. Co. of N. J., 36 I. C. C. 289, 290.

(c) The war and an unparalleled rise in prices for ocean transportation have so changed the transcontinental rate situation as to transform a relation of rates which was justified when established to one that is now unjustly discriminatory against intermediate points. Reopening Fourth Section Applications, 40 I. C. C. 35, 39.

(d) The Commission should not set up its judgment as to the possible and proper thing to do as against the judgment of other public officers, presumed to be performing their duty lawfully, who met a situation of extreme difficulty as best they could under the limitations imposed by war, and with existing or procurable facilities overtaxed. Clearly it should not do so when the preponderance of evidence supports the action as having been taken in good faith, in a timely manner, to the extent reasonably necessary, and so as to apply with substantial uniformity upon all similarly circumstanced persons and traffic. American Mfg. Co. v. Director General, as Agent, 77 I. C. C. 52, 57.

ALL OTHER CITATIONS

Rates on Lumber from Southern Points, 34 I. C. C., 652, 691, 693; Extension of Time to Comply with Safety Appliance Acts, 36 I. C. C. 370, 373; Tennessee Copper Co. v. S. Ry. Co., 41 I. C. C. 336, 343; Sulphuric Acid from New Orleans, La., 42 I. C. C. 200, 201; Export Grain Storage Charges, 42 I. C. C. 530, 533; Eastern Export Iron and Steel Case, 43 I. C. C. 5, 7; Montgomery Cotton Exchange v. L. & N. R. R. Co., 43 I. C. C. 197; Barytes from Tennessee, 43 I. C. C. 334, 335; Cadillac Lumber Exchange v. A. A. R. R. Co., 43 I. C. C. 636, 637; Drewes Sugar Co. v. S. P. Ry., 44 I. C. C. 533, 537; The Fifteen Per Cent Case, 45 I C. C. 303, 312, 321, 323; Bituminous Coal to C. F. A. Territory. 46 I. C. C. 66, 133; Lake Cargo Coal Rates, 46 I. C. C. 159, 192; Transcontinental Rates, 46 I. C. C. 236, 269; Direct Navigation Co., 46 I. C. C. 378, 381; Harrison Bros. & Co. v. L. & N. R. R., 46 I. C. C. 515, 516; Tidewater Demurrage, 46 I. C. C. 677, 680; Unification of Railroad Operation, 47 I. C. C. 757, 758; Minneapolis Traffic Asso. v. C. B. & Q. R. R., 49 I. C. C. 308, 313; Camp Bowie, Tex., Rates, 49 I. C. C. 528, 529; Delaware River Steel Co. v. P. R. Ry., 49 I. C. C. 537, 539.; Oden-Elliott Lumber Co. v. A. C. Ry., 51 I. C. C. 403, 411; Pacific Lumber Co. v. N. W. P. R. R., 51 I. C. C. 738, 772; Lyons Co. v. Adams Exp. Co., 53 I. C. C. 633, 634; Murray v. Director General, as Agent, 69 I. C. C. 477, 482.

§65. **Weight or Bulk of Shipment.**

See Classification §4, §11½; Reasonableness of Rates §41; Weights and Weighing.

CASES 1887-1908

(a) A carrier should receive a greater compensation in the aggregate for hauling a carload of large tonnage than one of less tonnage, but, other things being equal, as a general rule, the rate per hundred weight should be less in the former than in the latter case. Murray v. Wabash R. Co. (Com.), 3 I. C. C. 725.

(b) A carrier should receive a great-

er compensation in the aggregate for hauling a carload of large tonnage than one of less tonnage but, other things being equal, as a general rule, the rate per hundred pounds should be less in the former than in the latter case. Murphy Wasey & Co. v. Wabash R. Co., 3 I. C. C. 725, 728.

(c) While the circumstances and conditions in respect to the work done by the carrier and the revenue earned are dissimilar in the transportation of freights in carloads and less than carloads, and a lower rate on carloads than on less than carloads is, therefore, not in contravention of the statute, yet the difference between the two rates must be reasonable. Duncan v. Atchison T. & S. F. R. Co., 4 I. C. R. 385.

(d) "New ton" of coal apparently means "short ton." Hope Lumber Co. v. M. K. & T. Ry. Co., 12 I. C. C. 191.

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(e) The cost of the movement to the carrier depends upon the weight loaded into the car. The weight of the car must be hauled whether the contents weigh much or little. The expense of transporting a car containing 20,000 lbs. is not much greater than the expense of carrying the same car if it contains but 10,000 lbs. Montague & Co. v. A. T. & S. F. Ry. Co., 17 I. C. C. 72, 74.

(f) The minimum carload weight is a factor in the carload rate, and in connection with the rate per 100 lbs. determines the carload earnings. Any reduction in the minimum weight without an increase in the rate per 100 lbs. would therefore reduce the carload earnings of the carrier, and would be equivalent to a reduction in the rate itself. Georgia Fruit Exchange v. S. Ry. Co., 20 I. C. C. 623, 630.

(g) The heavy loading of a commodity results in saving of equipment in times of car shortage. Rates on Tomatoes from Jacksonville, 29 I. C. C. 522, 523.

(h) The car loading of a commodity is of importance in determining the rate, absolutely and relatively. Rates on Grain, Grain Products and Hay, 64 I. C. C. 85, 92.

(i) Under requirements of ocean carriers both export and coastwise cotton must be compressed at least to standard density before it will be loaded on board ships. Galveston Commercial Asso. v. A. & V. Ry. Co., 77 I. C. C. 391.

(j) Cotton, except in round bales, is ordinarily regarded as weighing 500 pounds per bale, but the actual average is slightly in excess of that weight. Compression to a density of 22.5 pounds per cubic foot is known as standard density; to 32 pounds per cubic foot, high density; while bales of density of about 12 pounds per cubic foot are commonly called flat or uncompressed bales, to distinguish them from bales of standard or high density. Round or cylindrical bales have a density of approximately 34 pounds per cubic foot and weigh approximately 250 pounds per bale. Galveston Commercial Asso. v. A. & V. Ry. Co., 77 I. C. C. 388, 390, 391.

(k) Theoretically, under an intensive method of loading and utilizing practically every inch of car space, as much as 48 or 50 bales of uncompressed cotton can be put into a 36-foot car; actually, over 40 bales of such cotton have been loaded into cars of that capacity. Galveston Commercial Asso. v. A. & V. Ry. Co., 77 I. C. C. 388, 391.

(l) Uncompressed cotton requires approximately double the car space used for the movement of compressed cotton. Galveston Commercial Asso. v. A. & V. Ry. Co., 77 I. C. C. 392.

(m) While an uncompressed bale is not in fit condition for ocean cargo, it is not unsuitable for rail transportation. Galveston Commercial Asso. v. A. & V. Ry. Co., 77 I. C. C. 409.

ALL OTHER CITATIONS

Blackwell Milling & Elevator Co. v. A. T. & S. F. Ry. Co., Unrep. Op. 483; Allen v. P. R. R. Co., Unrep. Op. 415; Browne Grain Co. v. G. C. & S. F. Ry. Co., 20 I. C. C. 163, 164; Noble v. D. & T. S. L. R. R. Co., 20 I. C. C. 60, 61; In Re Advances in Rates on Locomotives and Tenders, 21 I. C. C. 103, 109, 111; Louisiana Sugar Planters' Ass'n. v. I. C. R. R. Co., 31 I. C. C. 311 317; Five Per Cent Case, 31 I. C. C. 351, 411,; Allen Bros. Co. v. P. B. & W. R. R. Co., Unrep. Op. A-709; Union Trim & Lumber Co. v. G. R. I. Ry. Co., Cnrep. Op. A-716; American Round Bale Press Co. v. A. T. & S. F. Ry. Co., 32 I. C. C. 458, 468; Boldt Co. v. C., R. I. & P. Ry. Co., 33 I. C. C. 8, 10, 12; Saginaw Milling Co. v. M. C. R. R. Co., 33 I. C. C.

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§66. Widespread Rate Adjustment.

See Advanced Rates §5 (2), §5

(7¼); Blanket Rates VIII, §20; Differentials; Discrimination §13; Equalization of Rates §8; Reasonableness of Rates §16, §28; Relative Rates; Reparation §12.

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(a) Where a system of rates is made by a number of carriers, covering a widely extended territory, which seem to be reasonable in themselves and relatively fair, so far as the evidence in this case shows, the Commission will not order them to be changed at one important point, thereby rendering other changes unavoidable at a large number of other points, and throwing the rates of the entire system into confusion and unsettling values, unless a case arises in which it is necessary that this should be done in order to enforce compliance with the law and to reach the ends of substantial justice. Detroit Board of Trade v. Grand Trunk Railway of Canada, 2 I. C. R. 199.

(b) Where a change of rates, for example those on the defendant's line in this instance, would involve a reduction of rates on the Dunkirk, Allegheny Valley, Pittsburgh, and other competing lines not parties to this proceeding, and unsettle relative rates in a large extent of territory, such a change ought not to be made unless based upon adequate grounds. Rice, Robinson & Witherop v. Western New York & Pa. R. Co., 2 I. C. R. 298.

(c) Where a change of rates would involve a reduction of rates on other competing lines not parties to the proceeding, and unsettle relative rates in a large extent of territory, such a change ought not to be made unless based upon adequate grounds. Rice v. Western N. Y. & P. R. Co. (Com.), 2 I. C. R. 298.

(d) The question of relative injustice must be viewed upon broader grounds than a mere balancing of one rate against another. A reduction which will throw into confusion an adjustment of rates over a large section of country which are not claimed to be unreasonable of themselves, should not be required without a clear right thereto exists under some direct provision of the law. Rend v. C. & N. W. R. R., 2 I. C. C. 313, 317.

(e) The question of relative injustice must be viewed upon broader grounds than a mere balancing of one rate against another. A reduction of rates which will throw into confusion an adjustment of rates over a large section of country, which are not claimed to be unreasonable of themselves, should not be required unless a clear right thereto exists under some direct provision of the law. Rend v. Chicago & N. W. R. Co. (Com.), 2 I. C. R. 313.

(f) A reduction of the rates on local shipments from Chicago to the proportion received by the northwestern lines upon the division of the through rates aforesaid, would involve either a general reduction from the entire group under the short haul clause of the Law, or an abandonment by defendant of the through rates in question, neither of which would benefit complainant, while both would do great injury to all other interests involved. Under such circumstances the preference is not undue, nor is the advantage complained of unreasonable. Rend v. Cg. & Northwestern R. Co., 2 I. C. R. 313.

(g) The practice of making one rate on the same product over a large district is only justifiable under special and exceptional circumstances and is not to be encouraged when the difference in the transportation expense from the various parts of such district is considerable and substantial. Newland v. Northern Pacific R. Co., 4 I. C. R. 474.

(h) The same rate over a district so extensive denies to the producer nearer the market the advantages of his location, for which he receives no compensation in the fact that such rate was established to enable a railroad company to sell its lands more distant from markets at better prices. Newland v. Northern Pacific R. Co., 4 I. C. R. 474.

(i) It can not be held to be a valid objection to the correction of unlawful rates to one locality that it involves a like correction to other localities. Freight Bureau v. C. N. O. & T. P. R. Co., 4 I. C. C. 592, 617.

(j) The Interstate Commerce Commission will not reduce, as unreasonable, a rate between Dallas, Tex., and New Orleans, La., where it would involve a reduction from nearly all the points in Texas, and the Texas Railroad Commission has, since the hearing of the case, readjusted the rate between Dallas and Galveston, which of itself accomplishes a corresponding reduction between Dallas

and New Orleans. Dallas Freight Bureau v. Texas & P. R. Co., 8 I. C. C. 33.

(k) The Interstate Commerce Commission will not, without a reasonably satisfactory showing, determine the question whether or not there should be a reduction in freight rates from a large extent of territory upon a staple commodity like grain, since its decision may result in a large diminution of the revenues of the carrier, and may determine whether or not grain can be raised at a profit, and, ultimately, whether it can be raised at all. Grain Shippers' Asso. v. Illinois C. R. Co., 8 I. C. C. 158.

(l) A rate can seldom be considered "in and of itself." It must be taken almost invariably in relation to and in connection with other rates, for the freight rates of this country, both upon different commodities and between different localities, are largely interdependent, and it is because they do not bear a proper relation to one another, rather than that they are absolutely either too low or too high, which most often gives occasion for complaint. Geo. Tileston Mill Co. v. Northern P. R. Co., 8 I. C. C. 346.

(m) The evidence submitted is not sufficient to constitute the basis of a decision requiring defendant carriers to modify their long-standing system of rate-making, on the ground that the rates from New York, Chicago, St. Louis and other eastern points to Phoenix, Ariz., are unjust and unreasonable in themselves, and relatively as compared with rates on like traffic between eastern points and Los Angeles. Shippers' Union of Phoenix v. Atchison, T. & S. F. R. Co., 9 I. C. C. 250.

(n) It may often happen that a single rate out of an entire system of rates may, when examined by itself, appear to be unreasonable, even though, when considered as a part of the whole system, it is justifiable. To reduce this single rate would perhaps disarrange the entire system of rates in effect and the Commission does not feel that it should interfere until strong reasons for such interference are presented. Hastings Malting Co. v. C. M. & St. P. Ry., 11 I. C. C. 675, 682.

(o) Complainant attacked as unreasonable the rate on coal, carloads, from mines at Jewett, Kans., to Kansas City, Mo. The record shows that the rate is the same as from other mines in the same field; the same as that on competing railroads in the same field and that it is fixed in accordance with an established relation of rates on coal from other producing points to the same market. It also appears that the rate attacked could not be changed without disturbing rates on coal, not only from other neighboring mines, but from all the coal producing centers the product of which is sent to Kansas City. HELD, rate attacked not unreasonable, complaint dismissed. A. M. Fellows Coal & Material Co. v. M. P. Ry., 12 I. C. C. 481.

(p) While complaint alleges that rate on coal from mine at Jewett, Kans., to Kansas City, Mo., is unjust and unreasonable, the record shows that the rate is the same as from other mines in the same field; the same as that on competing railroad in the same field and that it is fixed in accordance with an established relation of rates on coal from other producing points to the same market. It also appears that the rate complained of could not be changed without disturbing rates on coal, not only from other neighboring mines, but from all the coal-producing centers the product of which is sent to Kansas City. HELD, That under the circumstances and conditions Commission is not justified upon the record made in ordering rate changed or declaring it unreasonable. Complaint dismissed. Fellows Coal & Material Co. v. Mo. Pac. Ry. Co., 12 I. C. C. 481.

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(q) Generally satisfactory rates of wide application and long standing should not be disturbed without convincing proof that they are unreasonable or unduly prejudicial to the complaining point or traffic therefrom. Wichita Business Assn. v. A. T. & S. F. Ry. Co., 30 I. C. C. 45, 52.

(r) Possibility that some readjustment will have to be made in other rates is no reason why just and reasonable rates should not be prescribed between points and on commodities involved. Oklahoma Cottonseed Crushers' Asso. v. M. K. & T. Ry. Co., 39 I. C. C. 497, 509.

(s) Long established rate adjustments that accord competing producing districts located at different distances from common markets equal rates will not be disrupted unless substantial justice requires it. The interests of consumers

must be considered as well as the interests of producers and dissatisfied producers deprived of the natural advantage of location must establish actual injury as a result of the discrimination. Galloway Coal Co. v. A. G. S. R. R. Co., 40 I. C. C. 311.

(t) When an important and long-standing relation is sought to be changed by carriers, justification therefor must be clear and convincing. Proctor & Gamble Distributing Co. v. A. & V. Ry. Co., 40 I. C. C. 367, 372.

(u) Reparation has frequently been denied when rates reduced have been in effect for long periods and when orders requiring reductions involved readjustments of rates throughout a large territory and affected shippers at many points who were not parties to the proceedings. Inland Seed Co. v. O. W. R. R. & N. Co., 40 I. C. C. 517, 521.

(v) A rate structure, being characterized by lack of uniformity, can not be said to present any basis so prevalent as to amount to a practice. Jacob E. Decker & Sons v. Director General, 55 I. C. C. 433.

(w) The fact that other cities and towns would seek similar relief, and application of the formula would involve serious reductions in rates, while proper elements for consideration in determining the reasonableness of rates, constitutes no bar to the granting of relief if rates are shown to be relatively unreasonable or unduly prejudicial. South Bend Chamber of Commerce v. Director General, 57 I. C. C. 215, 220.

(x) The effect of a rate upon commercial conditions, whether an industry can exist under particular rates or a particular adjustment of rates, are matters of consequence, and facts tending to show these circumstances and conditions are always pertinent. But they are only a single factor in determining the fundamental question. A narrowing market, increased cost of production, overproduction, and many other considerations may render an industry unprofitable without showing the freight rate to be unreasonable. National Livestock Shippers League v. A. T. & S. F., 63 I. C. C. 107, 116.

(y) It is one thing to give consideration to the condition of all competing carriers in fixing rates between competitive points on a reasonable basis, but quite a different matter to lift the entire rate structure of an important territory solely for the purpose of enabling carriers operating through a different and higher-rated territory to compete at border points with the carriers operating within that territory on a rate equality without reducing the rates at intermediate points in such higher-rated territory. Rates to, from and between Points South of Ohio River, 64 I. C. C. 306, 329.

(z) Even if it be a fact that other and extensive rate adjustments will necessarily follow any action taken this is not of itself a sufficient reason for depriving complainant of the relief to which it is entitled. West Virginia Rail Co. v. B. & O. R. R., 73 I. C. C. 149, 151.

(aa) Complainant cited a number of cases in which the commission has condemned the disruption of long-established rate relationships. While the potency of this argument is recognized, carriers can not be estopped from changing a relationship if the resulting rates are not unreasonable or otherwise in violation of the act. Boston Chamber of Commerce v. O. S. S. Co. of S., 73 I. C. C. 233, 239.

(bb) A rate can seldom be considered in and of itself. It must be taken almost invariably in relation to and in connection with other rates. Tileston Mill Co., 8 I. C. C., 346, 361. Atchison Board of Trade v. A., T. & S. F. Ry. Co., 80 I. C. C. 350, 360.

(cc) It is not an adequate defense to interpose that correction of unlawful rates will or may require revisions of rates from or to other points. Iola Cement Mill Traffic Asso. v. A. W. Ry., 87 I. C. C. 451, 462.

(dd) The fact that additional readjustments may be necessary is no ground for denying relief shown by the record as proper. Indiana Public Service Commission v. A. T. & S. F. Ry., 88 I. C. C. 709, 720.

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Black Mountain Coal Land Co. v. S. Ry. Co., 15 I. C. C. 286, 294, 295; Darling & Co. v. B. & O. R. R. Co., 15 I. C. C. 79, 83; Corporation Commission of North Carolina v. N. & W. Ry. Co., 19 I. C. C. 303, 309, 310; In Re Advances in Rates—Eastern Case, 20 I. C. C. 243, 306; Victor Mfg. Co. v. S. Ry. Co., 21 I. C. C. 222, 226; Milburn Wagon Co. v. L. S. & M. S. Ry. Co, 22 I. C. C. 93, 100; Boileau

v. P. & L. E. R. R. Co., 22 I. C. C. 640, 654; Florida Fruit & Vegetable Shippers' Protective Ass'n. v. A. C. L. R. R. Co., 22 I. C. C. 11, 16; Albree v. B. & M. R. R. Co., 22 I. C. C. 303, 315; Traugott Schmidt & Sons v. M. C. R. R. Co., 23 I. C. C. 684, 686; Southern Illinois Millers' Ass'n. v. L. & N. R. R. Co., 23 I. C. C. 672, 674; Bituminous Coal Operators v. P. R. R. Co., 23 I. C. C. 385, 391; Chamber of Commerce of Newport News v. S. Ry. Co., 23 I. C. C. 345, 356; Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 23 I. C. C. 195, 198, 203, 208; Sioux City Terminal Co. v. C. M. & St. P. Ry. Co., 23 I. C. C. 98, 109; Southwestern Shippers' Traffic Assn. v. A. T. & S. F. Ry. Co., 24 I. C. C. 570, 575; Cassasa v. P. R. R. Co., 24 I. C. C. 629, 631; In re Rates on Salt, 24 I. C. C. 192, 195; Chamber of Commerce of New York v. N. Y. C. & H. R. R. R., 24 I. C. C. 55, 74; Davidson Bros. v. L. & N. R. R., 25 I. C. C. 103, 105; Bartlesville Salvage Co. v. M. K. & T. Ry. Co., 25 I. C. C. 672, 674; Rates from the Walsenburg Coal Field, 26 I. C. C. 85, 87; Waukesha Lime & Stone Co. v. C. M. & St. P. Ry. Co., 26 I. C. C. 515, 519; Hormel & Co. v. C. M. & St. P. Ry. Co., 26 I. C. C. 112, 115; Board of Trade of Chicago v. I. C. R. R. Co., 26 I. C. C. 545, 551; Sioux City Terminal Elevator Co. v. C. M. & St. P. Ry. Co., 27 I. C. C. 457, 462; Chicago-Duluth Grain Rates, 27 I. C. C. 216, 221; The Mississippi River Case, 28 I. C. C. 47, 54, 59; Brick Rates from Ohio Points to Huntington, W. Va., 28 I. C. C. 292, 297; Mayor and Council of Douglas v. A. B. R. R. Co., 28 I. C. C. 445, 453; Grain Rates in Central Freight Association Territory, 28 I. C. C. 549, 455; Chicago Switching Charges, 28 I. C. C. 677, 678; Atlanta Freight Bureau v. N. C. & St. L. Ry., 29 I. C. C. 476, 487; Youngstown Steel & Tube Co. v. P. & L. E. R. R. Co., 29 I. C. C. 428, 435; Rates on Boots and Shoes from Boston, Mass., 31 I. C. C. 154, 158; Fourth Section Violations in the Southeast, 30 I. C. C. 153, 232; Ellicott Brick Co. v. B. R. & P. Ry. Co., Unrep. Op. A-560; Class and Commodity Rates to and from Quincy, Ill., 32 I. C. C. 471, 478; Reshipping Rates on Grain from Omaha, 32 I. C. C. 590, 594; Empire Coke Co. v. B. & S. R. R. Co., 31 I. C. C. 573, 579, 581; Export Rates on Grain and Grain Products, 31 I. C. C. 616, 622; Crawford & Bunce v. P. C. C. & St. L. Ry. Co., 32 I. C. C. 12, 16; Commercial Club of Joplin, Mo. v. M. P. Ry. Co., 32 I. C. C. 226, 228; Five Per Cent Case, 32 I. C. C. 325, 332; Rates on Lumber, 32 I. C. C. 494, 496; Merchants Exchange of St. Louis v. B. & O. R. R. Co., 34 I. C. C. 341, 356; Alpha Portland Cement Co. v. B. & O. R. R. Co., 34 I. C. C. 414, 420; St. Louis Terminal Case, 34 I. C. C. 453, 454; Pacific Creamery Co. v. S. P. Co., 34 I. C. C. 586, 591; Greer-Beatty Clay Co. v. P. Co., Unrep. Op. 1955; Retail Merchants Asso. of Montana v. N. P. Ry. Co., Unrep. Op. 1968; 1915 Western Rate Advance Case, 35 I. C. C. 497, 577; City of Astoria v. S. P. & S. Ry. Co., 38 I. C. C. 16, 17; Official Classification Rates on Paper, 38 I. C. C. 120, 133; La Crosse Shippers' Asso. v. C. & N. W. Ry. Co., 38 I. C. C. 453, 463; Bituminous Coal to Mississippi Valley Territory, 39 I. C. C. 378, 383, 384; Corp. Comm. of Virginia v. C. & O. Ry. Co., 40 I. C. C. 24, 28; Reopening Fourth Section Applications, 40 I. C. C. 35, 39; The Missouri River-Nebraska Cases, 40 I. C. C. 201, 206, 207, 259; Galloway Coal Co. v. A. G. S. R. R. Co., 40 I. C. C. 311, 320, 323; Proctor & Gamble Distributing Co. v. A. & V. Ry. Co., 40 I. C. C. 367, 376; Pacific Coast-Southwest Lumber Co., 40 I. C. C. 387, 394; Dallas Chamber of Commerce v. A. T. & S. F. Ry. Co., 40 I. C. C. 619, 637; Iron Ore Rate Cases, 41 I. C. C. 181, 214; Greater Des Moines Committee v. C. St. P. M. & O. Ry Co., 42 I. C. C. 65, 73, 74; Coal from Pennsylvania Mines, 42 I. C. C. 206, 214; Lake and Rail Cancellations (No. 2), 42 I. C. C. 513, 521; Federal Milling Co. v. M., St. P. & S. S. M. Ry. Co., 42 I. C. C. 632, 635; Fruits and Vegetables, 43 I. C. C. 291, 314; Proportional Rates to Ohio River Crossings, 43 I. C. C. 458, 465; Paducah Board of Trade v. I. C. R. R., 43 I. C. C. 537, 541; Pierce Oil Corp. v. M. K. & T. Ry., 44 I. C. C. 279, 282; C. F. A. Class Scale Case, 45 I. C. C. 254, 256, 258, 259, 286; Chamber of Commerce of Huntington, W. Va., v. C. & O. Ry., 46 I. C. C. 432, 436; Louisiana Cotton, 46 I. C. C. 451, 454; Minneapolis Traffic Asso. v. C. M. & St. P. Ry., 46 I. C. C. 685, 687; Toledo Produce Exchange v. N. Y. C. R. R., 50 I. C. C. 515, 521; Metropolis Commercial Club v. I. C. R. R., 51 I. C. C. 376, 383; Kansas Car-Lot Egg Shippers' Asso v. B. & O. R. R. Co., 53 I. C. C. 59, 65; Continental Coal Corp. v. L & N. R. R. Co., 53 I. C. C. 377, 382; Omaha Grain Exchange v. C. R. I. & P. Ry., 52 I. C. C. 249, 268; Na-

tional Tube Co. v. Lake Terminal, 55 I. C. C. 469, 480; Illinois Classification, 56 I. C. C. 202, 208; Watertown Sash & Door Co. v. Director General, 55 I. C. C. 186, 193; Memphis-Southwestern Investigation, 55 I. C. C. 515, 533, 544; Carnation Milk Products Co. v. Director General, 55 I. C. C. 665, 668; Illinois Classification, 56 I. C. C. 202, 208; Phelps Dodge Corp. v Director General, 57 I. C. C. 714, 720, 721; Proctor & Gamble v. A. C., 61 I. C. C. 700, 707; Steel & Tube Co. v. Director General, as Agent, 61 I. C. C. 526, 529; Choate Oil Corp. v. Director General, as Agent, 62 I. C. C. 93; Certain-Teed Products Corp. A. T. & S. F., 63 I. C. C. 65; McGregor-Noe Hardware Co. v. St. L. S. F. Ry. Co., 63 I. C. C. 246; Coad v. C. St. P. M. & R. Ry. Co., 64 I. C. C. 178; Indian Packing Corp. v. Director General, as Agent, 64 I. C. C. 205, 210; Box Shooks from Southeast to Eastern Points, 64 I. C. C. 389; Coal from Detroit, Toledo & Ironton R. R. Mines, 64 I. C. C. 564, 566; National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co., 68 I. C. C. 213, 232; Willapa Lumber Co. v. Director General, as Agent, 68 I. C. C. 659, 664; Cotton and Cotton Linters from Mississippi Valley, 69 I. C. C. 318, 334; Trunk Line & Ex-Lake Iron Ore Rates, 69 I. C. C. 611; Milwaukee Chamber of Commerce v. C. B. & Q. R. R. Co., 78 I. C. C. 110; Lissberger & Co. v. P. R. R. Co., 78 I. C. C. 469, 471; Ohio-Michigan Coal Cases, 80 I. C. C. 663, 676; Atlas Portland Cement Co. v. C., B. & Q. R. R. Co., 81 I. C. C. 1, 10; Owensboro Chamber of Commerce v. L., H. & St. L. Ry Co., 81 I. C. C. 145; Lissberger & Co. v. P. R. R. Co., 81 I. C. C. 645, 647; Carnation Milk Products Co. v. A. & W. Ry. Co., 81 I. C. C. 699; Wenatchee Valley Fruit Exchange v. N. P. Ry. Co., 83 I. C. C. 71, 72, 75, 79; Increased Rates on Petroleum, 83 I. C. C. 98, 101; Asphalt from New Orleans, 83 I. C. C. 424.

III. JUDICIAL NOTICE.

§67. In general.

See Courts §9 (a); Loss and Damage §16; Procedure Before Commission §16.

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(a) Judicial notice may be taken by the court, of the fact that two railroads touching the same points are parallel and competing lines. Gulf, Colorado & Santa Fe R. Co. v. State of Texas, 2 I. C. R. 335.

(b) Judicial cognizance may be taken of the fact that a very large interstate trade exists in fresh dressed meats. Re Rebman (C. C. E. D. Va.), 3 I. C. R. 126.

(c) Judicial cognizance may be taken of geographical distances, and of the fact that a Virginia statute imposing a charge of 1 cent per pound on all fresh meats offered for sale at 100 miles or more from the place of slaughter applies to meats brought from all other states of the union, and, as to cities of Virginia having 15,000, imposes the charge upon meats from nearly all that portion lying west of the Blue Ridge Mountains. Re Rebman (C. C. E. D. Va.), 3 I. C. R. 126.

(d) Judicial notice will be taken of the course of business of railroad companies to transfer cars over more than one railroad without breaking bulk. Burlington, C. R. & N. R. Co. v. Dey (Iowa), 3 I. C. R. 584.

(e) Judicial notice will be taken of the relative distance from a certain place to another part of the same state and to neighboring states. Jamieson v. Ind. Natural Gas & Oil Co., 3 I. C. R. 613.

(f) Courts take judicial notice of the fact that natural gas is a dangerous agency. Jamieson v. Indiana Natural Gas Co. (Ind.), 3 I. C. R. 613.

(g) The court will take judicial notice of the geographical location of Kansas City and Wichita, and that transportation by railroad from these places is over lines outside the state of New York. Parks v. Jacob Dold Packing Co. (Buff. Super. Ct.), 4 I. C. R. 486.

(h) The court will take judicial notice that for the first $36,000,000 of stock issued by the Union Pacific Railroad Company it received less than 2 cents on the dollar, and that the profit on construction represented by outstanding bonds was nearly $44,000,000. Ames v. Union P. R. Co. (C. C. D. Neb.), 4 I. C. R. 619.

(i) It is a matter of common knowledge and of history that Montgomery, Alabama, was a distributing point before the railroad system was known, and when there were no trunk lines of railroad competing for a share of her business. Interstate Commerce Commission v. Alabama M. R. Co. (C. C. M. D. Ala.), 5 I. C. R. 308.

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(j) When considering a complaint involving the rates or practices of a carrier, the Commission, being an admin-

istrative body performing its functions in the interest of the general public rather than in the interest of the particular litigants, is entitled to bring to its aid all the information that can be drawn either from the records in other complaints before it or from its general experience and knowledge of transportation matters. The right which courts have to these judicial notices of certain classes of facts is extended in the case of the Commission to the range of its experience with transportation problems and embraces all the knowledge that it has gathered from any source. The Commission is assumed to know what needs to be known in correctly solving any question relating to the rates or to the rules, regulations and practices of carriers affecting rates; and where it does not in fact know, it is its duty to ascertain what is essential to a proper conclusion. Joynes v. Penn. R. R. Co., 17 I. C. C. 361, 366.

(k) The statute gives parties a right to a full hearing and imposes upon the Commission the duty of deciding in accordance with the facts proved. Information gathered by the Commission under section 12 of the Act is not available where the party is entitled to a hearing. Wickwire Steel Co. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 415, 424.

(l) Commission is not confined in its consideration to facts and figures specifically stated pertaining to matters referred to in the record, but may consider and, in support of its conclusions, may rely upon actual facts and figures pertaining to matters referred to in the record, as verified by tariffs and other official documents and records which the law requires carriers to file with it. Oklahoma Cottonseed Crushers' Asso. v. M. K. & T. Ry. Co., 39 I. C. C. 497, 500, 501.

(m) Judicial notice taken of the "importance to the public of the transportation services" of complainants, common carriers in New England seeking establishment of just, reasonable, and equitable divisions, as well as that of the principal defendants. New England Divisions, 62 I. C. C. 513, 516.

(n) As indicating improvement in situation of respondent carrier since period covered by statistics offered in justification of proposed reduced rates to meet carrier competition, judicial notice taken of fact that revenues have increased subsequent to such period, based on reports to the commission. Reduced Rates from New York Piers, 81 I. C. C. 312, 319.

ALL OTHER CITATIONS

National Petroleum Ass'n. v. Ann Arbor R. R. Co., 14 I. C. C. 272, 281; Sanford v. Western Express Co., 16 I. C. C. 32, 36; Stonega Coke & Coal Co. v. L. & N. R. R. Co., 39 I. C. C. 523, 539; Montana Rates and Fares, 77 I. C. C. 141, 143; Morgan v. Hines, (Mont. 1922), 211 Pac. 778; United States v. Chicago, B. & Q. R. Co., (1923), 293 Fed. 185.

IV. PRESUMPTIONS

§68. In general.

See Advanced Rates §8; Loss and Damage §11½; Presumptions; Through Routes and Joint Rates §15.

CASES 1887-1908

(a) The filing of schedules of rates with the Commission, as required by statute, raises no presumption as to the legality of such rates. San Bernardino Bd. of Trade v. Atchinson, T. & S. F. R. Co. (Com.), 3 I. C. R. 138.

(b) Fraud and illegality in contracts are not to be presumed. United States v. Trans-Missouri Freight Asso. (C. C. App. 8th C.), 4 I. C. R. 443.

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(c) No conclusive presumption that a rate reasonable today was reasonable a year before or a day before, since reasonable rates vary from time to time, and some point of division must be found. Penrod Walnut & Veneer Co. v. C. B. & Q. R. R. Co., 15 I. C. C. 326.

(d) The law presumes that the measure of reasonableness of rates will be based upon all the many elements of the particular traffic involved. Ponchatoula Farmers' Ass'n. v. I. C. R. R. Co., 19 I. C. C. 513, 516.

(e) The presumption of the law is that rates in effect on January 1, 1910, were just and reasonable and may not be increased without satisfactory defense being made before the Commission. In Re Advances on Coal to Lake Ports, 22 I. C. C. 604, 624.

(f) The fact that rates have been long maintained and that the volume of traffic has increased in recent years raises a strong presumption that they are reasonable and profitable to the carriers. Rates on Bananas from Gulf Ports, 30 I. C. C. 510, 515.

(g) The presumption will be indulged that any unjust discriminations that may result from proposed rates in connection with matters not regularly before the Commission will be removed by the carriers. Freight Rates from Minnesota Points, 32 I. C. C. 361, 367.

(h) Congress may, consistently with the due process clause, create rebuttable presumptions, and shift the burden of proof. Akron, C. & Y. Ry. Co. v. United States, 43 Sup. Ct. 270.

ALL OTHER CITATIONS

Tully Grain Co. v. G. S. & W. R. R. Co., 16 I. C. C. 28, 29; Sunderland Bros. Co. v. P. M. R. R. Co., 16 I. C. C. 450, 451; Reddick v. M. C. R. R. Co., 16 I. C. C. 492; Fort Dodge Commercial Club v. I. C. R. R. Co., 16 I. C. C. 572, 583; Chaffin Coal Co. v. B. & O. R. R. Co., Unrep. Op. 585; Commercial Club of Superior v. G. N. Ry. Co., 24 I. C. C. 96, 101; Business Men's League of Albert Lea v. B. & O. R. R. Co., 24 I. C. C. 125; In Re Advance on Lime, 24 I. C. C. 170, 172; Flour City S. S. Co. v. L. V. R. R. Co., 24 I. C. C. 179, 188; Bahrenburg Bro. & Co. v. A. C. L. R. R. Co., 24 I. C. C. 560, 569; Chicago Switching Charges, 28 I. C. C. 677, 679; Grain Rates to Pittsburgh, Pa., 30 I. C. C. 382, 384; Rock Spring Distilling Co. v. I. C. R. R. Co., 29 I. C. C. 18, 24; Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co., 29 I. C. C. 428, 437; Reshipping Rates on Grain from Omaha, 32 I. C. C. 590, 594; Stuarts Draft Milling Co. v. S. Ry. Co., 31 I. C. C. 623, 625; Portland Chamber of Commerce v. C. M. & St. P. Ry. Co., 32 I. C. C. 188, 190.

V. STARE DECISIS

§69. In general.

See Cars and Car Supply §35; Previous Decisions of Commission; Prior Adjudication; Procedure Before Commission §17; Reasonableness of Rates §26½; Reparation §13.

CASES 1887-1908

(a) Stare decisis not applicable to decisions of Interstate Commerce Commission. Board of R. Comrs. v. Atchison, T. & S. F. R. Co., 8 I. C. C. 304.

(b) Proceedings before the Commission can not be made the subject of judicial estoppel. The decisions of a court once made is final, because, for one reason, the facts upon which the decision rests are always the same; but the facts upon which the controversies before this body are determined vary from day to day. A rate, regulation, or practice may be unreasonable now, although a year ago it was entirely reasonable. Cattle Raisers Asso. v. C. B. & Q. Ry., 12 I. C. C. 507, 514.

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(c) Rates reasonable at the present time may within the period of two years become very unreasonable by reason of changes in circumstances and conditions, economic transportation, or the like. It should be just as apparent that a rate which was unreasonable two years or more ago may become reasonable by reason of such changes in conditions. A plea of estoppel by reason of former adjudication is not good in so far as an investigation of present rates is concerned, although in a former proceeding a decree of a court was a general finding for the defendants on all the issues of fact. National Hay Ass'n. v. M. C. R. R. Co., 19 I. C. C. 34, 37.

(d) While the Commission is not bound by any rule of stare decisis and while its conclusions are not res judicata, still when a matter has been once fully considered and decided, it must be regarded as settled, unless it appears from new facts presented that the Commission was wrong. It can at any time recall and amend its order, and it ought to do so whenever it appears that an order is erroneous, but it must also be assumed that the judgment of the Commission was correct upon the facts as presented. Schmidt & Sons v. M. C. R. R. Co., 23 I. C. C. 684, 685.

(e) The technical plea of res adjudicata has no application to an order of the Commission. Federal Sugar Refining Co. v. C. R. R. of N. J., 35 I. C. C. 488, 490.

(f) The technical doctrine of res adjudicata as enforced in courts of law is not applied by the Commission. Goss v. Director General, 73 I. C. C. 649, 653.

ALL OTHER CITATIONS

Sawyer & Austin Lumber Co. v. St. L. I. M. & S. Ry. Co., 19 I. C. C. 141, 143; Waco Freight Bureau v. H. & T. C. R. R. Co., 19 I. C. C. 22, 24; Fels & Co. v. P. R. R. Co., 23 I. C. C. 483, 486; Jouannet v. A. C. L. R. R. Co., 23 I. C. C. 392, 393; Commercial Club of Superior, Wis., v. G. N. Ry. Co., 24 I. C. C. 96, 101; Curry & Whyte Co. v. D. & I. R. Ry. Co., 30 I. C. C. 1, 3; Neustadt v. Lehigh Val. Ry.

Co., 144 N. Y. Supp. 911, 915; Omaha Grain Exchange v. N. P. Ry. Co., 30 I. C. C. 572, 576; Wickwire Steel Co. v. N. Y. C. & H. R. R. R. Co., 30 I. C. C. 415, 424; American Round Bale Press Co. v. A. T. & S. F. Ry. Co., 32 I. C. C. 458, 463; May Bros. v. St. L. & S. F. R. R. Co., Unrep. Op. A-909; Leavitt & Co. v. L. S. & M. S. Ry. Co., Unrep. Op. A-953; Public Utilities Commission of Idaho v. O. S. L. R. R. Co., 33 I. C. C. 103, 108; Chamber of Commerce of Milwaukee v. C. M. & St. P. Ry. Co., 34 I. C. C. 581, 585; Lehigh Portland Cement Co. v. B. & O. S. W. R. R. Co., 35 I. C. C. 14, 20; Hires Condensed Milk Co. v. P. R. R. Co., 38 I. C. C. 441, 445; Bituminous Coal to Mississippi Valley Territory, 39 I. C. C. 378, 383; Oklahoma Cottonseed Crushers' Asso. v. M. K. & T. Ry. Co., 39 I. C. C. 497, 501; Stonega Coke & Coal Co. v. L. & N. R. R. Co., 39 I. C. C. 523, 539; Galloway Coal Co. v. A. G. S. R. R. Co., 40 I. C. C. 311, 323; Traffic Bureau of Nashville v. L. & N. R. R. Co., 43 I. C. C. 366, 369; Northern Potato Traffic Association v. C. & A. R. R., 44 I. C. C. 426, 427; West Virginia Rail Co. v. C. & O. Ry., 48 I. C. C. 600, 608; Orange Rice Mill Co. v. T. & N. O. R. R., 49 I. C. C. 250, 252; Holmes & Hallowell v. G. N., 60 I. C. C. 687, 706; Goss v. Director General, 73 I. C. C. 649, 653; Bell & Zoller Coal Co. v. O. S. W. R. R., 74 I. C. C. 433, 442.

EXAMINERS

See Interstate Commerce Commission §4; Procedure Before Commission §15½.

EXCESS FARES

See Passenger Fares and Facilities §5½.

EXCLUSIVE CONTRACTS

Auction Company; Baggage Transfer II; Eating Houses; Stock Yard Companies; Traffic Contracts; Special Contracts.

CASES 1887-1908

(a) The right of railroad companies to make an exclusive contract with a selected express company for the handling of all the express business upon its line has recently been established by the Supreme Court. Re Express Companies, 1 I. C. C. 677, 678.

(b) A railroad company is not liable for discrimination in refusing to a transfer company engaged in carrying freight between the city in which the railroad terminates and a city in another state, facilities equal to those given another transfer company with which the railroad company has made an arrangement for through billing and rating, whether such transfer company and the railroad be regarded as a connecting line between independent interstate carriers, or the transfer company be regarded as an agency for the delivery of the freight of the railroad company. St. Louis Drayage Co. v. Louisville & N. R. Co. (C. C. E. D. Mo.), 5 I. C. R. 137.

(ba) An article brought from another State under a contract of purchase ceases to be an article of interstate commerce so far as the contract makes an unlawful trust by giving the purchaser exclusive control of its sale in the vicinity and binding him not to deal in any other article of the kind. So beer brought from another State under an invalid trust agreement becomes upon its arrival in the State immediately subject to an anti-trust law of the State by reason of the act of Congress of August 8, 1890. Fuqua v. Pabst Brewing Co. 7 I. C. C. (Appendix) XCIII.

(bc) The respondent railroad companies entered into contracts with the respondent, the Armour Car Lines, to furnish them with refrigerator cars for use in the transportation of fruit from points in Michigan and to refrigerate the cars when used for such transportation. Under the contracts the use of other cars in that business is prohibited and the service of refrigeration is performed exclusively by the Car Lines Company. The railroad companies formerly furnished refrigeration without any charge in addition to the freight rate, and they subsequently made a charge for refrigeration substantially equal to the cost of the icing. Acting under the contracts the Car Lines Company exacts charges for the refrigeration service which greatly exceed those formerly made to cover the cost of icing by the railroad companies and range from 50 to 150% above those made prior to the contracts by the Car Lines Company itself. The total cost to the shipper therefore largely increased. HELD, Such exclusive contracts imposed exorbitant charges upon shippers in violation of section I. Re Transportation, Etc., of Fruit v. 10 I. C. C. 360.

(c) Railroad companies violate section 1 of the Act to Regulate Commerce in making exclusive contracts with a car line company to furnish refrigerator cars, under which the car line company exacts charges for refrigeration service which greatly exceed those formerly made to cover the cost of icing by the railroad companies, and range from 50 to 150 per cent above those made prior to the contracts, by the car line company itself, as they thereby, in effect, impose upon shippers exorbitant charges for the transportation of fruits to markets in other states. Re Transportation of Fruit, 10 I. C. C. 360.

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(d) Carriers made an exclusive contract to deliver live stock to the Union Stock Yards of Baltimore, although complainant had its own side track, and had shipped to it weekly carloads of live stock, but refused to deliver to other than the Union Stock Yards, on account of the exclusive contracts HELD, railroads may not make contracts which abrogate the Act; they may not refuse, because of their own contracts, to furnish a delivery that is reasonable upon tracks which they use, as a terminal for complainant; they may not discriminate as between commodities in the delivery which they give where no reason exists for such discrimination excepting the presence of a contract made with a private corporation, as in this case, The amended Act provides that it is the "duty of all common carriers to establish, observe and enforce just and reasonable regulations and practices affecting all matters relating to or connected with the receiving, handling, transporting, storing and delivery of property." Baltimore Butchers' Live Stock Co. v. P. B. & W. R. R. Co., 20 I. C. C. 124, 128.

(e) A carrier granted the exclusive right to a company to conduct its business as an auctioneer of fruit and vegetables on its terminal premises at St. Louis. Complainant, a rival company, asked for the same facilities. HELD, that the granting of the exclusive right to maintain a fruit auction company was somewhat analogous to the station restaurant, news-stand, barber shop, and other conveniences which travelers arriving at the station may make use of if they so desire. They are enterprises that outsiders are frequently permitted to engage in at railroad terminals, not as a part of the service that the carrier renders to the public, but as something that adds to the general convenience of the public. The telegraph, telephone, transfer and cab offices ordinarily found in passenger stations rest upon the same basis. They add to the convenience of the passenger before the transportation by the carrier has commenced or after it has been completed without adding to the service undertaken by the carrier for the traveler under its published rates. It is a matter that is wholly outside and apart from the service of transportation, and is a reasonable use for the defendant to make of its property. Complaint dismissed. Southwestern Produce Distributors v. Wabash R. R. Co., 20 I. C. C. 458, 460, 462.

(f) The Commission has no jurisdiction to order a railroad to give a local baggage transfer company an opportunity to bid against another one for the privilege of soliciting on trains, any more than it would have power to compel a railroad to place its fruit vendors' privilege up at auction, for neither one is transportation under the Act, and over neither one has the Commission jurisdiction. Cosby v. Richmond Transfer Co., 23 I. C. C. 72, 77.

(g) A union depot or terminal company may properly grant to a taxicab company the exclusive right to maintain a taxicab stand inside the station, and it may grant to such company the right to carry passengers from the station to some destination, as for instance another depot, if the route is entirely over its own land; but it cannot create a monopoly in one taxicab company by excluding, under the guise or pretense of regulating and controlling the use of its private property, all other taxicabs from its plaza or approach, even though it owns the same and has never dedicated the ground to the public. (Per White, Ragland, and James T. Blair, JJ) Kansas City Terminal Ry. Co. v. James, (Mo. 1923), 251 S. W. 53.

(h) Under Const. art. 12 § 23, prohibiting discrimination in charges or facilities between transportation companies and individuals, a union depot or terminal company cannot discriminate in favor of one taxicab owner or company by excluding others from its premises for the purpose of receiving or discharging passengers. (Per Woodson, C. J., and Walker, J.) Kansas City Terminal Ry. Co. v. James, (Mo. 1923), 251 S. W. 53.

(i) Though public patronage of busses as means of reaching ferry causes overcongestion of ferry terminal grounds, ferry company cannot, consistently with its public duty, exclude all busses from such grounds while admitting all other conveyances, public or private, though not protected by any contractual rights. Philadelphia & Camden Ferry Co. v. Johnson et al. (N. J., 1923), 121 A. 900.

ALL OTHER CITATIONS

Hocking Domestic Coal Co. v. K. & M. Ry., 44 I. C. C. 392, 398; Baggage & Omnibus Transfer Co. v. City of Portland (Ore. 1917), 164 Pac. 570; Missouri Pac. R. Co. v. Kohler, et al, (Kan. 1920) 193 Pac. 323; Mader v. City of Topeka (Kan., 1920), 189 Pac. 969; Missouri Pac. R. Co. v. Kohler (Kan. 1920), 193 Pac. 323; Clisbee, et al v. Chicago, R. I. & G. Ry. Co. (Tex. 1921), 230 S. W. 235.

EXCURSION RATES

See Advertising I; Passenger Fares and Facilities §6.

EXPEDITED SERVICE

See Live Stock Shipments; Special Rates and Service.

CASES 1887-1908

(a) For a special service by a carrier, such as the transportation of perishable freight, requiring quick movement, prompt delivery at destination, special fitting up of cars, their withdrawal from other service and their return empty on fast time, all involving greater expense to the carrier, a higher rate than for the carriage of ordinary freight is warranted by the conditions of the service and is reasonable and just. Delaware State Grange v. N. Y. P. & N. R. Co., 3 I. C. R. 554.

(b) In conference between officials of the carrier and representatives of certain of its patrons it was agreed that higher rates would be charged and paid for the transportation of strawberries in consideration of special expedited train upon which they would be hauled and by which they would be delivered for the early morning market; on account of reconstruction and improvement work upon and along the line of the carrier it was unable to furnish the expedited service agreed upon and which it had furnished for several years; the shippers contended that if the expedited service was not provided the higher rate should not obtain; HELD: That where an unusually high rate is charged because and in consideration of a special expedited service it is the duty of the carrier to provide and furnish such service or to cease and desist from charging the higher rate. Amer. Fruit Union v. Cin. N. Orleans & Tex. Pac. Ry. Co., 12 I. C. C. 411.

(c) Where an unusual and high rate is charged because and in consideration of a special and expedited service, it is the duty of the carrier to provide and furnish such service, or to cease and desist from charging the higher rate. American Fruit Union of Cincinnati v. C. N. O. & T. P. Ry. Co., 12 I. C. C. 411.

(d) Unusually high rate charged for special and expedited service not reasonable where such service not furnished. American Fruit Union of Cincinnati v. C. N. O. & T. P. Ry. Co., 12 I. C. C. 411.

(e) Complainant attacked as unreasonable commodity rates on strawberries, carloads, under refrigeration from Chattanooga and points on defendants line between Chattanooga and Oakdale, Tex., to Cincinnati, O., as unreasonable. In conference between officials of the carrier and representatives of certain of its patrons it was agreed that higher rates would be charged and paid for the transportation of strawberries in consideration of special expedited trains upon which they would be hauled and by which they would be delivered for the early morning market; on account of reconstruction and improvement work upon and along the line of the carrier it was unable to furnish the expedited service agreed upon and which it had furnished for several years. The shippers contended that if the expedited service was not provided the higher rate should not obtain. HELD, that where an unusually high rate is charged because and in consideration of a special and expedited service it is the duty of the carrier to provide and furnish such service or to cease and desist from charging the higher rate. HELD, rates attacked found unreasonable, reparation awarded. American Fruit Union v. C. N. O. & T. P. Ry., 12 I. C. C. 411.

(f) If a carrier charges and a shipper agrees to pay a higher charge in consideration of special or expedited service and the carrier fails to furnish the service agreed upon, it can not lawfully and properly demand the higher compensation. American Fruit Union v. N. O. & T. P. R. Co., 12 I. C. C. 411, 417.

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(g) Expedited movement of freight is a part of transportation service while a transit privilege is something offered to the shipper in addition to transportation service. The Five Per Cent Case, 31 I. C. C. 351, 408.

(h) And naturally expedition increases the cost of a given service and is also a thing of value to the shipper. Cleveland Prov. Co. v. B. & O. R. R., 50 I. C. C. 612, 618.

(i) Refusal to accord baggage-car service to shipments of condensed skimmed milk from Richmond, Petersburg, and Suffolk, Virginia, to Wilson and Rocky Mount, N. C., or to receive at such originating points mixed shipments of milk, cream, and condensed skimmed milk from connecting lines for further transportation to above destinations in baggage cars, found not unreasonable or unduly prejudicial. Present means of transportation accorded by express are not shown inadequate, and carrier should not be compelled to extend milk baggage-car service to other commodities simply because they are somewhat similar in character where same compelling reasons do not exist. Chapin-Sacks Corp. v. A. C. L. R. R. Co., 80 I. C. C. 255.

(j) Milk traffic in baggage cars is not an incident to passenger transportation. Chapin-Sacks Corp. v. A. C. L. R. R. Co., 80 I. C. C. 256.

(k) Milk, cream, and buttermilk are daily necessities, and this fact in connection with their perishable nature has compelled an extraordinary expedited service to be accorded these commodities. Carriers should not be compelled to extend this service to other commodities simply because they are somewhat similar in character where same compelling reasons do not exist. Chapin-Sacks Corp. v. A. C. L. R. R. Co., 80 I. C. C. 257.

(l) Maintenance of baggage-car service on milk, cream, and buttermilk is justified on grounds that they are used in practically every home as daily items of food, and from their perishable nature require prompt transportation. This service was not intended to serve private concerns at commercial centers, but in interest of public to provide small communities which are without adequate service by express with expeditious service necessary to movement of cream and milk to the cities. Chapin-Sacks Corp. v. A. C. L. R. R. Co., 80 I. C. C. 256, 257.

(m) Fast running time necessitates lighter trains and proportionately greater fuel consumption and wear and tear on rolling stock and roadway. Other ordinary freight trains running in same and opposite directions must be held up for fast fruit trains at passing points. Wenatchee Valley Fruit Exchange v. N. P. Ry. Co., 83 I. C. C. 71, 73, 74.

(n) Failure of defendant to establish c. l. rates and refrigerator-car service for strawberries from points on L. & N. R. R., while maintaining such rates and service from certain points in Louisiana and other States on other roads, found not unduly prejudicial to complainants at such L. & N. points. Unlike carrier in Louisiana, the L. & N. has at no time authorized the express company to furnish c. l. refrigerator service on strawberries, having handled such traffic by freight on December 27, 1917, and since. Hence, there is substantial difference in circumstances surrounding traffic from Louisiana as compared with traffic from points on L. & N. Furthermore, the railroads are not parties to this proceeding. Oyler & Son v. Amer. Ry. Exp. Co., 83 I. C. C. 160.

(o) Railroads are primarily responsible for proper transportation of all commodities offered to them and for furnishing of adequate service. If requirements of traffic demand more expeditious service it is duty of railroad either to furnish such reasonable service itself or to delegate that duty to an express company. Oyler & Son v. Amer. Ry. Exp. Co., 83 I. C. C. 160, 163.

ALL OTHER CITATIONS

Stacy & Sons v. O. S. L. R. R. Co., 20 I. C. C. 136, 138; In Re Investigation of Unreasonable Rates on Meats, 23 I. C. C. 656, 662; Hoyt & Bergen v. C. & N. W. Ry. Co., 32 I. C. C. 319, 324, 392; American Steel Dredge Co. v. American Exp. Co., Unrep. Op. A-807; S. P. Co. Steamboats on Sacramento River, 34 I. C. C. 174, 176; S. P. Co. Ownership of Stock in Transp. Co., 34 I. C. C. 648; 1915 Western Rate Advance Case, 35 I. C. C. 497, 580, 594; Fish to New York, N. Y., 39 I. C. C. 333; Providence Fruit & Produce Exchange v. M. St. P. & S. M. Ry. Co., 40 I. C. C. 43, 48; Fish from Virginia, 42

I. C. C. 415, 416; Roberts v. Nashville, C. & St. L. Ry. Co. (Tenn. 1916), 185 S. W. 69; Hormel & Co. v. C. G. W. R. R. Co., 43 I. C. C. 23, 26; C. F. A. Territory Milk and Cream Rates, 46 I. C. C. 601; Unification of Railroad Operation, 47 I. C. C. 757, 763; New York Harbor Case, 47 I. C. C. 643, 729; Nat'l Poultry, Butter & Egg Asso. v. B. & O. S. W. R. R., 51 I. C. C. 34, 47; Grossman Mfg. Co. v. New York Cent. R. R., 169 N. Y. S. 213; Ernest B. Timmons v. B. C. & A. Ry., 55 I. C. C. 495; Rates on Illustrated Newspaper Supplements, 74 I. C. C. 336; Transportation of Strawberries by Express, 81 I. C. C. 634.

EXPERIMENTAL RATES

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(a) Rates established for experimental purposes at the solicitation of shippers, as for instance to enable shippers to engage in certain business, and not shown to be reasonable in themselves, cannot be set up as standards by which to test the reasonableness of a proposed rate. N. Y. Produce Exchange v. N. Y. C. & H. R. R. Co., 32 I. C. C. 212, 216.

(b) An assertion that rates were established as an experiment and proved to be a mistake comes too late at the end of 14 years. Nebraska Bridge Supply and Lumber Co. v. N. C. & St. L. Ry., 35 I. C. C. 86, 89.

(ba) "Missionary Rates" were established for the purpose of developing business. Fruits and Vegetables, 43 I. C. C. 291, 293, 319.

(c) The Commission can not compel a carrier to reduce its fares solely on the ground that to do so would induce settlement of sparsely populated communities. Arizona Corp. Comm. v. A. T. & S. F. Ry., 45 I. C. C. 436, 442.

ALL OTHER CITATIONS

Anson, Gilkey & Hurd Co. v. S. P. Co., 33 I. C. C. 332, 340; Rates on Lumber from Southern Points, 34 I. C. C. 652, 659; Arlington Heights Fruit Exchange v. S. P. Co., 39 I. C. C. 88, 93; Felder v. S. Ry., 51 I. C. C. 124.

EXPERT TESTIMONY

See Evidence §22½, §40; Undercharges §6; Procedure Before Commission §15½.

EXPLOSIVE AND DANGEROUS ARTICLES

See Demurrage §2½.

CASES 1887-1908

(a) Common carriers have no right, by issuing a prohibitory tariff or otherwise to withdraw from the transportation of any articles not dangerous to handle and which are ordinarily the subject of transportation by them; less desirable traffic must be accepted upon reasonable terms, as well as that which is more desirable. Riddle, Dean & Co. v. N. Y., L. E. & W. R. R. Co., 1 I. C. R. 787.

(b) Common carriers in the transportation or handling of articles that are dangerous to health or property of others, where they have a knowledge of such dangerous character, or, by the use of due care, should have knowledge thereof, will not be relieved of the liability for damage done in consequence, or injury to others, by the transportation or handling of such dangerous articles. Rause v. Yauard, 5 I. C. C. 315.

(c) Carrier may direct handling of explosives on private sidings. Barden & Swartout v. Lehigh Valley R. R. Co., 12 I. C. C. 193.

IMPORTANT CASES SINCE 1908

(d) The regulations and precautionary measures prescribed by the Commission for handling inflammable and corrosive commodities in transit are said to have reduced the risk to such an extent as not to justify a rating on such commodities higher than the rating on other liquids moving in tank cars. Tanners Supply Co. v. A. A. R. R. Co., 42 I. C. C. 280, 284.

(e) The law confers the right and imposes the duty upon the carriers and the Commission to establish and enforce regulations, specifications and practices which are just and reasonable and which also afford adequate protection to the carrier, its employees and the general public against the hazards incident to the transportation of explosives and other dangerous articles. Transportation of Explosives, 53 I. C. C. 533, 542.

(f) Complainant in 12448 attacked charge of 7.5c per 100 pounds assessed by the P. & R., on over 500 carloads of smokeless powder, trinitritoluol, and other explosives for their movement by car float from Delaware River Pier at Wilmington, Del., to vessels in midstream or alongside piers at Wilmington and Carneys Point, N. J., as unreasonable. Complainant in 12450 attacked certain car demurrage and storage charges assessed by the P. & R., at

Wilmington on various carloads of wet nitrocelloulose and wet picric acid as unreasonable and not authorized by tariffs. No. 12448. Shipments originated at Emporium, New Castle, and Mount Union, Pa., Aetna, Ind., Hercules, Calif., and Fairmount and Syracuse, N. Y., between April 1918, and October 1918, for transhipment overseas. Car floats were employed to effect delivery to the vessels. The tariff on which complainant relies was not by its terms applicable on shipments floated to vessels in midstream or at piers on the New Jersey shore opposite Wilmington, whereas the tariff covering explosives specifically so applied. As to such shipments the allegation of a violation of section 6 is not sustained. The former tariff applied, however, on shipments floated to vessels tied up at piers on the Delaware side within the described limits of Wilmington Harbor territory. The locations of the vessels to which deliveries were made are not shown on the record, and in the absence of proof that the charge attacked or collected in any instance for the floatage of shipments to vessels at piers on the Delaware side of the Delaware River within Wilmington Harbor, the complaint will be dismissed without prejudice. No. 12450. Large quantities of wet nitrocellulose and wet picric acid were received at Wilmington over the P. & R., for transshipment; that the shipments were held for varying periods before exportation; and that for their detention defendant assessed and collected demurrage charges as provided in its tariff of rules governing car demurrage, together with storage in accordance with its local storage tariff applicable at Wilmington. While it may have been the intention of defendant to limit the free time on export shipments of explosives to either 48 or 24 hours and to provide for storage thereafter at the rate of $2 or $5, depending upon the character of the commodities, and to charge demurrage in accordance with its general demurrage tariffs, the tariffs failed to carry that intention into effect. HELD, demurrage charges assessed illegal, repartion awarded. Republic of France v. Director General, 68 I. C. C. 419.

(g) Contention that, since carriers may lawfully refuse shipments of explosives and other dangerous articles in containers not conforming to specifications of the commission, they may also refuse all articles in containers which do not meet the requirements which they prescribe, not sustained. Congress directed the commission to formulate regulations governing transportation of dangerous articles for protection of life and property, and fact that shipments of that character may not be transported in containers not complying in every particular with specifications prescribed does not prove that there should be no latitude in that respect in transportation of articles which are not dangerous. Fiber-Box Containers, 77 I. C. C. 713, 715.

ALL OTHER CITATIONS

Blumenstein v. P. & R. Ry. Co., 21 I. C. C. 90, 92; Masurite Explosive Co. v. Pittsburg & Lake Erie R. R. Co., 13 I. C. C. 405, 408; The Ingrid, 195 Fed. 596, 602; Storage Charges in C. F. A. Territory, 28 I. C. C. 372, 373, 375; Actiesselskabet Ingrid v. Central R. Co. of N. J., 216 Fed. 72, 82; International Agr. Corp. v. A. & W. P. R. R. Co., 32 I. C. C. 199, 200, 201; Du Pont de Nemours Powder Co. v. L. & N. R. R. Co., 33 I. C. C. 288; Rates on High Explosives to G. T. Ry. System Stations, 33 I. C. C. 567; Nitro Powder Co. v. W. S. R. R., 35 I. C. C. 77, 79; Du Pont de Nemours Powder Co. v. L. & N. R. R. Co., 33 I. C. C. 288, 289, 290; Rates on High Explosives to Grand Trunk Ry. System Stations, 33 I. C. C. 567; Nitro Powder Co. v. West Shore R. R. Co., 35 I. C. C. 77, 78, 79; Prest-O-Lite v. B. & A., 36 I. C. C. 545, 547; National Petroleum Asso. v. A. T. & S. F. Ry. Co., 38 I. C. C. 65, 68, 71; Aetna Powder Co. v. Wabash R. R., 39 I. C. C. 199; Tennessee Copper Co. v. S. Ry. Co., 41 I. C. C. 336, 340, 344; Horn v. Mitchell 232 Fed. 819; Du Pont de Nemours Powder Co. v. P. & R. R.y. 44 I. C. C. 531; Nitro Powder Co. v. W. S. R. R., 44 I. C. C. 596; Wilson Remover Co. v. C. M. & St. P. Ry., 48 I. C. C. 453, 454; City of Seattle v. Lloyd's Plate Glass Ins. Co., 253 Fed. 321; Du Pont de Nemours & Co. v. W. J. & S. R. R., 51 I. C. C. 553; Aetna Explosive Co. v. P., C. & St. L. R. R. Co., 53 I. C. C. 707; Regulations for Transportation of Explosives, 53 I. C. C. 533, 534, 544; Aetna Explosive Co. v. W. Ry. Co., 53 I. C. C. 749, 751; George C. Holt v. Hines, 55 I. C. C. 177; George C. Holt v. Director General, 55 I. C. C. 333; George C. Holt v. Director General, 56 I. C. C. 257, 258; Du Pont de Nemours & Co. v. Director General, 55 I. C. C. 247; Aetna Explosives Co. v. Director General, 55 I. C. C. 333, 350, 352; Reg-

ulations for the Transportation of Explosives, 56 I. C. C. 734, 738, 740, 741; Restrictions in Routing Explosives via N. & W. Ry., 64 I. C. C. 10; Western Petroleum Refiners Asso. v. A. & R. R. R. Co., 66 I. C. C. 58; Aetna Explosives Co. v. W. S. R. R. Co., 68 I. C. C. 264; Lehigh Valley R. Co., v. Allied Machinery Co. of America, 271 Fed. 900.

EXPORT RATES AND FACILITIES

I. CONTROL AND REGULATION
§1. Jurisdiction of Commission.
§1½. Construction of act.
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II. BILLS OF LADING
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III. DISCRIMINATION.
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VI. STORAGE AND DEMURRAGE
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VII. PAYMENT OF CHARGES
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§9. In general.

CROSS REFERENCES

See Coastwise Traffic; Express Companies §4; Foreign Commerce.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Jurisdiction of Commission.

See Interstate Commerce Commission I; Jurisdiction of Commission; Through Routes and Joint Rates §3.

CASES 1887-1908

(a) Upon petitions by railroad companies praying the Commission to "authorize the trunk lines to bill export freight to Boston at New York rates" etc., HELD, that as any legal ground for affirmative action on the part of the Commission was precluded by the fact that the parties bringing the practice to the attention of the Commission did so with explanations of its propriety and insisting upon its lawfulness,—no order should be made on the petitions, but leave should be given to withdraw them. Re Export Trade of Boston v. I. C. R. 25.

(b) Petition made by railroad companies praying the Commission to authorize the trunk lines to bill export freight to Boston at New York rates. HELD, that as any ground for affirmative action on the part of the Commission was precluded by the fact that the parties bringing the practice to the attention of the Commission did so with explanations of its propriety and insisting upon its lawfulness,—no order should be made on the petitions, but leave should be given to withdraw them. Re Export Trade of Boston, 1 I. C. C. 25, 27.

(c) Import and export tariff is not removed from the jurisdiction of the Commission by the decision of the United States Supreme Court in Texas & Pacific Railway Co. v. Interstate Commerce Commission, 162 U. S. 197, 40 L. ed. 940, 5 Inters. Com. Rep. 405, but, on the contrary, the effect of that decision is to extend such jurisdiction; and the Commission has full authority to pass upon the grievance of any individual or locality which is alleged to arise from rates upon export or import goods as compared with rates on domestic merchandise. Kemble v. Boston & Albany R. R. Co., 8 I. C. C. 110.

(d) If any individual or locality feels itself aggrieved by the rates made upon export or import business as compared with domestic business, the Commission has full authority to consider and pass upon that grievance. Kemble v. B. &. A. R. Co., 8 I. C. C. 110, 119.

(e) The Interstate Commerce Commission has jurisdiction over export traffic. Re Export and Domestic Rates on Grain, 8 I. C. C. 214.

(f) The Act to Regulate Commerce applies to the transportation of export and import traffic, and the jurisdiction of the Commission over such traffic is not denied, but is distinctly affirmed and rather enlarged by the decision of the U. S. Supreme Court in Texas & Pacific R. Co. v. Interstate Commerce Commission, 162 U. S. 197, 40 L. ed. 940, 5 Inters. Com. Rep. 405, Export & Domestic Rates v. 8 I. C. C. 214.

IMPORTANT CASES SINCE 1908

(g) Cummins Amendment does not apply to export and import shipments. The Cummins Amendment, 33 I. C. C. 682, 693.

(h) It is beyond the Commission's jurisdiction to pass upon the negligence of governmental agencies in failing to

efficiently co-operate in bringing forward shipments for export early enough for loading into vessels on which space engaged, and thereby obviate demurrage. The various steps taken by the government during the war were for the benefit of the public in general and were intended to and did facilitate commerce. American Smelting & Refining Co. v. Director General, as Agent, 62 I. C. C. 583, 587.

(i) The jurisdiction of the Commission to prescribe a uniform export bill of lading for shipments to nonadjacent foreign countries in connection with ocean carriers whose vessels are registered under the laws of the United States is one of law, but pending judicial interpretation of the pertinent provisions of the act the Commission must construe them in endeavoring to perform the administrative duties which they impose upon it. Export Bill of Lading, 64 I. C. C. 347, 351.

(j) The Commission's power to prescribe rules and regulations, not inconsistent with the act, which shall constitute and determine the form of the bill of lading, covers the terms or tenor of that instrument, and is, as to the transportation until delivery to the ocean carrier, adequate and complete. And the intent of the Congress to require a uniform through export bill of lading and to have the terms thereof prescribed by the Commission seems clear. Export Bill of Lading, 64 I. C. C. 347, 352.

(k) Carriers challenge the Commission's power to do more than prescribe the "form" as distinguished from the substance of a bill of lading, but such interpretation would imply that each carrier could insert its own peculiar phraseology in its bill of lading, while the intention of Congress to have a uniform bill of lading prescribed by the Commission is clearly indicated in section 25, under which the Commission is also required to "preserve for carriers by water the protection of limited liability provided by law," and this can not be done by specifying color of paper or size of type. Export Bill of Lading, 64 I. C. C. 347, 352.

(l) The Commission has no jurisdiction or control over ocean rates to foreign port, and the equalization of port rates on basis of the water rates from the ports would place upon the rail lines the burden of the disabilities of the several ports, arising from such causes as distance from foreign markets, difference in harbor facilities, and other conditions affecting ocean rates. No stabilization of rail rates would be possible under such an adjustment. Tobacco from Ohio River Crossings, 73 I. C. C. 384, 387.

(m) Freight moving under a through export bill of lading is "designated as 'for export'" as definitely and certainly as when it moves under billing to the port with the words "for export" written theron. U. S. Steel Products Co. v. Director General, as Agent, 73 I. C. C. 505, 508.

(n) The Commission has no jurisdiction over shipments originally intended for export but which are subsequently reshipped to another point in the same State and not exported, the entire movement being intrastate. Phillips & Sons Co. v. B. & O. R. R. Co., 74 I. C. C. 381.

ALL OTHER CITATIONS

N. Y. C. & H. R. R. R. Co. v. I. C. C. 168 Fed. 131, 137; In re Advances for Transportation of Cotton and Cotton Linters, 23 I. C. C. 404, 410; Red River Oil Co. v. T. & P. Ry. Co., 23 I. C. C. 438, 440; In Re Wharfage Charges at Galveston, 23 I. C. C. 535, 548; New Orleans Board of Trade v. I. C. R. R. Co., 23 I. C. C. 465, 470; St. L. S. F. & T. Ry. Co. v. Birge-Forbes Co. (Tex., 1911), 139 S. W. 3, 4; Railroad Commission of Louisiana v. T. & P. Ry. Co., 33 Sup. Ct. 837, 840; 229 U. S. 336; Rates on Plaster & Gypsum Rock, 27 I. C. C. 67, 70; Lumber Rates from Memphis and Other Points to New Orleans, 27 I. C. C. 471, 478; Galveston Commercial Assn. v. A. T. & S. F. Ry. Co., 25 I. C. C. 216, 217, 225; Cottonseed Products to Port Arthur, Tex., 38 I. C. C. 378, 388; Kirk v. M. K. & T. Ry. Co., of T., 39 I. C. C. 755, 756; National Implement & Vehicle Assn. v. B. & O. R R., 42 I. C. C. 461, 468; Evans Lumber Co. v. C. of G. Ry. Co., 43 I. C. C. 476, 479; New York Produce Exchange v. B. & O. R. R., 46 I. C. C. 666, 671.

§1½. Construction of Act.

See Act to Regulate Commerce.

CASES 1887-1908

(a) It is not, as matter of law, a violation of the Act to Regulate Commerce to make a lower rate to the port of export upon traffic which is exported than upon that which is locally consumed, for the export rate is in essence the division

of a through rate. Kemble v. Boston & Albany R. R. Co., 8 I. C. C. 110, 117.

(b) Carriers are not prohibited, as a matter of law, from making rates from points in the United States to points in foreign countries, or from points in foreign countries to points in the United States, of which the inland division or share accruing to carriers within the United States is less than the tariff rate of such carriers on domestic shipments of similar commodities. Kemble v. B. & A. R. Co., 8 I. C. C. 110, 118.

(c) In 1898 defendants' rates to New York on export corn were 19 cents per hundred pounds from Peoria and 17½ cents from Chicago; and from the Mississippi River the 17½ cent Chicago rate applied as a proportional rate on export corn coming from the west of that river. In January and February, 1899, the proportional rate from the river was made 13½ cents, a reduction of 4 cents, the Chicago rate was made 16 cents, and the Peoria rate 17½ cents, a reduction of 1½ cents. This rate from the river had always been higher, or at least no lower, than the rate from Chicago. Higher rates are in effect on export corn originating at the river crossings, and local and proportional rates considerably above the proportional export rate are also in force from river points on domestic shipments. Under former rates Illinois corn went forward freely for export through Atlantic ports, but under present rates it is stored in elevators or cribbed upon the farms, while Iowa corn moves in large quantities across Illinois farms and through Illinois markets on its way to the seaboard and foreign points. Large quantities of corn are held in store at Chicago and Peoria. Through rates to the Atlantic seaboard apply from a large number of points in Illinois, but from numerous other localities in that State the corn must be shipped under local rates to and from points like Chicago and Peoria. Some of these through rates and many of the combination rates are higher than through or combination rates on export corn from points in Iowa. Facts relating to competition of routes leading to Gulf ports and to application of "transit rates" on export corn are stated. HELD (1) That through or total combination tariff rates on export corn from points in Illinois, which are higher than the through or combination rate on corn from any point in Iowa, are unlawful under section 3 of the Act to Regulate Commerce. (2) That the evidence is not sufficient to enable the Commission to determine what, if any, other correction should be made in the present rate relations, and that the Boards of Trade of Chicago and Peoria, complainants herein, have leave to apply for further hearing in regard to the effect of the changes made by defendants in the general rate adjustment. Export Rates from Points E. & W. of Mississippi River, 8 I. C. C. 185.

(d) The act does not, as a matter of law, prohibit a carrier by railroad from making a through rate from a point within the United States to a foreign destination of which its division shall be less than the amount charged by it for the corresponding transportation of domestic merchandise to the port of export. Nor is it, as a matter of law, in violation of the act for such carrier to make a lower rate to the port of export on traffic which is exported than upon that which is locally consumed, for the export rate is in essence the division of a through rate. In the matter of relative rates upon export and domestic rates on traffic in grain and grain products and of the publication of tariffs relating to such traffic., Export and Domestic Rates, 8 I. C. C. 214, 255.

(e) It is a question of fact whether rates upon export or import traffic, as well as those upon domestic traffic, are in contravention of the provisions of the act. Export and Domestic Rates, 8 I. C. C. 214, 256.

(f) The Act to Regulate Commerce applies to the transportation of export traffic. Re Export & Domestic Rates on Grain, 8 I. C. C. 214.

(g) Whether rates upon export traffic contravene provisions of the Act to Regulate Commerce is a question of fact. Re Export & Domestic Rates on Grain, 8 I. C. C. 214.

(h) It is a question of fact whether rates upon export or import traffic, as well as those upon domestic traffic, are in contravention of the provisions of the Act to Regulate Commerce. Export & Domestic Rates v. 8. I. C. C. 214.

(i) In the application of export grain rates the carriers should in no case make the rate from any point to the seaboard less than that from any intermediate points on the same line. Export and Domestic Rates, 8 I. C. C. 214, 265.

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(j) It seems evident that it was not

the intention of Congress to make the Cummins amendment applicable to traffic to a nonadjacent foreign country. There is a clear distinction between "interstate" and "foreign" commerce in the wording of the Act throughout, and in the definitions of the courts in construing these terms, whether or not the cases arise under the Act to Regulate Commerce. Transportation in interstate commerce, as used in the Act, means the transportation of commodities between or among, the states, territories, etc. Transportation in foreign commerce, as used in the Act, means the transportation of commodities between a point in the United States and a point in a foreign country. The deduction seems clear and inevitable that transportation from a point in the United States to a point in a nonadjacent foreign country cannot be brought within the specification of the Cummins amendment of commerce "from a point in one state or territory or the District of Columbia to a point in another state, territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country." For obvious reasons, not necessary to enlarge upon, it seems equally clear that commerce from a point in the United States to a point in a nonadjacent foreign country moving wholly intrastate from the point of shipment to a port of export is not within the purview of the amendment. This interpretation is supported by the holdings of the courts in St. Louis, I. Mt. & So. Ry. Co. v. Starbird, 243 U. S. 592, and Aldrich v. Atlantic coast Line R. Co., 104 S. C. 364; Bills of Lading, 52 I. C. C. 671, 729.

(k) While the carrier may not make a limitation exempting itself from liability for loss, damage or injury not occurring on its own road, or its own water line, nor after the property has been delivered to the next carrier, in respect of interstate traffic within this country. nor in respect of traffic to an adjacent foreign country, it may, in respect of export traffic to nonadjacent foreign countries, still enjoy its common law right to contract for such a limitation of its liability. Congress has not sought to take its right from it. While the carrier is bound to issue to the shipper a bill of lading on a shipment destined "from a point in the United States to a point in an adjacent foreign country," the law does not say that, in form, such a bill of lading shall be an "export" bill. Bills of Lading, 52 I. C. C. 671, 732.

(l) The provisions of the Cummins amendment apply only to such export shipments as are destined to "a point in an adjacent foreign country." To shipments destined to a nonadjacent foreign country the provisions of this amendment do not apply, and the jurisdiction of the Commission over the issuance, form, and substance of bills of lading covering such shipment is limited to the provisions which govern the inland or coastwise transportation to the port. Bills of Lading, 52 I. C. C. 671, 733.

(m) The provisions of the Carmack and Cummins amendments are inapplicable to export shipments destined to points in nonadjacent foreign countries, and it is only by the provisions of these amendments that carriers are prohibited from restricting their liability for loss, damage, or injury not occurring on their respective separate lines. In the absence, therefore, of any statutory provision, a carrier is within its legal rights in contracting against liability for a delay not occuring on its own line not the result of its negligence, and, where proper tender of a shipment has been made to a connecting line, to reduce its liability thereafter to that of a warehouseman for the period such shipment is awaiting further transportation. Bills of Lading, 52 I. C. C. 671, 737.

ALL OTHER CITATIONS

Bills of Lading, 52 I. C. C. 671, 727, 728, 736; Amer. Smelting & Refining Co. v. Director General, as Agent, 69 I. C. C. 231.

§2. Establishment and Construction.

See Construction of Rates.

CASES 1887-1908

(a) The Act to Regulate Commerce does not, as a matter of law, prohibit a carrier by railroad from making a through rate from a point within the United States to a foreign destination, of which its division shall be less than the amount charged by it for the corresponding transportation of domestic merchandise to the point of export; nor is it, as a matter of law, a violation of the act for such carrier to make a lower rate to the port of export upon traffic which is exported than upon that which is locally consumed, for the export rate is, in essence, the division of a through rate. Re Export and Domestic Rates on Grain, 8 I. C. C. 214.

(aa) Market conditions, sometimes in

case of wheat, but seldom in case of corn, may justify an export rate through the port of New York somewhat lower than the domestic rate. Re Export and Domestic Rates on Grain, 8 I. C. C. 214.

IMPORTANT CASES SINCE 1908

(ab) Until 1903 export iron and steel traffic moved to Atlantic seaboard at domestic rates when manufacturers asked for lower rates to compete with producers in England, France, Germany, and Belgium, who were then in control of the foreign markets. Eastern Export Iron and Steel, 43 I. C. C. 5, 6.

(b) The maintenance of different export rates to the same port dependent upon the foreign destination of the traffic is not unlawful. Western Export Iron & Steel Case, 43 I. C. C. 129, 131.

(c) There is nothing inherent in export traffic that entitles it as such to take lower rates than domestic traffic. D. Nagase & Co., Ltd. v. Director General, 68 I. C. C. 539, 540.

(d) In paragraph (5), section 25, of the Act Congress stated that "issuance of a through (export) bill of lading shall not be held to constitute an arrangement for continuous carriage or shipment." In view of this specific limitation as to meaning of that term in connection with export traffic, it is evident that issuance of through bills of lading by Pacific Ocean carriers in a nonadjacent foreign country likewise does not constitute such an "arrangement" as to bring those Pacific Ocean carriers within commission's jurisdiction. Boston Wool Trade Asso. v. A., T. & S. F. Ry. Co. 83 I. C. C. 445. 448, 449.

(e) There is nothing inherent in export traffic that entitles it as such to take lower rates than domestic traffic. Lincoln Oil Refining Co. v. C. C. C. & St. L. Ry., 88 I. C. C. 269, 271.

(f) There is an important distinction between the voluntary act of a carrier in granting export rates lower than the corresponding domestic rates and an order from the Commission requiring such a difference to be observed. The formerly may freely be done so long as no violation of the act results, but the Commission may not require a difference in rates on the two classes of traffic unless there is a substantial variation in the service performed. Lincoln Oil Refining Co. v. C. C. C. & St. L. Ry., 88 I. C. C. 269, 271.

ALL OTHER CITATIONS

The New England Investigation, 27 I. C. C. 560, 569, 613; Erickson Co. v. C. M. & St. P. Ry. Co., 29 I. C. C. 414, 416; Mobile Chamber of Commerce v. M. & O. R. R. Co., 32 I. C. C. 272, 277; Basin Supply Co. v. T. & S. F. Ry. Co., 33 I. C. C. 157, 158, 159; Louisiana Cotton, 46 I. C. C. 451, 452; New York Produce Exchange v. B. & O. R. R., 46. I. C. C. 666, 672, 673; Export Freight Free Time, 47 I. C. C. 162, 180; New York Harbor Case, 47 I. C. C. 643, 649; Wieser & Co. v. M. K. & T. Ry. of Tex., 49 I. C. C. 69; Duckworth Company v. I. C. C. R. R. Co., et al., 52 I. C. C. 323; Engineering Co. v. Director General, 57 I. C. C. 311; Inland Steel Co. v. Director General, 57 I. C. C. 339, 341; Lakewood Engineering Co. v. Director General, 58 I. C. C. 162; Le Pestre, Miller & Co. v. Erie Railroad, 73 I. C. C. 621; United States Steel Products Co. v. Director General, as Agent, 73 I. C. C. 505, 508; Standard Export Lumber Co. v. A. S. M. R. R., 74 I. C. C. 721; Boston Wool Trade Asso. v. A., T. & S. F. Ry. Co., 83 I. C. C. 445, 448, 449.

II. BILLS OF LADING.

See Bills of Lading; Routing and Misrouting §3; Through Routes and Joint Rates III; §12.

§3. Provisions in General.

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(a) A through export bill of lading is not a joint undertaking for the through carriage of property from an interior point in this country to a foreign port. It is merely an instrument combining for the convenience of the shipper the separate and several contracts of the rail carrier to the American port and of the ocean carrier beyond. As a matter of law, neither the rail nor the ocean carrier is liable for the storage charges at the port. New York Produce Exchange v. B. & O. R. R., 46 I. C. C. 666, 670.

(aa) Carriers' practice of construing "delivery" in export bill of lading, which fixes date from which time limit begins to run for filing of claims for loss and damage, as delivery at port of export, not found unreasonable. Price & Co. v. A. T. & S. F. Ry., 56 I. C. C. 437, 438.

(b) So-called through export bills of lading are in fact two distinct contracts, one on the part of the railroads for the carriage to the port and the other on the part of the ocean line for the carriage

from the port. The Director General, through his agents, performed the contract of rail transportation, and he was not responsible for the detention of cars at the port awaiting vessel space. The complainant retained and exercised the right to direct reconsignment and disposition at the port of exit. Dodge Brothers v. Director General, 62 I. C. C. 689, 691.

(c) Commission reopened 52 I. C. C. 671, in the matter of bills of lading with respect to the form and substance of through export bills of lading. HELD, the power of the Commission to prescribe rules and regulations, not inconsistent with the act, which shall constitute and determine the form of the bill of lading, covers the terms or tenor of that instrument and is, as to the transportation until delivery to the ocean carrier, adequate and complete. And the intent of the Congress to require a uniform through export bill of lading and to have the terms thereof prescribed by the Commission seems clear. HELD, further, present through export bills of lading unreasonable to nonadjacent foreign countries in so far as they differ from those shown in connection with this report. Carriers to publish in accordance with section 6 of the Act. As to bills, of loading for domestic use and to adjacent foreign countries, see 64 I. C. C. 357. In the matter of bills of lading, 64 I. C. C. 347.

(d) Rules and regulations made prescribing form of through export bill of lading to be issued by carriers subject to the act of application to the transportation of property, in connection with ocean carriers, whose vessels are registered under the laws of the United States from points in the United States designated under the provisions of section 25 of the act to points in nonadjacent foreign countries. Export Bill of Lading 64 I. C. C. 347.

(e) The question of the jurisdiction of the Commission to prescribe a unifrom export bill of lading for shipments to nonadjacent foreign countries in connection with ocean carriers whose vessels are registered under laws of the United States is one of law, but pending judicial interpretation of the pertinent provisions of the act the Commission must construe them in endeavoring to perform the administrative duties which they impose upon it. Export Bill of Lading, 64 I. C. C. 347, 351.

(f) Shipments moved to San Francisco, Calif., under "order notify" bills of lading for export, and were unloaded into private warehouse at consignee's request. Shipments subsequently exported. Tariff provided export rate where domestic bills of lading exchanged for export bills at port of exit. HELD: Delivery to warehouse at consignee's order tantamount to delivery to consignees, and carrier justified in demanding surrender of negotiable bills of lading for its protection. Domestic rates assessed found applicable. Rolph, Mills & Co. v. Director General, as Agent, 74 I. C. C. 751, 752, 753.

(g) The Commission in 64 I. C. C. 347 prescribed a form of through export bill of lading. The United States Shipping Board suggested that some changes be embodied in the prescribed form. 1: The following to be printed or stamped in the heading of through export bills: Bill of lading signature No..... Through bill of lading issued in conformity with understanding with the Liverpool Cotton Bills of Lading Conference (1907) Committee and the American Bankers Association. Also "If charges are to be prepaid, write or stamp here, "to be prepaid." Received $..... to apply in prepayment of the charges on the property described herein. The signature here only acknowledges the amount prepaid." HELD, previous order modified as follows: To include in the heading of the form of through export bill heretofore prescribed by the Commission either the provision with respect to signature certificate number suggested by petitioners, hereinbefore quoted, or that provision with the word "agreement" substituted for the word "understanding." To include in that form the second or receipt portion of the prepayment provision suggested, and to print the said form on both sides of the paper, consecutively, in part on one side of the paper and the remainder on the other side, without change in the order of arrangement heretofore prescribed. Export Bill of Lading, 80 I. C. C. 305.

(h) No specific reference whatever in the act relating to through import bills of lading. Although specific jurisdiction over through export bills of lading is conferred by section 25, and some jurisdiction is acquired because traffic originates on rail carriers within United States, the commission has refused to de-

termine and prescribe terms and provisions of export bills respecting service after delivery to steamship company at port of export, in view of limitations on commission's jurisdiction over traffic, or an ocean carrier of that traffic, from nonadjacent foreign country prior to delivery at port by ocean carrier to American rail carrier. Boston Wool Trade Asso. v. A., T. & S. F. Ry. Co., 83 I. C. C. 445, 450.

ALL OTHER CITATIONS

Cosmopolitan Shipping Co. v. Hamburg-American Packet Co., 13 I. C. C. 266, 281; Mobile Chamber of Commerce v. M. & O. R. R. Co., 23 I. C. C. 417, 424, 425, 426, 427; Aransas Pass Channel & Dock Co. v. G. H. & S. A. Ry. Co., 27 I. C. C. 403, 415; Galveston Commercial Assn. v. A. T. & S. F. Ry. Co., 25 I. C. C. 216, 222, 225; Mobile Chamber of Commerce v. M. & O. R. R. Co., 32 I. C. C. 272, 280; Basin Supply Co. v. T. & F. S. Ry., 33 I. C. C. 157, 158; Evans Lumber Co. v. C. of G. Co., 43 I. C. C. 476, 477; Dewey Bros. Co. v. P. C. C. & St. L. R. R., 48 I. C. C. 467; Peterson Co. v. A. T. & S. F. Ry., 51 I. C. C. 401, 402; Bills of Lading, 52 I. C. C. 671, 726, 730, 734, 735; Transcontinental Freight Co. v. Director General, 62 I. C. C. 127.

III. DISCRIMINATION.

See Discrimination.

§4. In General.

CASES 1887-1908

(a) Complainant attacked rates for export to Boston as compared with the rates to New York, from Chicago as discriminatory. The relative reasonableness of rates on shipments from western points to cities on the Atlantic seaboard is to be determined by all the circumstances and conditions that effect the traffic to the respective points between which the rates are questioned, and not solely by one standard of comparison. The length and character of the haul, the cost of service, the volume of business, the conditions of competition, the storage capacity of the different terminal points are all elements of importance bearing upon the relative reasonableness of the respective charges for transportation. The fact that the export rates through Boston and the rates on merchandise intended for coast wise points east of Portland, and the westbound rates from Boston have been made by the carriers the same as corresponding New York rates in order to put Boston on an equality with New York and other seaboard cities wherever Boston is a competitor with those cities is not controlling in determining the reasonableness of eastbound local rates in a traffic in which there is no competition by other cities. In view of the longer haul to Boston than to New York, the greater cost of transportation to Boston, the very much greater volume of business to and from New York, the competition by water transportation by the lakes, Erie Canal and Hudson River, and also by several rival railroad lines, and the geographical and commercial advantages of New York, the differentials on Boston local rates of 10c per 100 pounds on the first and second classes of merchandise and of 5c per 100 pounds on the four other classes between New York and Boston on traffic originating west of Buffalo have not been shown to be unjust and unreasonable or to constitute unjust discrimination against Boston. Complaint dismissed. Boston Chamber of Commerce v. L. S. & M. S. R. R., 1 I. C. C. 754.

(b) It is essential that any method for making rates should be practicable, and not afford a cover for discrimination and injustice. The only practicable mode yet devised for making through export rates, is to add to the established inland rate from the interior to the seaboard, the current ocean rates. New York Produce Exchange v. N. Y. C. & H. R. Co., 2 I. C. C. 553, 563.

(c) From Nov. 4, 1887, to February 20, 1888, the Trunk Lines made through export rates of which the inland proportion accepted by them was, at the Port of New York, often ten cents or more per hundred pounds less on like traffic than the published tariff rates charged at the same time to the same ports. HELD, that the discrepancy between the proportion of the through rate accepted and the established tariffs for seaboard consignments for the same inland carriage, is not shown to have been justified by any circumstances tending to show that it was just or proper, and that it must therefore be deemed an unjust and unlawful discrimination as against the transportation terminating at the port. New York Produce Exchange v. N. Y. C. & H. R., 2 I. C. C. 553.

(d) Through or total combination tariff rates on export corn from points in Illinois, which are higher than the through or combination rate on corn

from any point in Iowa, are unlawful under §3 of the Act to Regulate Commerce. Re Export Rates from Points East and West of Miss. River, 8 I. C. C. 185.

(e) Public policy and good railway policy alike seem to require the same rate on export wheat and export flour, but, in view of the conditions shown, a greater rate of 2 cents per 100 lbs. on export flour than on export wheat is not in violation of the Act to Regulate Commerce. Re Export and Domestic Rates on Grain, 8 I. C. C. 214.

(f) Carriers engaged in the transportation of export flour from Minneapolis at a rate which is 1½ cents less than the domestic rate to the port of export refuse to make any corresponding concessions to intermediate millers. HELD, That this is unjust and unlawful discrimination against such intermediate traffic, and that whatever line participates in such lower export rate on flour from Minneapolis must make a corresponding rate upon similar traffic from intermediate points. Export & Domestic Rates, v. 8 I. C. C. 214.

(g) Much higher domestic rates on wheat and corn from intermediate points than the export rate from more distant points subject the former localities to undue prejudice, where the circumstances and conditions governing the transportation of corn from the longer and shorter distance points are not substantially dissimilar. Board of R. Comrs. v. Atchison, T. & S. F. R. Co., 8 I. C. C. 304.

(h) Several defendant carriers in transporting wheat and corn from points in Kansas and Missouri and intermediate points to Galveston and New Orleans make lower export rates on those commodities from Kansas City, Mo., or points in that vicinity, than from some of the intermediate stations on their lines. These export rates are much lower than the corresponding domestic rates, in case of which the fourth section is invariably followed. The circumstances and conditions governing transportation of grain from the longer and shorter distance points are not substantially dissimilar. HELD, that the higher rates from such intermediate points subject those localities to undue prejudice, and that if the carriers are allowed to make these low export rates they should in making them treat all intermediate territory alike, and desist henceforth from charging higher rates from the nearer stations than those in effect from the more distant points. Board of Railroad Commissioners of Kansas v. A. T. & S. F. R. Co., 8 I. C. C. 304.

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(i) So if A and B are both shippers of grain located at a given point in the west, and A has trade relations with a Baltimore exporter, to whom he usually ships his grain, while B has similar relations with an intermediate dealer at Baltimore, to whom he usually ships his grain, the permit system operates to the advantage of A and to the disadvantage of B. Baltimore Chamber of Commerce v. B. & O. R. R., 45 I. C. C. 40, 49.

(j) Proposal to prohibit recompression or high-density compression at Texas ports, and limit export rates on cotton moving under through bills of lading to traffic delivered direct to ship side, found not justified. Apprehension that carriers might be required to establish similar arrangements at interior points is not well founded, risk or loss while traffic is in possession of the compress is no reason for withdrawing the privilege, it is not shown that the privilege results in failure to meet connections with sailings, exercise thereof does not constitute conversion as there is no difficulty in identifying shipments in and out of the compress, and it seems improper of line-haul carriers attempting to dictate what privileges should be given the traffic after they have completed their part of the transportation service by unloading the traffic on the wharf. Elimination of Transit Privileges on Export Cotton, 73 I. C. C. 299.

ALL OTHER CITATIONS

Thompson Lumber Co. v. I. C. R. R. Co., 13 I. C. C. 657, 666; N. Y. C. & H. R. R. R. Co. v. I. C. C. 168 Fed. 131; Hecker-Jones-Jewell Milling Co. v. B. & O. R. R. Co., 14 I. C. C. 356, 360, 363, sustained; Joseph Ullman & Adams Exp. Co., 14 I. C. C. 340, 345, Rehearing Denied, 14 I. C. C. 585; Bulte Milling Co. v. C. & A. R. R. Co., 15 I. C. C. 351, 360; Baltimore Chamber of Commerce v. B. & O. R. R. Co., 22 I. C. C. 596, 603; New Orleans Board of Trade v. I. C. R. R. Co., 23 I. C. C. 465, 469; Red River Oil Co. v. T. & P. Ry. Co., 23 I. C. C. 438, 447; Mobile Chamber of Commerce v. M. & O. R. R. Co., 23 I. C. C. 417, 423, 426; In Re Advances on Cotton, 23 I. C. C. 404, 411; Chamber of Commerce of Newport News v. S. Ry. Co., 23 I. C.

C. 345, 355; In re Advances on Manganese Ore, 25 I. C. C. 663, 669; Greenbaum Co. v. C. & O. Ry. Co., 25 I. C. C. 352; Galveston Commercial Assn. v. A. T. & S. F. Ry. Co., 25 I. C. C. 216, 224, 226; Board of Trade of Chicago v. I. C. R. R. Co., 26 I. C. C. 545; Aransas Pass Channel & Dock Co. v. G. H. & S. A. Ry. Co., 27 I. C. C. 403; National Lumber Exporters' Assn. v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 215; New Orleans Board of Trade v. I. C. R. R. Co., 29 I. C. C. 32; Rates on Cottonseed and its Products, 28 I. C. C. 219; Texarkana Freight Bureau v. St. L. I. M. & S. Ry. Co., 28 I. C. C. 569, 576; Stange Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-244; Erickson Co. v. C. M. & St. P. Ry. Co., 29 I. C. C. 414, 416; Alexandria Lumber Co., Ltd., v. L. R. & N. R. R. Co., Unrep. Op. A-710; United States v. P. R. R. Co., Unrep. Op. A-957; Miller Elevator Co. v. F. & V. Ry., 38 I. C. C. 224; American Creosote Works, Inc. v. M. L. & T. R. R. & S. S. Co., 37 I. C. C. 238; Omaha Grain Exch. v. M. & O. R. R., 37 I. C. C. 363; Corp. Commission of Oklahoma v. A. T. & S. F. Ry., 38 I. C. C. 33; Lamb-Fish Lum. Co. v. Y. & M. V. R. R., 38 I. C. C. 278; Greenbaum Co. v. S. Ry., 38 I. C. C. 715; Baltimore Chamber of Commerce v. B. & O. R. R., 45 I. C. C. 40, 51; Export Freight Free Time, 47 I. C. C. 162, 188; West Virginia Rail Co. v. C. & O. Ry., 50 I. C. C. 110, 115; Armour & Co. v. B. & A. R. R., 51 I. C. C. 244, 247; William v. S. P., 53 I. C. C. 338; Inland Steel Co. v. Director General, 55 I. C. C. 462, 466; Price & Co. v. A. T. & S. F. Ry., 56 I. C. C. 435, 437, 438; Inland Steel Co. v. Director General, 60 I. C. C. 640, 642; Anderson & Co. v. Director General, as Agent, 61 I. C. C. 64; American Steel Export Co. v. Director General, as Agent, 63 I. C. C. 86; Werner Stave Co. v. Director General, as Agent, 63 I. C. C. 442; Mitsui & Co. v. Director General, as Agent, 64 I. C. C. 4; Wenger-Armstrong Petroleum Co. v. Director General, as Agent, 64 I. C. C. 175, 176; Lee Flour Mills Co. v. Director General, as Agent, 64 I. C. C. 226; Ault & Wiborg Co. v. Director General, 66 I. C. C. 247; Shibakawa & Co. (Inc.) v. P. & R. Ry. Co., 66 I. C. C. 261; Southern Pine Association v. Director General, 73 I. C. C. 731; Tobacco from Ohio River Crossings, 73 I. C. C. 384; Galveston Commercial Association v. A. & V. Ry. Co., 77 I. C. C. 388; Galveston Commercial Asso. v. A. & V. Ry. Co., 77 I. C. C. 388, 413, 414; Kirby-Bonner Lumber Co. v. Director General, as Agent, 78 I. C. C. 333; Clay Grain Co. v. A. T. & S. F. Ry. Co., 78 I. C. C. 539; Parkersburg Rig & Reel Co. v. B. & O. S. W. R. R. Co., 81 I. C. C. 197; Foster Lumber Co. v. V. & S. R. R. Co., 81 I. C. C. 505; Rio Grande Chamber of Commerce v. St. L. B. & M. Ry. Co., 81 I. C. C. 703, 711; Wolfe & Co. v. Director General, as Agent, 83 I. C. C. 301; Wichita Motors Co. v. A. & V. Ry., 88 I. C. C. 152.

IV. TARIFFS AND CONSTRUCTION.

See Tariffs.

§5. In General.

CASES 1887-1908

(a) In the publication of export rates carriers in the United States shall file in tariffs with the Commission their rate to the port for export, or in case of through rates from point of origin to the foreign nonadjacent port carriers shall file tariffs naming their proportion of the through rate including terminal charges with the Commission. Re Publication of Export tariffs, 2 I. C. C. 9.

(b) It is essential that any method for making rates should be practicable and not afford a cover for discrimination and injustice. The only practicable mode yet devised for making through export rates, as appears by past experience, is to add to the established inland rates from the interior to the seaboard, the current ocean rates. New York Produce Exchange v. New York Central & H. R. R. Co., 2 I. C. R. 553.

(c) Whenever a tariff is established for merchandise billed or intended for export by sea, and ocean rates are not specified, either because of fluctuations or for any other reason, so that only the charge for inland transportation is definitely fixed, the tariff as filed and made public should show the rate charged by the inland carrier or carriers to the point of export, including all terminal charges and expenses, and should also show in what manner the through rate to the point of ultimate destination is to be determined, whether by the addition of the ocean rate from time to time prevailing or how otherwise. New York Produce Exchange v. N. Y. C. & H. R. Co., 2 I. C. C. 553, 554.

(d) The work of the inland carrier is completed when he discharges his freight

at the seaboard, whether in warehouses, elevators or on board vessels. His service is identically the same whether the destination is the seaboard or a foreign port, and there is no reason founded on the character of the service for a difference in compensation, or why a fixed charge applicable to both should not exist. The fixed inland rate would seem the fair and just rate. New York Produce Exchange v. N. Y. C. & H. R. Co., 2 I. C. C. 553, 565.

(e) Through tariffs showing total charges on export from interior points in the United States to destinations in foreign countries cannot, owing to the fluctuation in ocean rates, usually be determined and published in accordance with section six of the Act to Regulate Commerce; and if the inland carrier publishes and maintains its division of the through export rate it apparently does all that it can do, and all that it is required to do under that section; but if the inland carrier, instead of receiving a fixed inland division, makes through rates in fact of which its division fluctuates, a question arises as to the publication of such rates, which is not passed upon in this proceeding. New York, New Haven & Hartford R. Co. v. Platt, 7 Inters. Com. Rep. 323, cited and distinguished. Kemble v. Boston & Albany R. R. Co., 8 I. C. C. 110.

(f) Through tariffs showing total charges on export traffic from interior points in the United States to destinations in foreign countries, cannot, owing to the fluctuation of ocean rates, usually be determined and published in accordance with section 6 of the act; and if the inland carrier publishes and maintains its division of the through export rate it apparently does all that it can do, and all that it is required to do under that section. Kemble v. B. & A. R. Co., 8 I. C. C. 110, 119.

(g) Through tariffs showing total charges on export traffic from interior points in the United States to destinations in foreign countries, cannot, owing to the fluctuations in ocean rates, usually be determined and published in accordance with § 6 of the Act to Regulate Commerce; and if the inland carrier publishes and maintains its division of the through export rate, it apparently does all that it is required to do under that section; but if the inland carrier, instead of receiving a fixed inland division, makes through rates in fact of which its division fluctuates, a question arises which is not passed upon in this proceeding. Kemble v. Boston & A. R. Co., 8 I. C. C. 110.

(h) The Commission, having under consideration the subject of tariffs on export freight, promulgated a general order, directing, among other things, that carriers engaged in the transporting of merchandise for export should, in case such merchandise was taken upon a through rate to the foreign port indicate not only the entire rate, but the inland division which the carrier received, and that where the through rate, by reason of fluctuation of the ocean rate, could not be known, the carrier should specify by its tariff the inland rate which it received. Kemble v. B. & A. R. Co., 8 I. C. C. 110, 114.

(i) Rates on export traffic must be published and filed in accordance with the provisions of section 6 of the Act to Regulate Commerce. Carriers published a rate which is 2½ cents less than the domestic rate to the port of export refuse to make any corresponding concession to intermediate millers. HELD, That this is unjust and unlawful discrimination against such intermediate traffic, and that whatever line participates in such lower export rate on flour from Minneapolis must make a corresponding rate upon similar traffic from intermediate points. Export & Domestic Rates, v. 8 I. C. C. 214.

(j) In the application of export grain rates the carriers should in no case make the rate from any point to the seaboard less than that from any intermediate point on the same line. Export & Domestic Rates v. 8 I. C. C. 214.

(k) Rates on export traffic must be published and filed in accordance with the provisions of section 6 of the act. Export and Domestic Rates, 8 I. C. C. 214, 276.

(l) The Act to Regulate Commerce now requires the publication of import and export tariffs in the same manner as domestic tariffs. Re Publication & Filing of Tariffs, 10 I. C. C. 55.

(m) The carriers will be afforded an opportunity to adjust their tariffs and arrangements, and, if so advised, present the subject to Congress, provided, however, that in the meantime all carriers which do not publish and maintain import and export tariffs shall file with the Commission, as promptly as possible,

a statement of the rates actually charged. If the Act is not amended within a reasonable time, it will be the duty of the Commission to enforce the publication of import and export rates in the manner now provided by law. Re Publication & Filing of Tariffs, 10 I. C. C. 55.

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(n) Carriers applied the percentage increases under Increased Rates, 1920, 58 I. C. C. 220, to the through charges, including charges for wharfage, on cotton moving to Galveston, Tex., for export. It had been the practice in the past to base export rates to that point upon the domestic rate, adding thereto the wharfage charges which carriers absorbed. This was the adjustment made in applying the increases under General Order No. 28 of the director general, and rate subsequently established reflected this method of adjusting the rates. Reparation awarded. Weatherford, Crump & Co. v. A. & S. Ry. Co., 73 I. C. C. 315.

ALL OTHER CITATIONS

In Re Transportation of Cotton and Cotton Linters, 23 I. C. C. 404, 411; Red River Oil Co. v. T. & P. Ry. Co., 23 I. C. C. 438, 441, 444; New Orleans Board of Trade v. I. C. R. R. Co., 23 I. C. C. 465, 467; Red River Oil Co. v. T. & P. Ry. Co., 23 I. C. C. 438, 447, 448; Aransas Pass Channel & Dock Co. v. G. H. & S. A. Ry. Co., 27 I. C. C. 403, 409; Talage Mahogany Co. v. S. Ry. Co., 25 I. C. C. 44, 45; Port Arthur Rice Milling Co. v. T. F. & S. Ry. Co., 28 I. C. C. 697, 699; Mobile Chamber of Commerce v. M. & O. R. R. Co., 32 I. C. C. 272, 279, 281, 282; Board of Trade of the City of Chicago v. A. A. R. R., 39 I. C. C. 643; Kirk v. M. K. & T. Ry. Co. of T., 39 I. C. C. 755; Bulley & Son v. St. L. & S. F. R. R., 45 I. C. C. 171; American Refining Co. v. St. L. & S. F. R. R., 50 I. C. C. 270; Armour & Co. v. B. & A. R. R., 51 I. C. C. 244; Casey-Hedges Co. v. A. G. S. R. R., 50 I. C. C. 240; Shane Bros. & Wilson Co. v. P. R. R. R., 52 I. C. C. 403; Harriss, Irby & Vose v. G., H. & S. A. Ry. Co., 53 I. C. C. 433; United Shoe Machinery Corp. v. Director General, 55 I. C. C. 253, 255, 256; Inland Steel Co. v. Director General, 55 I. C. C. 462; Price & Co. v. A. T. & S. F. Ry., 56 I. C. C. 435, 438; Sulphur from Texas Points to Beaumont, etc., 59 I. C. C. 568; Absorption of Handling Charges at New Orleans, La., 59 I. C. C. 597; Swift & Co. v. Director General, 60 I. C. C. 1; Producers Refining Co. v. Director General, 62 I. C. C. 17; General American Oil Co. v. Director General, 60 I. C. C. 136; Suzuik & Co. v. Director General, 62 I. C. C. 144; Inland Steel Co. v. Director General, 60 I. C. C. 640, 642; Nestles Food Co. v. M. & O., 61 I. C. C. 695; Ault & Wiborg Co. v. Director General, 62 I. C. C. 133; General American Oil Co. v. Director General, as Agent, 60 I. C. C. 136; California Fruit Growers Exchange v. C. & N. W. Ry., 63 I. C. C. 361; Wenger Armstrong Petroleum Co. v. Director General, 64 I. C. C. 175; Werner Stave Co. v. Director General, as Agent, 63 I. C. C. 442; Ocean S. S. Co. of Savannah, 78 I. C. C. 251, 256; Stevens v. Atchison, T. & S. F. Ry. Co., 202 N. Y. S. 195.

V. REASONABLENESS.

See Reasonableness of Rates.

§6. In General.

CASES 1887-1908

(a) The fact that the export rates through Boston, and the rates on merchandise intended for coast wise points east of Portland, and the west bound rates from Boston have been made by the carriers the same as corresponding New York rates in order to put Boston on an equality with New York and other seaboard cities wherever Boston is a competitor with those cities is not controlling in determining the reasonableness of east bound local rates in a traffic in which there is no competition by other cities. Boston Cham. of Com. v. Lake Shore & M. S. R. R. Co., 1 I. C .R. 754.

(b) When freight, for example, grain is hauled to the seaboard for export, or to New England points, from the Northwestern States and Territories of the American Union; or when freight is hauled from the seaboard, or New England points, to the Northwestern States or Territories, through the Cities of Detroit and Chicago, the rule invoked by the petitioners in this case as a basis of relief, namely: that an estimated portion of this through rate as between the points of origin of the freight and Detroit must not be lower in proportion to distance than the rate upon the freight from such points of origin destined to Detroit, is one that cannot be sustained. Detroit Board of Trade v. Grand Trunk Railway of Canada, 2 I. C. R. 199.

(c) When freight is hauled to the

seaboard for export, or to New England points, from the Northwestern States or Territories, or vice versa, through Detroit, the rule that the estimated portion of the through rate from the starting point to Detroit may be lower in proportion to distance than the rate upon freight from such point destined to Detroit cannot be sustained. Detroit Board of Trade v. Grand Trunk R. Co. (Com.), 2 I. C. R. 199.

(d) Complainant attacked as unjust and unreasonable rates on cotton from Meridian, Miss., to New Orleans for export. A rate in effect via one of the roads from Meridian was $1.50 per bale distance 409 miles. HELD, for a distance of 196 miles rate attacked unreasonable to extent it exceeded $1.50 per bale on compressed cotton. New Orleans Cotton Exchange v. C. N. O. & T. P. R. R., 2 I. C. C. 289.

(e) Complainant attacked as unjust and unreasonable rates on oil, carloads, from Titusville, Pa., to Buffalo, N. Y., in that they are higher than the same carrier accepts on oil moving through Buffalo to Perth Amboy for export. Where unreasonableness of freight rates on oil in carload lots is charged for short local hauls and the charge is attempted to be sustained on a comparison of these rates with rates on what is usually an inferior grade of oil transported from Titusville through Buffalo to Perth Amboy, N. J., for export, chiefly in the cars of another company, and it appears that upon such shipments destined to Buffalo there are expensive terminal charges, while upon such shipments to Perth Amboy these terminal charges are far less considerable, the circumstances and conditions which control the making of the rates in each instance are substantially dissimilar. HELD, complaint dismissed. Rice Robinson & Witherop v. W. N. Y. & P. R. R., 2 I. C. C. 298.

(f) The only practicable mode yet devised for making through export rates, as appears by past experience, is to add to the established inland rates from the interior to the seaboard the current ocean rates. New York Produce Exch. v. New York C. & H. R. R. Co. (Com.), 2 I. C. R. 553.

(g) Whenever a tariff is established for merchandise billed or intended for export by sea, and ocean rates are not specified, either because of fluctuations or for any other reason, so that only the charge for inland transportation is definitely fixed, the tariff as filed and made public should show the rate charged by the inland carrier or carriers to the point of export, including all terminal charges and expenses, and should also show in what manner the through rate to the point of ultimate destination is to be determined, whether by the addition of the ocean rate from time to time prevailing, or how otherwise. New York Produce Exchange v. New York C. & H. R. R. Co. (Com.), 2 I. C. R. 553.

(h) From November 4th, 1887, to February 20th, 1888, the Trunk Lines, so called, under resolutions of their Association, made through export rates of which the inland proportion accepted by them was, at the Port of New York, of ten cents or more per hundred pounds less on like traffic than the published tariff rates charged at the same time to the same port. (2) HELD, That the discrepancy between the proportion of the through rate accepted and the established tariffs for seaboard consignments for the same inland carriage, is not shown to have been justified by any circumstances tending to show that it was just or proper, and that it must therefore be deemed an unjust and unlawful discrimination as against the transportation terminating at that port. New York Produce Exchange v. New York Central & H. R. R. Co., 2 I. C. R. 553.

(i) The division of the through rate accepted by the inland carrier is for all practical purposes its rate to the seaboard, and is as fully subject to the provisions of the act and the jurisdiction of the Commission as a rate terminating at the seaboard. New York Produce Exchange v. N. Y. C. & H. R. Co., 2 I. C. C. 553, 568.

(j) Defendants established rates on "exlake" grain from Buffalo, N. Y., to New York and Philadelphia points taking same rates, which were lower on so-called cargo lots of 10,000 bushels of oats and 8,000 bushels of other grain than on shipments of oats and such other grain in carload lots, but afterwards modified their tariffs so that, with few exceptions, the lower rates on cargo lots were restricted to export shipments. Such modifications removed the principal grievance complained of, and no evidence was offered concerning rates on shipments of grain for export. HELD, that the

principle involved under lower rates for cargo or trainload quantities than for carload shipments, whether for export or domestic use, violates the rule of equality and tends to defeat its just and wholesome purpose; and such purpose is not fully accomplished by making all cargo shippers pay the same rate and charging all carload shippers alike. Paine Brothers & Company v. L. V. R. Co., 7 I. C. C. 218.

(k) Conceding that lower rates on export than on domestic grain may be properly allowed, the Commission perceives no sufficient reason for different rates on carload than on cargo or trainload shipments, whether grain is carried for export or for domestic use. The principle involved in such a distinction violates the rule of equality and tends to defeat its just and wholesome purpose. That purpose is not fully accomplished if one scale of charges is applied to cargo shipments and a higher rate is imposed on single carloads, even though all cargo shippers pay the same and all carload shippers are charged alike. Paine Bros. Co. v. L. V. R. R. Co., 7 I. C. C. 218, 223.

(ka) Section 4 of the Act to Regulate Commerce is not violated by fixing a lower rate for export traffic between Chicago and East Boston than the rate upon traffic for domestic consumption between Chicago and Boston, the distance in the latter case being a few miles less than in the former. Kemble v. Boston & A. R. Co., 8 I. C. C. 110.

(l) Defendants make two rates on grain and sixth class merchandise from Chicago, Ill., to Boston, Mass. If the commodity is for local consumption the rate is 2 cents above the rate to New York; but if the commodity is to be exported the Boston rate is the same as the New York rate. The export traffic is delivered to the ocean carrier at East Boston, which is a few miles more distant than Boston from Chicago, and the export rate, which is essentially the inland carriers division of a through export rate, applies in fact only to East Boston. Whether, as a matter of fact, the domestic rate to Boston is unreasonably high, or whether the export rate through Boston unduly discriminates against Boston, are questions which were involved in cases heretofore decided by the Commission; and their consideration in this case is not warranted by any facts developed at the hearing. HELD, the fourth section is not violated by the lower export rate to East Boston than the domestic rate for the shorter distance to Boston, complaint dismissed. Kemble v. B. & A. R. Co., 8 I. C. C. 110.

(m) It is not, as a matter of law, a violation of the Act to Regulate Commerce to make a lower rate to the port of export upon traffic which is exported than upon that which is locally consumed, for the export rate is, in essence, the division of a through rate. Kemble v. Boston & A. R. Co., 8 I. C. C. 110.

(n) In 1898 defendants rates to New York on export corn were 19 cents from Peoria, Ill., and 17½ cents from Chicago; and from the Mississippi River the 17½ cents Chicago rate applied as a proportional rate on export corn coming from west of that river. In January and February, 1899, the proportional rate from the river was made 13½ cents, a reduction of 4 cents, the Chicago rate was made 16 cents and the Peoria rate 17½ cents, a reduction of 1½ cents. This rate from the river had always been higher, or at least no lower than the rate from Chicago. Higher rates are in effect on export grain originating at the river crossings, and local and proportional rates considerably above the proportional export rate are also in force from river points on domestic shipments. Under former rates Illinois corn went forward freely for export through Atlantic ports, but under present rates it is stored in elevators or cribbed upon the farms, while Iowa corn moves in large quantities across Illinois farms and through Illinois markets on its way to the seaboard and foreign points. Large quantities of corn are held in store at Chicago and Peoria. Through rates to the Atlantic seaboard apply from a large number of points in Illinois, but from numerous other localities in that state the corn must be shipped under local rates to and from points like Chicago and Peoria. Some of these through rates and many of the combination rates are higher than through or combination rates on export corn from points in Iowa. HELD, that through or total combination tariff rates on export corn from points in Illinois, which are higher than the through or combination rate on corn from any points in Iowa are unlawful under section 3 of the act. That the evidence is not sufficient to enable the Commission to determine what, if any, other correction

should be made in the present rate relations, but complainants have leave to apply for further hearing in regard to the effect of the changes made by defendants in the general rate adjustment. In the matter of export rates from points west and east of the Mississippi River, 8 I. C. C. 185.

(o) The propriety of present rates in force on Iowa export corn is not considered; and no opinion is expressed concerning the legality of the "transit system" as allowed at Mississippi River crossings, Peoria and Chicago, nor as to whether the statute sanctions a system of local and proportional rates on domestic and export shipments from the Mississippi River, which results in four different rates on corn from the east bank of that river to the Atlantic seaboard. Export Rates from Pts. E. & W. of Mississippi R. 8 I. C. C. 185.

(p) Market conditions, sometimes in case of wheat, but seldom in case of corn, may justify an export rate through the port of New York somewhat lower than the domestic rate, and Philadelphia, Baltimore, Norfolk, and Newport News usually take rates which are certain differentials below the New York rate on both domestic and export traffic. During the period of closed lake navigation the export and domestic grain rates to New York and other ports mentioned should ordinarily be the same. Rates to other ports, including Boston and ports on the Atlantic north of Boston, and Galveston, New Orleans and other Gulf ports may perhaps be properly made lower on export than on domestic traffic to enable them to compete for the export business. Such an adjustment of rates would be to the advantage of the carrier, and just alike to the American consumer and the American producer. But as the problem is primarily one for the carriers rather than this Commission, and some rate changes have been made by them during the progress of this proceeding, and the testimony indicates that the present disparities between domestic and export rates will not become permanent, no order is made in relation to this branch of the case. Export & Domestic Rates 8 I. C. C. 214.

(q) The profit to American millers in manufacturing flour for export is from 1 to 3 cents per 100 pounds, but the freight rates on wheat and flour for export show a difference in favor of the English miller of from 4 to 11 cents per 100 pounds, and, other things being equal, such discrimination is clearly prohibitive upon the American manufacturer. The published railroad rates on both wheat and flour for export have been the same up to a recent period, and the carriers have exacted such rates except where lower rates on wheat were induced by competition. Water competition on the Great Lakes limits rail rates to the various ports on both wheat and flour during the navigation season, and to a degree before the opening and after the close of navigation, and the published and actual water rates on wheat have been from 2 to 4 cents lower than those on flour. To a limited extent the cost of service may be greater in the transportation of export flour than in that of export wheat. The export rate on flour includes delivery on board ship, while the rate on wheat ordinarily does not, and at New York an additional charge of about 1 1-8 cents per bushel for loading wheat is made. Exportation of flour has steadily increased, but for the last six years the increase has not been marked, and a decrease is shown by comparing exports in 1894 and 1898. HELD, (1) That public policy and good railway policy alike seem to require the same rate on export wheat and export flour, but that the duties of the Commission are confined to administering the Act to Regulate Commerce, and in view of all the conditions shown in the investigation a somewhat higher rate on export flour than on export wheat is not in violation of that statute. (2) That the published difference in rates is too wide, and that the rate on flour for export should not exceed that upon export wheat by more than 2 cents per 100 pounds. (3) That the relation of rates on domestic shipments of flour and wheat is not involved in this decision, as the export and domestic freights are handled under different conditions. Export & Domestic Rates 8 I. C. C. 214.

(r) Carriers largely engaged in transporting export flour have for many years made the same rate on wheat and flour, and such long-continued practice is evidence against any difference in rate on those commodities; but the presumption is not irrebuttable, for if it were the carriers could never change their tariffs or classifications. Export & Domestic Rates 8 I. C. C. 214.

(st) Refusal of carriers engaged in

transportation of export flour from Minneapolis at a rate 1½ cents less than the domestic rate to the port of export, to make any corresponding concession to intermediate millers, is an unjust and unlawful discrimination against such intermediate traffic, within the Act to Regulate Commerce; and whatever line participates in such lower export rates on flour from Mnneapolis must make a corresponding rate on similar traffic from intermediate points. Re Export and Domestic Rates on Grain, 8 I. C. C. 214.

(u) In the application of export grain rates the carriers should in no case make the rate from any point to the seaboard less than that from any intermediate point on the same line. Re Export and Domestic Rates on Grain, 8 I. C. C. 214.

(v) So-called through export rates, made by adding the ocean rate to the inland rail rates, are not analogous to railroad rates made by joint arrangement by railway carriers subject to the statute, in the sense that the total rate must be published and filed, and it is enough if the railroad carrier publishes and maintains its own rate to the seaboard; but if there is in fact such a joint arrangement that the rate is a joint rate under the 6th section of the Act to Regulate Commerce, then the entire through rate should be published, and not the inland division, which in that case might vary while the entire rate remained the same. Re Export and Domestic Rates on Grain, 8 I. C. C. 214.

(w) Carriers largely engaged in transporting export flour have for many years made the same rate on wheat and flour, and such long continued practice is evidence against any difference in rate on those commodities; but the presumption is not irrebuttable, for if it were the carriers could never change their tariffs or classifications. Export and Domestic Rates, 8 I. C. C. 214, 269.

(x) So-called through export rates made by adding the ocean rate, whatever it may be, to the inland rail rate, whatever it may be, are not analogous to joint rates made by joint arrangement between railway carriers subject to the statute in the sense that the total rate must be published and filed, and it is enough if the railway carrier publishes and maintains its own rate to the seaboard. But if there is in fact such a joint arrangement that the rate is a joint rate under the sixth section, then the entire through rate should be published, and not the inland division, which in that case might vary while the entire rate remains the same. Export and Domestic Rates, 8 I. C. C. 214, 276.

(y) If carriers are allowed to make export rates, which are certainly very disproportionate to the corresponding domestic rates, in case of which the fourth section is invariably observed, they should in the making of them treat all intermediate territory alike. Board of Railroad Commissioners of Kansas v. A. T. & S. F. R. Co., 8 I. C. C. 304, 315.

(ya) Complainant attacked rates on cotton piece goods, carloads from New England mills through Pacific coast ports to the Orient as compared with rates from southern mills. Rates from the former points were about 85c per 100 pounds and from southern mills $1.25 per 100 pounds. The greater proximity of the New England mill to New York is a natural advantage which diminishes the freight paid for the distribution of the finished product in exactly the same way that the location of the southern mill near the cotton field is an advantage which decreases the freight rate upon the raw material. The lower rate overland which these defendants make from New England is forced by water competition, and the Supreme Court has held that railways do not violate the terms of the act by meeting such competition without reference to the rates from other points where the competition does not exist. HELD, rates attacked not unreasonable or unjustly discriminatory, complaint dismissed. China & Japan Trading Co. v. Georgia R. R. 12 I. C. C. 236.

(yb) The rates to Galveston for export, and to the various destinations in Texas for domestic consumption, found unreasonable per se, and reductions ranging from 3 to 5 cents per 100 pounds ordered. Farmers, Etc. Club v. A. T. & S. F. Ry. et al. 12 I. C. C. 351.

(z) Complainant attacked rates charged on wheat and corn from all stations in Oklahoma to Galveston for export as unreasonable and discriminatory. The rates attacked in this proceeding and the circumstances surrounding the movement are similar to those shown in 12 I. C. C. 352. HELD, rates attacked unreasonable to extent they exceeded 25½ cents and 24½ cents. Territory of Oklahoma v. C. R. I. & P. Ry., 12 I. C. C. 368.

(aa) The advance in the rate on packing-house products which was made by withdrawing a lower export rate is not properly an advance. In the Matter of Proposed Advances in Freight Rates, 9 I. C. C. 382.

(bb) Complainant attacked as unreasonable rate of $1.25 charged on cotton goods, baled, from southern mills via Pacific ports to Asiatic ports and discriminatory as compared with rates from eastern cotton mills. Previous decision in 12 I. C. C. 130 and 12 I. C. C. 236. HELD, the Commission has approved rate of $1.25 per 100 pounds in previous cases mentioned, complaint dismissed. Enterprise Mfg. Co. v. Georgia R. R. 12 I. C. C. 451.

(cc) On complaint of the City of Wichita, Kansas, alleging that the rates charged by defendants for the transportation of grain in carloads from Wichita to Galveston, Texas, for export are unlawfully higher than the export rates on like traffic in force for longer distances over defendants' lines from Kansas City to Galveston, on some of which lines Wichita is an intermediate point, it appeared that competition, which does not exist at Wichita, actually controls and forces the rates from Kansas City, which are, nevertheless, remunerative to the carrier; but that the present wheat rate at 30½ cents from Wichita to Galveston is excessive as applied to wheat and other kinds of grain to the extent of two cents per 100 pounds. HELD, That the export rates on grain from Wichita to Galveston are unreasonable and unlawful and should be reduced in accordance with the finding, but that order can be directed only against the unreasonableness of such rates and not against the adjustment of export rates as between Kansas City and Wichita to Galveston. Mayor, Etc. of Wichita v. A. T. & S. F. Ry. Co., et al, 9 I. C. C. 534.

(dd) Complainant attacked rates charged on grain carloads from Wichita, Kans., to Galveston, Tex., for export as unlawfully higher than the export rates on like traffic for longer distances over defendants lines from Kansas City, Mo., to Galveston, on some of which lines Wichita is an intermediate point, it appeared that competition, which does not exist at Wichita, actually controls and forces the rates from Kansas City, which are remunerative to the carrier; but that the present wheat rate of 30½ cents from Wichita to Galveston is excessive as applied to wheat and other kinds of grain to the extent of 2 cents. HELD, the export rates on grain from Wichita to Galveston are unreasonable and should be reduced 2 cents per 100 pounds, but the order is directed only against the unreasonableness of such rate and not against the adjustment of export rates as between Kansas City and Wichita. Mayor and City Council of Wichita, Kans. v. A. T. & S. F. Ry., 9 I. C. C. 534.

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(ee) But the application of different charges to export and domestic traffic is justifiable. New Jersey Zinc Co. v. C. R. R. Co. of N. J., 36 I. C. C. 289, 290.

(ff) While a carrier for commercial reasons may make effective comparatively low export rates it can not for such reasons be compelled to maintain rates which are less than reasonable. Increased rates from C. F. A. and trunk line territories to Atlantic ports found justified. National Implement & Vehicle Asso. v. B. & O. R. R., 42 I. C. C. 461, 467.

(gg) No fixed relationship has ever existed between the export rates on unmanufactured tobacco to Atlantic and Gulf ports, and the commission does not feel that the equalization of port rates or the restoration of the parity formerly existing between domestic and export rates are sufficient to justify proposed increases in the export rates. Tobacco from Ohio River Crossings, 73 I. C. C. 384, 387.

(hh) Carriers placed embargo on export traffic except when moving under special permits. Routes inserted in permits were invariably inserted by shipper in bills of lading. Contention that under General Order No. 1 of the director general, and the commission's order of April 26, 1918, rates over the cheapest and customary routes should have been protected. HELD, Commission's order provided that where routing specified in bill of lading was disregarded charges should be adjusted according to the rates applicable over the route specified. Shipper exercised option of voluntarily accepting the cheapest routes available when permits were issued, in lieu of withholding shipments until the desired routes became available. North Packing & Provision Co. v. Director General, as Agent, 73 I. C. C. 749.

(ii) Although export rates are generally lower than domestic rates, the

fact that an export rate exceeds the domestic rate between th same points does not establish the unreasonableness of the export rate. American Maize Products Co. v. Director General, 88 I. C. C. 354, 356.

ALL OTHER CITATIONS

St. Regis Paper Co. v. N. Y. C. & H. R. R. Co., Unrep. Op. 403; Rosedale Foundry & Machine Co. v. P. R. R. Co., Unrep. Op. 370; Hecker-Jones-Jewell Milling Co. v. B. & O. R. R. Co., 14 I. C. C. 356, 360; Newark Machine Co. v. P. C. C. & St. L. Ry. Co., 16 I. C. C. 291, 292; Minneapolis Thres. Mach. Co. v. C. St. P. M. & O. Ry. Co., 16 I. C. C. 193, 194; Board of Trade of Chicago v. A. C. R. R. Co., 20 I. C. C. 504, 511, 518; In Re Restricted Rates, 20. I. C. C. 426, 434; R. R. Commissioners of Kans. v. M. P. Ry. Co., 22 I. C. C. 24, 27; In Re Transportation of Cotton and Cotton Linters, 23 I. C. C. 404, 408, 411; State of Iowa v. A. C. L. R. R. Co., 24 I. C. C. 134; Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co., 24 I. C. C. 55, 74, 674; National Lumber Exporters' Assn. v. K. C. S. Ry. Co., 25 I. C. C. 78, 85; Scott Paper Co. v. P. R. R. Co., 26 I. C. C. 601, 602; Board of Trade of Chicago v. I. C. R. R. Co., 26 I. C. C. 545, 546; New England Investigation, 27 I. C. C. 560, 613; Toledo Produce Exchange v. A. A. R. R. Co., 27 I. C. C. 536, 545; Lumber Rates from Memphis and Other Points to New Orleans, 27 I. C. C. 471, 487; Port Arthur Board of Trade v. A. & S. Ry. Co., 27 I. C. C. 388; Break-Bulk Rates, 27 I. C. C. 78; Port Arthur Rice Milling Co. v. T. & F. S. Ry. Co., 28 I. C. C. 697; Gulf Lumber Co. v. M. L. & T. R. R. & S S. Co., Unrep. Op. A-574; Mobile Chamber of Commerce v. M. & O. R. R. Co., 32 I. C. C. 272, 275, 279; New York Produce Exchange v. N. Y. C. & H. R. R. R. Co., 32 I. C. C. 212; Sondheimer Company v. St. L. I. M. & S. Ry. Co., Unrep. Op. A-737; Lumberman's Asso. of New Orleans v. M. L. & T. R. R. & S. S. Co., 33 I. C. C. 516; Imperial Valley Cotton Co. v. S. P. Co., 35 I. C. C. 215; American Refining Co. v. T. & P. Ry., 39 I. C. C. 559; Cairo Milling Co. v. M. & O. R. R., 40 I. C. C. 20; National Implement & Vehicle Asso. v. B. & O. R. R. Co., 42 I. C. C. 461, 466; Export Grain Case, 42 I. C. C. 523, 524; Export Grain Storage Charges, 42 I. C. 530, 538; Orange Commercial Company v. T. & F. S. Ry. Co., 42 I. C. C. 587; Eastern Export Iron and Steel Case, 43 I. C. C. 5; Western Export Iron & Steel Case, 43 I. C. C. 129; Lumber to Texas Ports, 44 I. C. C. 275; Gates & Co. v. S. P. Co., 45 I. C. C. 79; Board of Trade of Chicago v. P. M. R. R., 44 I. C. C. 345, 348; Proportional Rates to Gulf Ports for Export, 44 I. C. C. 543, 547; Graves Brothers v. A. N. R. R., 45 I. C. C. 470; Mengel & Brothers Company v. L. & N. R. R., 45 I. C. C. 545; Baltimore Chamber of Commerce v. B. & O. R. R.,45 I. C. C. 40, 50; Louisiana Cotton, 46 I. C. C. 451, 454, 462, 463; New Orleans Cotton Exchange v. L. & N. R. R., 46 I. C. C. 712, 754; Campbell & Cleaver v. St. L. & S. F. R. R., 47 I. C. C. 8; Dewey Bros. Co. v. P. C. C. & St. L. Ry., 48 I. C. C. 467; Crown Williamette Paper Co v. Williamette Nav. Co., 49 I. C. C. 13; Weiser & Co. (Inc.) v. M. K. & T. Ry. of Texas, 49 I. C. C. 69; Scalvini v. N. C. & St. L. Ry., 49 I. C. C. 119; Barrett Co. v. D. L. & W. R. R., 49 I. C. C. 363; West Virginia Rail Co v. C. & O. R. R., 50 I. C. C. 110; Ansted & Burk Co. v. C. C. C. & St. L. Ry., 50 I. C. C. 371; Armour & Co. v. D. & R. G. R. R., 51 I C. C. 233; Texas Export & Import Co. v. A. & S. Ry., 51 I. C. C. 583; Wilbur v. S. P. Co., 53 I. C. C. 388; Inman, Akers & Inman v. Hines, 55 I. C. C. 146, Beaumont Chamber of Commerce v. Director General, 55 I. C. C. 428; Inland Steel Co. v. Director General, 57 I. C. C. 339; Inman, Akers & Inman v. Director General, 55 I. C. C. 146, 147; Inman Steel Co. v. Director General, 55 I. C. C. 462; Lakewood Engineering Co. v. Director General, 57 I. C. C. 311; Inland Steel Co. v. Director General, 57 I. C. C. 339; Mobile Chamber of Commerce v. M. & O. R. R. Co., 57 I. C. C. 554; Lakewood Engineering Co. v. Director General, 58 I. C. C. 162; Sulphur from Texas Points to Beaumont, Tex., 59 I. C. C. 568; Absorption of Handling Charges at New Orleans, La., 59 I. C. C. 597; General American Oil Co. v. Director General, 60 I. C. C. 136; Inland Steel Co. v. Director General, 60 I. C. C. 640, 642; West Kentucky Coal Bureau v. L. & N. R. R. Co., 69 I. C. C. 443, 448; Swift & Co. v. Director General, 60 I. C. C. 1; Union Petroleum Co. v. Director General, as Agent, 60 I. C. C. 655, 656; Anderson & Co. v. Director General, as Agent, 61 I. C. C. 64; Nestle's Food Co. (Inc.) v. M & O. R. R. Co., 61 I. C. C. 695; Producers Refining Co. v. Director General, as

Agent, 62 I. C. C. 14, 17; Ault & Wiborg Co. v. Director General, as Agent, 62 I. C. C. 133; Suzuki & Co. v. Director General, as Agent, 62 I. C. C. 144; Texas Co. v. Director General, as Agent, 62 I. C. C. 489; Werner State Co. v. Director General, 63 I. C. C. 442; Mitsui & Co. v. Director General, 64 I. C. C. 4; American Steel Export Co. v. Director General, as Agent, 63 I. C. C. 86; California Fruit Growers Exchange v. C. & N. W. Ry. Co., 63 I. C. C. 361; Wenger-Armstrong Petroleum Co. v. Director General, as Agent, 64 I. C. C. 175, 176; Ault & Wiborg Co. v. Director General, as Agent, 64 I. C. C. 186; Lee Flour Mills Co. v. Director General, as Agent, 64 I. C. C. 226; Harper, Marshall & Thompson (Inc.) v. Director General, as Agent, 64 I. C. C. 599; Ault & Wiborg Co. v. Director General 66 I. C. C. 247; Mitsui & Co., Ltd. v. Director General, 66 I. C. C. 269; Shibakawa & Co. (Inc.) v. P. & R. Ry. Co., 66 I. C. C. 261; Republic of France v. Erie Railroad Co., 68 I. C. C. 370; Louis Werner Stave Co. v. Director General, 68 I. C. C. 395; Republic of France v. Director General, 68 I. C. C. 424, 426; D. Nagase & Co., Ltd. v. Director General, 68 I. C. C. 539, 540; Grain from Illinois Points to New Orleans, 69 I. C. C. 38; Armour & Co. v. Erie R. R. Co., 69 I. C. C. 250; Producers Refining Co. v. Director General, 69 I. C. C. 403; West Kentucky Coal Bureau v. L. & N. R. R. Co., 69 I. C. C. 443, 448; John P. Rausch Co. v. Director General, 69 I. C. C. 451; Beaumont Chamber of Commerce v. B. S. L. & N. W. Ry., 69 I. C. C. 471; Suzuik & Co. v. Director General, 69 I. C. C. 698; Tobacco from Ohio River Crossings and Adjacent Points to Gulf Ports for Export, 73 I. C. C. 384; Weatherford, Crump & Co. v. A. & S. Ry. Co., 73 I. C. C. 315; International Steel Corp. v. Director General, as Agent, 73 I. C. C. 635; Southern Pine Asso. v. Director General, as Agent, 73 I. C. C. 731; International Lumber Export Co. v. Director General, 74 I. C. C. 12; American Hominy Co. v. Director General, 74 I. C. C. 204; Lakewood Engineering Co. v. N. Y. C. R. R., 74 I. C. C. 465; Marion Extract Co. v. Director General, 74 I. C. C. 613; Gulf Refining of La. v. St. L. S. F. Ry., 74 I. C. C. 639; Getz Brothers & Co. v. Director General, 74 I. C. C. 699; Marion Extract Co v. Director General, as Agent, 74 I. C. C. 613; Standard Export Lumber Co. v. A. & M. R. R. Co., 74 I. C. C. 721; Rolph Mills & Co. v. Director General, as Agent, 74 I. C. C. 711, 751, 752, 753; Hamilton Furnace Co. v. B. & O. R. R., 77 I. C. C. 377; Republic of France v. M. K. & T. Ry., 77 I. C. C. 383; Armour & Company v. Director General, 78 I. C. C. 65; Swift & Co. v. Director General, 78 I. C. C. 68; Ocean S. S. Co. of Savannah, 78 I. C. C. 251, 256; Kirby Bonner Lumber Co. v. Director General, 78 I. C. C. 333; Standard Export Lumber Co. v. Director General, 78 I. C. C. 337, 340; F.B. Clay Grain Co. v. A. T. & S. F. Ry., 78 I. C. C. 539; Du Bois Mill Co. v. S. P. & S. Ry., 80 I. C. C. 31; Hansen Packing Co. v. Director General, 80 I. C. C. 66; Hunt & Co. v. W. & R. G. Ry., 80 I. C. C. 101; Anderson Clayton & Co. v. Director General, 80 I. C. C. 323; Saginaw & Manistee Lumber Co. v. A. T. & S. F. Ry., 80 I. C. C. 487; Compani De Real Del Monte Y. Pachua v. Director General, 81 I. C. C. 52; Parkersburg Rig & Reel Co. v. B. & O. S. W. R. Co., 81 I. C. C. 197; Hansen Packing Co. v. Director General, as Agent, 80 I. C. C. 66; Hunt & Co. v. F. W. & R. G. Ry. Co., 80 I. C. C. 101; Anderson, Clayton & Co. v. Director General, as Agent, 80 I. C. C. 323; Elimination of Transit Privileges on Export Cotton. 80 I. C. C. 235; Procter & Gamble Co v. Director General, 81 I. C. C. 361; S. A. Foster Lumber Co. v. V. & S. R. Co. 81 I. C. C. 505; Pritchard-Wheeler Lumber Co. v. Director General, 83 I. C. C. 260; Heacock Co. v. C., B. & Q. R. R. Co., 83 I. C. C. 691; Lincoln Oil Refining Co. v. C. C. C. & St. L. Ry., 88 I. C. C. 269; Gillican Chipley v. Director General, 88 I. C. C. 441; Trojan Powder Co. v. Director General, 88 I. C. C. 447; Routing on Grain and Grain Products from Oklahoma to Mobile, Ala., 88 I. C. C. 505; General Fire Extinguisher Co. v. Director General, 88 I. C. C. 521; Lindeteves-Stokvis v. Director General 89 I. C. C. 3; Armour & Company v. A. C. L. R. R., 89 I. C. C. 162.

VI. STORAGE AND DEMURRAGE

See Demurrage; Storage.

§7. In General.

ment of new charges for storage of ex-

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(a) Carriers believe that establish- port grain held in cars on tracks would relieve congested conditions at the ports. While abnormal conditions require drastic remedies, the cure must be one which is lawfully permissible. Export Grain Storage Charges, 42 I. C. C. 530, 542.

(b) If the assessment of storage charges at the port is proper on shipments moving under through export bills of lading, the requirement that a shipper guarantee the payment thereof must also be proper, for a carrier, as a matter of law, has the right to go even so far as to require the prepayment of all charges before accepting a shipment for transportation. New York Produce Exchange v. B. & O. R. R., 46 I. C. C. 666, 671.

(c) A shipment consigned to a port for export must be regarded as moving in foreign commerce as soon as the transportation begins; the essential nature of a shipment, not its mere accidents, should determine whether it is state or interstate, domestic or foreign; and inasmuch as transshipment at the seaboard is but incidental to the through movement, an export shipment can not be given a local character merely by the device of separate bills of lading. These principles of law are well settled, but they do not lead necessarily to the conclusion that storage charges imposed on export shipments at the seaboard are essentially unlawful. It is true that it is ordinarily incumbent upon a common carrier of domestic freight to allow consignees a reasonable time in which to remove their shipments from the carrier's property, and by analogy it would seem that a reasonable time should be accorded on export freight at the seaboard to permit its transfer from cars to vessels. The Commission knows of no principle of law, however, which denies to a carrier the right to impose storage charges after the expiration of a reasonable period of free time; on the contrary, that right has been frequently recognized. New York Harbor Storage, 47 I. C. C. 141, 153; 154.

(d) Any rule or practice that continues storage charges on export traffic after the tender to the rail carrier by the shipper of an order to move his shipments to ship side, or after receipt by the rail carrier of the vessel's permit to load, is unreasonable. Export Freight Free Time, 47 I. C. C. 162, 177.

(e) And any rule which did not make allowance for the reasonable necessities of the situation with respect to export traffic would in practically every instance result in improper and unjust assessment of storage charges against the shipper. Export traffic must be forwarded from the inland point in ample time to reach the port not only previous to the sailing of a vessel, but a sufficient time in advance of such sailing to enable to effect vessel delivery. No such condition exists with respect to domestic freight, because, ordinarily, it is a matter of indifference to a consignee on what particular day the domestic freight may reach its destination. Delay in transportation of domestic shipments does not necessarily result in imposing demurrage charges upon the consignee, for, in general, there is no reason why he can not remove his traffic from the carrier's property as well at one time as another. Another essential difference between the domestic and export traffic is that domestic traffic is not transported beyond the terminal by a separate water carrier. Export Freight Free Time, 47 I. C. C. 162, 179.

(f) Due to a strike lightermen carriers refused to accept order for delivery of export shipment to steamship. On day steamer arrived second order was tendered for delivery to another steamship and was accepted subject to delay. HELD, storage charges accruing not found unreasonable or unlawful, as complainant gave orders for different delivery and carriers would have been without authority to act upon first order even if accepted. Cade (Inc.) v. P. R. R. Co., 60 I. C. C. 151.

(g) A vessel on which space was engaged was commandeered by government while shipments in transit. While an effort was being made to secure space on other vessels, the shipments were unloaded and stored in order to release equipment. Demurrage and storage charges assessed found not illegal, unreasonable, or unduly prejudicial, as the governing tariff did not limit the causes which might contribute to failure of a vessel to make its scheduled sailing. Dodge Bros. v. Director General, as Agent, 62 I. C. C. 689.

(h) The fact that demurrage and storage charges on export shipments are imposed at one port, and not at others, does not of itself constitute undue prejudice. Dodge Bros. v. Director General, as Agent, 62 I. C. C. 689, 692.

(i) In 62 I. C. C. 583, the Commission found not unjust or unreasonable the demurrage charge and average free time applicable at Baltimore, Md.,

between Feb. 10 and Dec. 31, 1918, on carload shipments of coke consigned to complainants at Baltimore for export to South America through that port. Upon complainant's petition the case was reopened. The issue rests chiefly upon disputes growing out of the operation of an arrangement for substituting cars of coke billed to one consignee for those billed to another. Complainants' acquiesced in that arrangement and participated in its benefit. Before August 1, 1918, complainants exercised control in varying degree over the purchase and shipment of their coke, and concede that they are chargeable for some of the car detention during that period. But they insist that when the fuel administration took over, on August 1, 1918, the placing of orders for coke and the directing shipment, they were deprived of all control over this traffic, could do nothing to expedite the release of equipment, were in nowise responsible thereafter for detention of cars, and therefore should not be charged with any demurrage. Complainants have not shown that defendant is accountable for the irregular movement of traffic which occurred under the abnormal conditions produced by the war. This complaint is apparently founded upon the theory that complainants can not be charged demurrage for car detention which was not directly authorized by them and which was not due to their fault or negligence. Defendant had no authority over the other government agencies, and can not be held answerable for detention, if any, which may have been caused by them. It is not within the province of the Commission to review the acts or omissions of these other governmental agencies. HELD, under the demurrage tariffs shippers are chargeable with demurrage for any detention of equipment which is not due to the fault of the carrier, except as otherwise expressly provided. This is true even if the detention is beyond the shippers control. Original findings confirmed. American Smelting & Refining Co. v. Director General, 69 I. C. C. 229.

(j) Tariff rule governing reconsignment for export shipments consigned locally to New Orleans, La., provided that notice of desire to export be given carrier within 48 hours after arrival at the port, otherwise, local rates and demurrage rules apply. Complainant gave such notice within free time but not within 48 hours as provided by the rule. HELD, demurrage charges collected and rule assailed found not unreasonable or discriminatory. A similar rule is in effect on lines of various carriers serving other ports and it can not be condemned as unreasonable merely because it is not published by all carriers serving New Orleans. Foxley Stave & Lumber Co. v. L. & N. R. R. Co., 74 I. C. C. 43.

ALL OTHER CITATIONS

Galveston Commercial Assn. v. A. T. & S. F. Ry. Co., 25 I. C. C. 216, 227, 230, 231, 232; DuMee, Son & Co. v. P. R. R. Co., 26 I. C. C. 33, 35, 36; Anderson-Tully Co. v. M. L. & T. R. R. & S. S. Co., 30 I. C. C. 140, 144; Adam v. I. C. R. R. Co., 41 I. C. C. 685; Moore Stave Co. v. B. & A. R. R., 43 I. C. C. 679; New York Produce Exchange v. B. & O. R. R., 46 I. C. C. 666, 673; Newman Lumber Co. v. N. O. & N. E. R. R., 47 I. C. C. 33; New York Harbor Storage, 47 I. C. C. 141, 159; Blum & Popper v. B. & M. R. R., 49 I. C. C. 107; Newman Lumber Co. v. G. & S. I. R. R., 49 I. C. C. 340; Export Freight Free Time, 47 I. C. C. 162, 178, 180, 188, 197, 198; New York Harbor Case, 47 I. C. C. 643, 728; Newman Lumber Company v. G. & S. R. R., 49 I. C. C. 340; Peterson Co. v. A. T. & S. F. Ry., 51 I. C. C. 401; Bills of Lading, 52 I C. C. 671, 734; New Orleans Refining Co. v. L. Ry. & Nav. Co., 55 I. C. C. 131; United Shoe Machinery Corp. v. Director General, 55 I. C. C. 253; Heid Brothers, 55 I. C. C. 416; Lowry Lumber Co., 58 I. C. C. 113; New York Board of Trade v. Director General, 59 I. C. C. 205, 209; Cade (Inc.) v. P. R. R. Co., 60 I. C. C. 151; Seaboard Air Line Ry. Co. v. New Orleans Export Co., 271 Fed. 861; Manufactured Export Clearing House v. Director General, as Agent, 61 I. C. C. 85; American Smelting & Refining Co. v. Director General, as Agent, 62 I. C. C. 582, 583, 587; Dodge Bros. v. Director General, as Agent, 62 I. C. C. 689, 692; Regulations for Payment of Rates and Charges, 63 I. C. C. 373, 380; Decreased Free Time Allowances, 64 I. C. C. 400, 403; British United Shoe Machinery Co., Ltd. v. Pennsylvania R. R. Co., 66 I. C. C. 661; American Smelting & Refining Co. v. Director General, 69 I. C. C. 229, 231; Weatherford, Crump & Company v. A. & S. Ry. Company, 73 I. C. C. 315; U. S. Steel Products Co.

v. Director General, as Agent, 73 I. C. C. 505; Kidston & Co. v. D. L. & W. R. R., 74 I. C. C. 135; F. R. Philips & Sons Co. v. B. & A. R. R., 74 I. C. C. 381, 382; Gardner Shipping Co., Inc. v. Pa. R. R. Co., 74 I. C. C. 461; Caldwell Shipping Co. v. Director General, 74 I. C. C. 704; Phillips & Sons Co. v. B. & A. R. R. Co., 74 I. C. C. 381, 382; Gardner Shipping Co., Inc. v. P. R. R. Co., 74 I. C. C. 461; International Steel Corporation v. Pennsylvania R. R., 77 I. C. C. 381; International Steel Corporation v. Pennsylvania R. R. Co., 78 I. C. C. 89; Hidalgo Steel Co. v. Pennsylvania R. R. Co., 80 I. C. C. 207; Republic of France v. Director General, 81 I. C. C. 174; Allied Machinery Company of America v. Director General, 81 I. C. C. 204; Pacific Grain Co. v. Director General, 81 I. C. C. 679; U. S. Steel Products Co. v. Director General, 88 I. C. C. 57.

VII. PAYMENT OF CHARGES.

§8. In General.

ALL CITATIONS

California Sugar & White Pine Co. v. Director General, 73 I. C. C. 338.

VIII. REPARATION.

See Reparation.

§9. In General.

IMPORTANT CASES SINCE 1908

(a) Tariff provided for free lighterage at New York, N. Y., on staves for export when tied in bundles. Complainant's shipments arrived at New York with bands on bundles loose, and carrier refused to lighter, claiming that shipments were not in bundles. Complainant had lighterage performed by outside agency. HELD, since tariff did not specify any particular method of tying staves in bundles to entitle them to free lighterage, reparation awarded in amount of cost of lighterage. Gledhill Co. v. Director General, as Agent, 80 I. C. C. 701.

EXPRESS COMPANIES

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- §28. In general.

X. RULES AND REGULATIONS.
- §29. In general.
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§34½. Stoppage in transit.
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XI. THROUGH ROUTES AND JOINT RATES.
§36. In general.
§37. Divisions.
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XII. LIABILITY FOR DAMAGES.
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XIII. PROCEDURE AND EVIDENCE.
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XIV. RELATION TO RAILROADS.
§40. In general.
§41. Consolidation.

I. CONTROL AND REGULATION.

See Control and Regulation.

§1. Jurisdiction of commission.

See Interstate Commerce Commission I; Jurisdiction of the Commission.

CASES 1887-1908

(a) Inquiry made as to whether Express Companies are subject to the operation of the act. HELD, Express companies are subject to the act. Re Express Companies, 1 I. C. C. 22.

(aa) Express business conducted by a railroad company is within the Interstate Commerce Act; a liter as to independent express companies. Re Express Companies, 1 I. C. R. 22, 317, 363, 448, 451, 456, 677.

(bc) Express business, when conducted by a railroad company, is within the provisions of the Act; but independent express companies are not subject to the Act, not being included among the common carriers declared to be subject to the provisions of the Act as they now stand. Re Express Companies, 1 I. C. C. 677, 683.

(d) Express companies consisting of independent organizations which carry on the express and parcel business in the usual manner and do not operate railway lines are not subject to the provisions of the Interstate Commerce Act; such business only becomes subject to the provisions of that Act when it is carried on by a railway company or a combination of railway companies as a branch or department of their general freight traffic. United States v. Morsman, 3 I. C. R. 112.

(e) A statute making it unlawful for any common carrier to give undue or unreasonable preference to any person, company or firm, corporation, or locality does not require equal facilities to be given to express companies for carrying on business over a railroad, unless it holds itself out as a common carrier of such companies. Atlantic Exp. Co. v. Wilmington & W. R. Co., (N. C.), 4 I. C. R. 294.

(f) The doing of business—such as that of the express company—which constitutes interstate commerce, by a person who is also at the same time engaged in business of the same kind which constitutes state or local commerce, cannot be made a bar or exemption of the local or state commerce business from taxation or regulation by state authority. Osborne v. State (Fla.), 4 I. C. R. 731.

(g) Express companies not within the Interstate Commerce Act. The Interstate Commerce Act does not apply to express companies properly so called. The court says: "There is no principle of the common law requiring a common carrier receiving articles of trade and commerce from a connecting line to advance or assume the payment of the charges accrued thereon for the transportation of such articles from the point of origin to the connecting line. If it does thus pay or assume such accrued charges, it can retain a lien upon the property transported for their payment as well as for the payment of the charges due to itself for such transportation. An express company, like any other common carrier, has a right to demand that its charges for the transportation shall be paid in advance, and is under no obligation to receive goods for transportation unless such charges are paid if demanded. ..... An express company in the absence of contract, is under no obligation to receive and transport for the original consignor, or to continue the transportation for a connecting carrier, without the prepayment of its charges if demanded. The furnishing of equal facilities without discrimination does not require a common carrier to advance money to all other carriers on the same terms, nor to give credit for the carriage of articles of trade and commerce to all carriers because it extends credit for such services to others." Southern Indiana Express Co. v. United States Express Co., 8 I. C. C., App. LXII.

(h) The defendant express company is a common carrier engaged in the transportation of packages like those carried by the parcels express between the same points, and it is the duty of that defendant to establish for the benefit of the public an adequate service at a reasonable compensation. Whether the amount of these stamps would afford such compensation is not now considered. J. E. Walker v. Baltimore & Ohio R. R. Co., et al., 12 I. C. C. 196.

IMPORTANT CASES SINCE 1908

(ha) The phrase in paragraph (3) of section 15 of the Act, relative to jurisdiction of commission to establish through routes and joint rates, "applicable to transportation of passengers and property," includes express traffic. Southeastern Express Co. v. Amer. Ry. Exp. Co., 78 I. C. C. 126, 129.

(hb) The Supreme Court of the United States early recognized the binding force of contracts between express and railroad companies under which the former operate, and observed that regulation of matters of this kind is legislative in its character and not judicial. For the commission to decline to permit the establishment of schedules in conformity with such contracts would amount to a revision of the contracts. The commission is aware of no legislative authority for doing this. Express Rates on Milk and Cream, 74 I. C. C. 427, 431.

(i) Under section 15 (3) the Commission has not only the power to require through routes and joint rates between express companies but also to prescribe the terms and conditions under which such through rontes shall be operated; and under this power the Commission may provide for the right of the shipper to route. Certainly the establishment of alternative through routes would be of no advantage if the shipper has no right to direct that traffic. Southeastern Express Co. v. American Railway Express Co., 78 I. C. C. 126, 141.

(ia) In Southeastern Express Co., 78 I. C. C., 126, 129, in construing a section of the act the commission held that express companies are not carriers by railroad. The same conclusion is reached here. Oyler & Son v. Amer. Ry. Exp. Co., 83 I. C. C. 160, 162.

(ib) The commission may not require a rail carrier to relinquish to an express company traffic which it has, by contract with that company, reserved to itself. Question whether combination of baggage and express rates on a particular movement results in unreasonable charges could be determined only upon a record devoted to that subject and properly bringing baggage rates before the commission. Express Rates, 1922, 83 I. C. C. 606, 669.

(j) By the amendment of June 29, 1906, express companies stand with refference to the Act and the several amendments thereto as though they had been named in the original Act of 1887 and stand in the same attitude as that of a railroad except in so far as the language of the Act necessarily excludes them. United States v. Wells-Fargo Co., 161 Fed. 606, 609.

(k) An order establishing additional through routes for express matter is not arbitrary or unreasonable, because made avowedly to foster competition, under Interstate Commerce Act, §15, par. 3 (Comp. St. §8583 (3). American Ry. Exp. Co. v. U. S. (Ga. 1923) 293 Fed. 31.

ALL OTHER CITATIONS

State v. Adams Express Co., 171 Ind. 138, 151, 85 N. E. 337, and 966; California Commercial Ass'n v. Wells-Fargo & Co., 14 I. C. C. 422, 425; American Bankers Assn. v. American Exp. Co. 15 I. C. C. 15, 21, 22; In Re Contracts of Exp. Companies, 16 I. C. C. 246, 249; Saunders v. Southern Express Co., 18 I. C. C. 415; Williams v. Wells, Fargo & Co., 18 I. C. C. 17, 18; Douglas Shoe Co. v. Adams Express Co., 19 I. C. C. 539, 542, 543; I. C. C. v. D. L. & W. R. R. Co., 220 U. S. 235,, 31 Sup. Ct. 392, 55 L. Ed. 448; American Express Co. v. U. S., 212 U. S. 522, 532, 29 Sup. Ct. 315, 53 L. Ed. 635; In Re Express Rates, 24 I. C. C. 380, 387, 423; In Re Express Rates, Practices, Accounts and Revenues, 28 I. C. C. 131, 137, 139, 148; Fairmont Creamery Co. v. Adams Express Co., Unrep. Op. 2248; Barrett & Gimbel Bros., 226 Fed. 623, 624, 631; Traffic Bureau v. American Express Co., 39 I. C. C. 703, 721, 722; Lay v. American Express Co., 51 I. C. C. 373; Campbell v. Southern Exp. Co., 55 I. C. C. 633, 635, 636; Shite Bros. & Crum Co. v. Director General, 57 I. C. C. 511, 512; Consolidation of Express Companies, 59 I. C. C. 459, 465; State ex rel. Bennett v. American Express Co. (Utah 1921), 195 Pac. 312; Express Rates on Milk and Cream, 74 I. C. C. 427, 431; Southeastern Express Co. v. Amer. Ry. Exp. Co., 78 I. C. C. 130.

§1½. State Regulation.
See Interstate Commerce §4; State Rate and Regulation.

IMPORTANT CASES SINCE 1908

(a) It is evident that in case of controversies between express companies and railroads (parties to contracts) their respective rights and duties are matters within the jurisdiction of the courts. Express Rates on Milk and Cream Between I. C. R. R. Points, 74 I. C. C. 427, 431.

ALL OTHER CITATIONS

State v. Adams Express Co., 171 Ind. 138, 144, 153, 154, 85 N. E. 337, and 966; In Re Express Rates, Practices, Accounts and Revenues, 24 I. C. C. 380, 432; Atlantic Packing Co. v. American Ex. Co., 28 I. C. C. 244; Parlin & Orendorff Plow Co. of St. Louis v. U. S. Express Co., 26 I. C. C. 561; State v. Am. Ex. Co. (S. D. 1917), 161 N. W. 132.

§1⅝. Consolidation of Companies.

IMPORTANT CASES SINCE 1908

(a) The intent of Congress that the power of the Commission and authority to approve and authorize the consolidation of two or more carriers shall extend and apply to the consolidation of the express companies into the American Railway Express Company is definitely expressed by the language of paragrph 7, section 5, of the Interstate Commerce Act. The statute further directs that pending the decision of the Commission such consolidation shall not be dissolved. Express Contract, 1920, 59 I. C. C. 518, 520.

§1⅝a. Jurisdiction of Courts.

IMPORTANT CASES SINCE 1908

(a) In case of controversies between express companies and railroad companies over contracts, their respective rights and duties are matters within the jurisdiction of the courts. Express Rates on Milk and Cream, 74 I. C. C. 427, 431.

II. FACILITIES.

See Facilities and Privileges.

§1¾. In general.

CASES 1887-1908

(a) The railroad company performs its whole duty to the public at large and to each individual when it affords the public all reasonable express accommodations. If this is done the railroad company owes no duty to the public as to the particular agencies it shall select for that purpose. The public requires the carriage, but the company may choose its own appropriate means of carriage, always provided they are such as to insure reasonable promptness and security. Re Express Companies, 1 I. C. C. 677, 678.

(b) A railroad company is not under obligation to furnish an express company with facilities for doing an express business upon its road, such as it provides for itself or some other express company unless it holds itself out as a common carrier of express companies. Atlantic Exp. Co. v. Wilmington & W. R. Co., (N. C.), 4 I. C. R. 294.

(c) Unlawful device cannot be imposed upon shipper by reason of contracts which an express company has made with its agents and the railroad. Society of American Florists v. United States Express Co., 12 I. C. C. 120.

(d) Parcels express. The denial to an occasional but not regular patron of the road, apparently upon the ground that he was not a patron, of the privilege accorded to the public generally and without question at most places, of sending baggage by a parcels express operated by the railroad and an express company for the convenience of suburbanites from Philadephia, Pa., to certain points upon the Baltimore & Ohio Railroad by affixing stamp,—is clearly unjust discrimination. Walker v. B. & O. R. Co., 12 I. C. C. 196.

(e) Duty of express company to establish for the benefit of public an adequate service at reasonable compensation from Philadelphia, Pa., to suburban points upon Baltimore & Ohio Railroad. Walker v. B. & O. R. Co., 12 I. C. C. 196.

(ea) Defendants operate, for the convenience of suburbanites, a "parcels express" from Philadelphia, Pa., to certain points upon the Baltimore & Ohio Railroad, whereby packages of not more than 50 pounds can be sent to such points by affixing a stamp, the charge for which varies according to weight. Complainant, an occasional but not a regular patron of the road, complained in September last that he was denied, prior to August 28, 1906, such privilege, upon the ground that he was not a patron of the road. Persons to whom complainant sent packages were also occasional passengers on this road. Since August 28 the privilege has been extended to complainant and the public generally, but defendants insist

that it is their right to restrict the privilege to patrons of the road, for whose benefit it is intended. Upon the facts existing previous to amended act, that the complaint was well founded, because to apply to complainant a particular rule not applied to the general public is clearly an unjust discrimination; but that defendants were not in violation of law when complaint was filed and hearing had. J. E. Walker v. Baltimore & Ohio R. R. Co. Et. Al. 12 I. C. C. 196.

IMPORTANT CASES SINCE 1908

(f) With the very substantial increases in express rates, shippers have a right to demand an improved and steadily improving service; and the obligation on the respondent's part will not be discharged by mere compensation for loss or damage, but primarily by prompt and otherwise satisfactory deliveries. While at all times ready to accord to a common carrier that relief to which it may be justly entitled, the Commission shall not view with complacency anything other than a painstaking and unremitting effort to reduce the item of loss and damage to the lowest possible figure. Express Rates, 1920, 58 I. C. C. 707, 711.

(g) Express should be handled over reasonably direct routes. Southeastern Express Co. v. American Railway Express Co., 78 I. C. C. 126, 132.

ALL OTHER CITATIONS

R. R. Com'rs. of Fla. v. S. Exp. Co., 28 I. C. C. 634, 635; Ozark Fruit Growers' Asso. v. U. S. Exp. Co., Unrep. Op. A-736; Lindsay & Co., Ltd., v. Wells, Fargo Co., Unrep. Op. A-755; Northwestern Trading Co. (Inc.) v. Adams Express Co., 51 I. C. C. 211; Charles L. Campbell v. Southern Express Co., 55 I. C. C. 633; New Albany Box & Basket Co. v. American Railway Express Co., 56 I. C. C. 720; Express Rates, 1920, 58 I. C. C. 281, 295. 707; Southeastern Express Co. v. American Railway Express Co., 78 I. C. C. 126, 132; Express Co. v. American Railway Express Co., 78 I. C. C. 126, 142; Transportation of Strawberries by Express, 81 I. C. C. 634.

§2. Delivery and Receipt.

See Transportation §5, §8.

IMPORTANT CASES SINCE 1908

(a) The right of an express company to maintain a free package pick-up and delivery service at one point, while not maintaining such a service at another point, must necessarily be controlled by the conditions existing at each place, and because such a service is maintained at one place, where the volume of the traffic is large and a wagon service can be conducted economicaly, it by no means follows that a like service must be maintained at another point, where the traffic is small and the cost of keeping up a wagon service might more than absorb the revenue. Phillips v. N. Y. & B. D. Express Co., 15 I. C. C. 631, 635.

(b) In order to remove abuses arising from vague and indefinite free delivery limits it is ordered that express carriers publish a joint general directory, alphabetically arranged by cities; of all express offices in the United States, the name of each office to be followed by a statement as to whether a free-delivery service is maintained at such office or not; that where a free-delivery service is maintained, unless the publication shall circumscribe the delivery limits, it shall be understood that the delivery service comprehends the corporate limits of the place named; that at each such office where restricted free-delivery limits have been established, the boundaries of the free-delivery zones shall be shown in a condensed and abbreviated form sufficient to give notice to the shipper and consignee of the outline of the limits thereof, by streets; that at each point where delivery is made by local express, companies beyond the established delivery limits a footnote shall indicate this fact, the amount of the usual charges by such local companies, and an offer to permit the consignor at point of origin to prepay such charges subject to collection from the consignee of any deficiency; that the directory shall be filed with the Commission and conform to the express tariff regulations; that copies shall be posted at all express offices and furnished to shippers at cost of printing. In Re Express Rates, Practices, Accounts and Revenues, 24 I. C. C. 380, 394.

(c) Copies of the general express directory should be posted in all express offices and copies of this and similar publications should be furnished to shippers at a reasonable charge. In Re Express Rates, 24 I. C. C. 380, 395.

(d) There should be definite rules concerning delivery at express traffic, and when free delivery is made the free delivery limits must be plainly indicated. This information should be

contained in the express tariffs and in the express directory. In Re Express Rates, 24 I. C. C. 380, 394, 406.

(e) Free collection and delivery can not always be demanded as a matter of right, and express companies may be justified in refusing to offer it where the points to be served are not readily accessible or are too far removed from the depots, or where the traffic is insufficient to meet the expense incurred or is of such a nature as to preclude its movement by express. Butterworth-Judson Corp. v. Adams Exp. Co., 51 I. C. C. 386, 388.

(f) Due to strike, complainants obliged to cart express from freight station to place of business. Contention that shipments overcharged to extent of cartage charges, not sustained. Carrier's tariffs did not authorize allowance or deductions from legally applicable rate for service performed; and since question whether or not complainants may recover for such services can not be determined from tariff, amounts paid for cartage are not overcharges. Tariff rate itself and rules and regulations connected therewith are standards to determine an overcharge. Lay Fish Co. v. Director General, as Agent, 80 I. C. C. 4.

(g) In the absence of a showing to the contrary, an express company must make personal delivery to consignee. American Ry. Express Co. v. Stanley (Ala. 1922), 92 Sou. 642.

ALL OTHER CITATIONS

Pyro Art Club v. United States Express Co., 16 I. C. C. 37; Strauss v. American Express Co., 19 I. C. C. 112; In re Express Rates, 24 I. C. C. 380, 392, 407, 408, 410; In Re Express Rates, 28 I. C. C. 132 141; Atlantic Packing Co. v. Ameican Exp. Co., 28 I. C. C. 244, 246; R. R. Commissioners of Fla. v. S. Exp. Co., 28 I. C. C. 634, 635; Butterworth-Judson Corp. v. Adams Exp. Co., 51 I. C. C. 386, 389; Express Rates, 1920, 58 I. C. C. 281, 295; Express Classification, 1920, 59 I. C. C. 265, 270; Oyler & Son v. American Ry. Express Co., 59 I. C. C. 657, 658; East Springfield Citizens Club v. American Railway Express Co., 68 I. C. C. 482; San Francisco Wholesale Dairy Produce Exchange v. American Ry. Express, 78 I. C. C. 737; American Fruit & Vegetable Shippers Asso. v. American Ry. Express, 81 I. C. C. 87.

§3. C. O. D. Shipments.

IMPORTANT CASES SINCE 1908

(a) There is no common law duty resting on an express company to act as the collection agent of a shipper, but if such an obligation is assumed it arises on some independent contract, which the company may refuse to make. Royal Brewing Co. v. Adams Express Co., 15 I. C. C. 255, 258.

(b) Express companies are entitled to some compensation for acting as collection agent. Returns from collections should be made within 24 hours. In Re Express Rates, 24 I. C. C. 380, 409.

(c) Claims for C. O. D. collections should be promptly paid on presentation of proper proof of delivery and failure to make return. In Re Express Rates, 24 I. C. C. 380, 412.

ALL OTHER CITATIONS

Burke v. Platt, 172 Fed. 777; Davis Hotel Co. v. Platt, 172 Fed. 775, 776; In Re Express Rates, Practices, Accounts and Revenues, 28 I. C. C. 131, 138; In Re Express Rates, 28 I. C. C. 132, 138.

§4. Export Service.

IMPORTANT CASES SINCE 1908

(a) Defendant express companies in receiving shipments destined to foreign parts where the base rate to New York exceeded $1 per 100 lbs. and the shipments exceeded 300 lbs. deducted by their published inland rate 33 1-3 per cent for the inland portion of the through rate, but made such reduction only where the shipments were consigned to themselves at New York to be shipped abroad over their own foreign branch service. Complainant shipper of raw furs from St. Paul to New York and foreign points claimed that this practice resulted in giving a lower rate to New York to certain shippers, and asked that defendants be compelled to extend to all shippers the reduced proportional rate with the privilege reserved to all shippers to select the steamship, route, etc., to the foreign point. HELD, following Cosmopolitan Shipping Co. v. Hamburg-American Packet Co., 13 I. C. C. 266, complainant's demand should be granted to make certain that the traffic which enjoyed the lower rate was actually exported. Joseph Ullman v. Adams Express Co., 14 I. C. C. 340, 344, 345.

§5. Free Transportation.

See Crimes III; Free Transportation.

IMPORTANT CASES SINCE 1908

(a) The Commission entered into an investigation to determine whether the interstate commerce law prohibited express companies from giving free transportation of personal packages to their officers and employees, and to the officers and employees of other transportation companies in exchange for passes issued by the latter to the officers and employees of the express companies. Annual franks were issued to the officers of the issuing and other express companies and the principal officers of railroad companies; paster franks, good for a single shipment, to employees of the express and railway companies. The so-called anti-press proviso of section 1 of the act seemed to justify this practice, but the Commission had held otherwise in Conference Ruling 513. HELD, (1), that the proviso did not have the force and effect contended for the express companies and they were instructed to desist therefrom. Legality of Express Franks, 50 I. C. C. 599.

(b) In 50 I. C. C. 599, the Commission held that the Act to Regulate Commerce prohibited express companies from issuing franks for the free transportation of packages for their officers and employees, and for the officers and employees of other common carriers in exchange for passes or franks of such other carriers. In 212 U. S. 522, the Supreme Court held that the act at that time prohibited express companies from transporting free the property of their officers and employees or of officers and employees of other common carriers. The issue before the Commission is the interpretation of the amended statute. HELD, express companies are prohibited from transporting free the property of their officers or employees or the officers and employees of other common carriers subject to the act. Legality of express franks, 69 I. C. C. 627.

(c) The term frank has long been applied to the free transportation of express matter as well as to the transmission of intelligence by telegraph, telephone and cable companies. Legality of express franks, 69 I. C. C. 627, 628.

(d) Under the Act as amended by the Elkins Act of February 19, 1903, and the Hepburn Act of June 29, 1906, an express company was prohibited from issuing franks to any officer, agent, attorney or employee of itself or other express companies, and of any railroad company, and to the respective families of such persons, and from transporting, without demanding the payment of the full published rates, any property of such persons in an interstate shipment, the granting of such privileges not being within the exceptions enumerated in section 1 of the original Act, which provides that no common carrier shall directly or indirectly issue any interstate free tickets, free pass, or free transportation for passengers except its employees and their families, its officers, agents, etc. United States v. Wells, Fargo Express Co., 161 Fed. 606, 616.

ALL OTHER CITATIONS

In Re Express Rates, Practices Accounts and Revenues, 28 I. C. C. 150; Adams Express Co. v. Mellichamp (Ga. 1912), 75 S. E. 596; Legality of Express Franks, 50 I. C. C. 599, 604.

§6. Money Orders.

IMPORTANT CASES SINCE 1908

(a) If an express company's charges for the transportation of money covered only the actual cost of that service it would be no discrimination for it to ship its own money. American Bankers' Ass'n v. American Express Co., 15 I. C. C. 15, 22.

(b) Complainant bankers requested the Commission to order defendant express companies to discontinue the business of issuing money orders, letters of credit, travelers' checks and drafts, purchase of foreign exchange and purchase and sale of foreign money, etc., on the ground that said business peculiarly belonged to complainants and that defendants in transporting money for themselves in connection with said lines of business carried the same at lower rates than they accorded to complainants. HELD, on motion of defendants to dismiss the complaint defendants had a right to engage in said lines of business, but evidence should be submitted on the question whether in the transportation of money defendants were unduly discriminating against complainants and in favor of themselves. America Bankers' Association v. American Express Co., 15 I. C. C. 15, 24.

ALL OTHER CITATIONS

American Bankers' Ass'n v. American

Express Co., 15 I. C. C. 15, 20; In re Express Rates, Practices, Accounts, and Revenues, 24 I. C. C. 380, 409.

§6a. Speed in Transporting.

IMPORTANT CASES SINCE 1908

(a) The Commission instituted an investigation into and concerning the question of the transportation of strawberries by express in carloads in passenger trains from Florida to northern markets, and of requiring the express companies or the railroads to provide themselves with and furnish refrigerator cars for use in that transportation. Rates charged from Florida second class. Express companies furnish refrigerator cars to strawberry shippers from Alabama, Louisiana and Mississippi. There are two strawberry producing sections in Florida. The principal shipping points in the Northern section are Starke and Lawtey on the S. A. L. The southern section is about 145 miles farther south. The North Carolina shippers use ordinary express and freight refrigerator cars in shipping their product. Shipments by ordinary express are limited. Neither the A. C. L., nor the Seaboard owns any express refrigerator cars, but are dependent upon the Fruit Growers Express Company. Florida growers are in direct competition with Louisiana growers. Louisiana shipments ordinarily move in refrigerator cars either by express or frieght. About 90 per cent of the movement is by express in special trains on passenger schedule. The Louisiana shippers have lower rates per quart available. Because of the expedition with which their shipments are handled, they also have an advantage over the Florida shippers with respect to time in transit. HELD, the record justifies the conclusion that the present service from Florida is inadequate. Time required is four days. Schedule should be shortened thereby accomplishing earlier deliveries. Carriers and shippers will work out a better schedule within 60 days. Transportation of strawberriers by express, in carload lots, in passenger trains, from Florida to northern markets, 81 I. C. C. 634.

§7. Prepaid and Collect Shipments.

IMPORTANT CASES SINCE 1908

(a) A carrier has the right to demand prepayment on all shipments, but it can within reasonable and nondiscriminatory limits waive its right to prepayment and extend credit. It cannot, however, distinguish in rates between those who prepay and those who do not. In Re Express Rates, 24 I. C. C. 380, 399.

ALL OTHER CITATIONS

Boise Commercial Club v. Adams Express Co., 17 I. C. C. 115, 121; In re Express Rates, 24 I. C. C. 380, 404, 405.

§7½. Free Collection and Delivery.

IMPORTANT CASES SINCE 1908

(a) Free collection and delivery can not always be demanded as a matter of right, and express companies may be justified in refusing to offer it where the points to be served are not readily accessible or are too far removed from the depots, or where the traffic is insufficient to meet the expense incurred or is of such a nature as to preclude its movement by express. Butterworth-Judson Corporation v. Adams Express, 51 I. C. C. 386, 388.

(b) Pick up and delivery comprises one distinguishing feature of express service and should be consistently expanded to keep pace with growing needs, rather than curtailed or permitted to become static. Express Rates, 1922, 83 I. C. C. 606, 654.

ALL OTHER CITATIONS

Non Absorption of Switching Charges on Fish, 81 I. C. C. 113.

§7½a. Refrigerator Cars.

IMPORTANT CASES SINCE 1908

(a) In 44 I. C. C., 645, 649, the commission found that it was without authority to require carriers to acquire refrigerator cars for use in express service. Although the law has been changed since that decision, provision of the act under which the commission may require common carriers to equip themselves with adequate facilities for performing their car service applies only to common carriers by railroad. Express companies are not carriers by railroad. Southeastern Express Co., 78 I. C. C., 126, 129. Oyler & Son v. Amer. Ry. Exp. Co., 83 I. C. C. 160, 162.

§8. Special Contracts.

See Special Contracts.

IMPORTANT CASES SINCE 1908

(a) A contract between an express company and railroad companies over whose lines it operates providing that the former shall not charge less than a certain percentage over the railroad rate applying on the same commodity between the same points, cannot be considered as

a controlling factor in passing upon the reasonableness of the express rates. The Commission will, of course, notice the railroad rate as affording a basis of comparison, but the law requires the fixing of just and reasonable charges, and the authority of the Commission to prescribe a reasonable rate is not restricted by the terms of any agreement between the express company and the railroad company. Reynolds v. Southern Express Co., 13 I. C. C. 536, 539.

(b) Where defendant express company publishes an export rate from St. Paul to New York which is less than its domestic rate, it must offer that rate to the entire public and may not confine it to itself nor to a particular express company or forwarder. Joseph Ullman v. Adams Express Co., 14 I. C. C. 585, 587.

(c) A railway company may lawfully transport the men and supplies of an express company without reference to any tariff provision, when employed or used in the business of the express company upon the line of the railway itself, and in the same manner an express company may lawfully transport the packages of a railway company between points upon that line of railway, without reference to its tariff rates; but a railway company may not transport men and supplies for an express company when employed and used in the business of that company at points not on the line of railway, and an express company may not transport for the railway packages between points on its route but not on that particular line of railway. In the Matter of Free Transportation, 16 I. C. C. 246, 250.

(d) Any contract for the free transportation of men and materials of express companies to points off the line of a carrier, though valid when entered into, must become invalid under the operation of the Act. In Re Contracts of Express Companies, 16 I. C. C. 246, 253.

ALL OTHER CITATIONS

Kindel v. Adams Express Co., 13 I. C. C. 475, 480, 495; Phillips v. N. Y. & B. D. Express Co., 15 I. C. C. 631, 632, 633; In Re Express Rates, 28 I. C. C. 132, 137; Pacific Express Co. v. Krower (Tex. 1914), 163 S. W. 9, 10; United States Express Co. v. Cohn (Ark. 1913), 157 S. W. 144; Glonlyon Dye Works v. Interstate Exp. Co. (R. I. 1914), 91 Alt. 5, 7.

§8. (1) Limitation of Liability.

See Loss and Damage §9; Limitation of Liability.

IMPORTANT CASES SINCE 1908

(a) Apparently an express company has a right to contract for limitation of its liability beyond its own line and after it has delivered the property to another carrier in respect of shipments to nonadjacent foreign territories, but a receipt or bill of lading which provides for that limitation of liability should clearly and appropriately disclose the class of traffic in connection with which it is to apply, and should recite that it is not to be used on shipments from a point in the United States destined to a point in an adjacent foreign country. Express Classification, 1920, 59 I. C. C. 265, 269.

(b) Where the published schedules and the shipping receipt of an express company show that the interstate rate is based upon an agreed value, the right of the carrier to have its liability so restricted remains, despite the fact that no inquiry was made of the shipper as to the value of the package. Adams Express Co. v. Croninger, 33 Sup. Ct. 148, 153; 226 U. S. 491.

ALL OTHER CITATIONS

Adams Express Co. v. Croninger, 226 U. S. 491, 33 Sup. Ct. 148, 57 L. Ed. 314, 44 L. R. A. (N. S.), 257; Lynch v. Southern Express Co. (Ga. 1916), 90 S. E. 655; In re Express Rates, 24 I. C. C. 380, 395, 396, 404; In re Express Rates, Practices, Accounts and Revenues, 28 I. C. C. 131, 132, 137, 138; Wells Fargo & Co. v. Nieman-Marcus Co., 33 Sup. Ct. 267, 269, 227 U. S. 469; Apple Suit & Cloak Co. v. Platt (Colo., 1913) 132 P. 71, 72; Adams Express Co. v. Mellichamp (Ga. 1912) 75 S. E. 596; Pacific Express Co. v. Krower (Tex., 1914), 163 S. W. 9, 10; United States Express Co. v. Cohn (Ark., 1913), 157 S. W. 144; Glonlyon Dye Works v. Interstate Exp. Co. (R. I. 1914), 91 Atl. 5, 7.

§8a. Switching and Trucking.

IMPORTANT CASES SINCE 1908

(a) Respondents proposed to discontinue the absorption of charges for switching or trucking at Chicago, Ill., on fish, carloads, shipped by express or on passenger trains from British Columbia, and other western points. Carload rates

covering shipments by express or on passenger trains generally do not include a drayage or delivery service or movement beyond the tracks of the delivering road. When any further movement is necessary an additional terminal switching charge is assessed. The tariff items here sought to be canceled are exceptions to this general rule. Protestants warehouse at Chicago is on the C. & N. W., and shipments to Chicago over that road are delivered direct to the warehouse under the line haul rate. On shipments arriving over roads other than the C & N. W., at the instance of the express carrier, the latter will continue to absorb the terminal transfer charge. Protestant admits that it never has taken advantage of the free drayage provision. Since its inbound shipments are always routed over the Northwestern it does not appear that its interests will be prejudiced by cancellation of the items in question. HELD, suspended schedules justified. Non-absorption of Switching Charges on Fish at Chicago, Ill., via Express or Passenger Service, 81 I. C. C. 113.

III. DISCRIMINATION.

See Discrimination.

§9. In General.

IMPORTANT CASES SINCE 1908

(a) Even where unjust and undue discrimination, free from criminal act, is shown to exist in the practices of express companies, the Commission will go no further in destruction or disturbance of the business of the carrier, or in depriving the public of conveniences and facilities of value to it, than is necessary in order to remove the discrimination to the extent that is unjust or undue. American Bankers' Ass'n. v. American Express Co., 15 I. C. C. 15, 21.

(b) The traffic which express companies move should flow with the greatest possible celerity between all portions of the country and whatever artificial barriers have been raised by the existence of separate express companies should be broken down, and the rates made or practices followed should neither rest upon the foundation of a railroad's preference nor of an express company's opportunity. In Re Express Rates, Practices, Accounts and Revenues, 24 I. C. C. 380, 387.

(c) The large differences between intrastate and interstate express rates for equal distances place a burden upon interstate shippers and give a corresponding advantage to intrastate shippers, thus accomplishing an inevitable restriction of shipment in interstate commerce or shrinkage of profits. Traffic Bureau, Sioux City Commercial Club v. Am. Ex. Co., 39 I. C. C. 703, 719.

(d) Complainant attacked the express rates of $3.50 per 100 lbs. charged on certain less-than-carload shipments of fresh fish shipped from Selkirk, Man., to Buffalo, N. Y., as unreasonable and discriminatory to the extent that it exceeds the subsequently established rate of $2.60. HELD, (1) that the Commission's jurisdiction extended over that part of the transportation performed within the United States, but (2) that the facts did not justify a finding of unreasonableness or discrimination in the charges with respect to such portion of the transportation. Complaint dismissed. Booth Fisheries Co. v. American Express Co., 45 I. C. C. 363.

ALL OTHER CITATIONS

Saunders and Welles v. Southern Express Co., 18 I. C. C. 415, 422; Atlantic Packing Co. v. American Express Co., 28 I. C. C. 244; Express Rates, 1922, 83 I. C. C. 606, 671, 676, 680.

IV. RATES.

§10. Reasonableness in General.

See Reasonableness of Rates.

CASES 1887-1908

(a) Express company is entitled to charge a reasonable amount for the service which it gives, but cannot justify a rate by the mere production of its contracts with its agents and the railroad. Society of American Florists v. United States Express Co., 12 I. C. C. 120.

(aa) Unusual expense arising out of special delivery of a certain class of express traffic does not justify any greater increase in the rate than will cover such expense. Society of American Florists v. United States Express Co. 12 I. C. C. 120.

(ab) Complainant attacked express rates on cut flowers from Chatham, N. J., to New York, N. Y., as excessive and unreasonable. Defendants rates on cut flowers from certain points in New Jersey and Pennsylvania to New York City, prior to May 1, 1906, were graduated from 50 to 75c per 100 pounds and on empty boxes returned from 5 to 25c each; on that date the cut flower rates

were increased to $1.00 per 100 pounds, and empty boxes folded flat returned 50 to 75c each, per 100 pounds and on empty boxes not folded flat $1.00 per 100 pounds. HELD, rates attacked unreasonable to extent they exceeded 60c on cut flowers, merchandise rates to apply on the empty boxes returned. Reparation withheld pending further action. Society of American Florists and Ornamental Horticulturists v. United States Express Company, 12 I. C. C. 121.

(ac) An added and unusual terminal expense arising out of the special delivery of a certain class of express traffic does not justify any greater increase in the rate than will cover such terminal expense. Society of American Florists and Ornamental Horticulturists v. United State Express Company, 12 I. C. C. 121.

(b) An express company is entitled to charge a reasonable amount for the service it gives, and this servicce being partly rendered by its own employees and partly rendered by the railroad, it can not justify a rate by the mere production of its contracts with the agents and the railroad, as an unreasonable rate can not be imposed upon the shipper by reason of contracts which an express company had made with its agents and the railroad. Society of American Florists and Ornamental Horticulturists v. United States Express Co., 12 I. C. C. 121, 127.

(c) An express company can not justify a rate which, in comparison with other rates, is excessive and unreasonable, by showing that it gives a service that is exceptionally expensive, where the burden of the rate charged therefor, falling upon the shipper, increases an already sufficient return to the railroad. An express company is entitled to a reasonable amount for the service which it gives; and this service, being partly rendered by its own agents and employees and partly rendered by the railroad, it cannot justify a rate by the production of its own contracts made with the agents and the railroad. Society American Florists v. U. S. Express Co., 12 I. C. C. 121, 127.

(d) Express rate of $350 per car for horses from Columbus, Ohio, to Kansas City and to St. Paul, unjust and unreasonable and reduced to $250.00. McLaughlin Bros. v. Adams Express Co., 12 I. C. C. 489.

(e) Express rates on horses from Columbus, Ohio, to Kansas City and St. Paul should not exceed $250 per car. McLaughlin Bros. v. Adams Express Co., 12 I. C. C. 489.

(f) Complainant attacked express rates on horses from New York to western points. Defendants rate per car from New York to Columbus, O., is $200; from Columbus to Kansas City, Mo., $350; from Columbus to St. Paul, Minn., $350. The rate per car from New York to St. Louis, Mo., is $300; from St. Louis to Kansas City, $150; from New York to Chicago, $250; from Chicago to St. Paul, $200. Thus the total charge from New York to Kansas City when the shipment is stopped at St. Louis is $450; when stopped at Columbus the total charge is $550. Similarly the charge from New York to St. Paul is $450 when the shipment is stopped at Chicago and $550 when stopped at Columbus. HELD, rate of $350 per car from Columbus to Kansas City and to St. Paul is unjust and unreasonable and should not exceed $250 per car. McLaughlin Bros. v. Adams Express Co., 12 I. C. C. 489.

IMPORTANT CASES SINCE 1908

(g) Express rates ought not to be so low with reference to freight rates as to attract to the express service business which can be properly and more cheaply handled by freight. When a reasonable freight rate has once been established the express rate in many instances ought to be fixed with reference to it. Nevertheless there is a wide field in which express charges may vary without unduly diverting traffic from freight to express. Kindel v. Adams Express Co., 13 I. C. C. 475, 484.

(h) The first consideration in an express service is the quality of the service itself, and the compensation allowed should be adequate to a service of high quality. Maricopa County Commercial Club v. Wells, Fargo & Co., 16 I. C. C. 182, 185.

(i) A system must be developed by which express rates shall conform to standards to which railroads have in a great measure conformed and which the law enjoins. Boise Commercial Club v. Adams Express Co., 17 I. C. C. 115, 122.

(j) The question of what is a reasonable rate for a transportation service upon a certain commodity must be determined individually, and the ques-

tion of what other traffic may or may not move has no bearing upon the determination of this particular issue. Ohio Face Brick Mfrs. Ass'n. v. Adams Express Co., 20 I. C. C. 582, 585.

(k) A reasonable express rate may not be fixed on the basis of the value of the property owned and used by the express company. In Re Express Rates, Practices, Accounts and Revenues, 24 I. C. C., 380, 418.

(l) An express company has no right to impose unreasonable rates by reason of the exclusive contract it enjoys with the railroad. It must be treated as the railroad itself would be treated. It is an arm of the railroad; it is the railroad itself reaching out of the door and taking the package and delivering it again personally to the consignee. In Re Express Rates, Practices, Accounts and Revenues, 24 I. C. C. 380, 419.

(m) A reasonable express rate is one which gives reasonable compensation to the rail carrier for carrying a small package upon a passenger train, or a train going at passenger speed, plus reasonable compensation for the service of gathering, care and delivering which the express company as such renders. In Re Express Rates, Practices, Accounts and Revenues, 24 I. C. C. 380, 424.

(n) The Commission, recognizing the variation in the density of traffic and of population and in the expense of operating railroads in the different sections of the country, has divided the country for the purpose of making express rates into 5 grand sub-divisions or zones, which conform generally to those recognized by rail carriers in the matter of freight rates. In Re Express Rates, Practices, Accounts and Revenues, 24 I. C. C. 380, 430.

(o) While the construction of express tariff rates upon the blanket theory after the fashion of the postage stamp might be one of far-sighted policy on the part of the companies, the Commission is not free to substitute its own judgment as to policy for that of the carriers themselves. In Re Express Rates, Practices, Accounts and Revenues, 24 I. C. C. 380, 430.

(p) The Commission reached the following conclusions as to the standard of reasonableness of express rates: 1, Express rates should be made primarily to meet the need of the great body of the people and should, therefore, be stated in the terms that represent the small package which the express company is intending to carry rather than by the 100 lbs., as freight rates are stated. 2. In the fixing of its rates the company should not be allowed to charge more than the railroad company if the latter undertook to, and did, give the same service. 3. It is proper for the government to treat the express company as a freight forwarder by passenger train, giving supplemental service at each terminus and intermediate care. 4. An express rate may not be based upon the monopoly right of the express company to be the exclusive freight forwarder over one or more lines of railroad. 5. The rate should not include more than a reasonable compensation for the service given, even though such compensation falls below that which the railroad exacts as a minimum for the carriage of 100 lbs. of freight. 6. It is unreasonable to fix as rapid a decline in the express rates for long distances as is made by the railroads in their freight rates, express service in this respect being more analogous to passenger than to freight service. 7. In compounding the express rate the railroad should be allowed a compensation for bulked freight moved upon a passenger train as to which it is relieved by contract from all liability for loss or damage and is without the expense of furnishing a receipt, the billing, the bookkeeping and a great number of other general expenses. 8. The rate should include a return to the express company which will compensate it with profit of the expense of the serice which it gives, there being added thereto in the formation of the total rate a proper charge which it may reasonably make for the service which the railroad gives, as stated in 7., above. In Re Express Rates, Practices, Accounts and Revenues, 24 I. C. C. 380, 431.

(q) Express rates should include a return to the express company which will compensate it with profit for the expense of the service, there being added thereto the proper charges which it may reasonably make for the service the railroad gives. In Re Express Rates, 24 I. C. C. 380, 431.

(r) In the case of shipments of extraordinary value, not only is the carrier entitled to notice of each value in order that its care may be increased, but it is also entitled to extra compensation for

the increased liability and care. In Re Express Rates, Practices, Accounts and Revenues, 28 I. C, C. 131, 138.

(s) The element of time is the controlling factor that makes express service valuable, and it is of especial importance in connection with the transportation of such perishable commodities as fresh fruits and vegetables. Davies Spur, Wash., Express Rates, 43 I. C. C. 143, 146.

(t) An element of potential competition of no slight importance was and must always be a factor in the plan under which the express business is conducted in this country. Express Contracts, 1920, 59 I. C. C. 518, 522.

(u) Complainants attacked second class rates on strawberriers, carloads, by express, from Kentucky, Tennessee, Alabama, and Mississippi served by the Southern and L. & N., to destinations in central and trunk line territorries. as unjust and unreasonable and the maintenance of lower rates from Louisiana, Alabama, Kentucky, Tennessee and Mississippi served by the I. C., subjects them to unjust discrimination and undue prejudice. Commodity rates, about 65 per cent of the first class rates applicable in any quantity, have been in force for some years. The second class rates are based on 75 per cent of the first class rates Refrigerator car service, however, is not available in connection with express rates. Berries from this territory cannot be successfully marketed because the feight movement is so slow that they deteriorate before reaching their destinations. Hammond, La., on the I. C., is the center of an important berry producing region, which for about 18 years has had the benefit of regular express refrigerator service and carload rates to all northern and eastern consuming points. Shipments from Alabama and Louisiana are made contemporaneously. Generally speaking, the carload commodity rates from Louisiana points are a lower percentage of the first class rates than are the carload rates from points farther north. What complainants really desire is the establishment of a carload express refrigerator service. There is a substantial difference in the circumstances surrounding the traffic from Louisiana as compared with the traffic from points on the L. & N. HELD, rates attacked not unreasonable and failure of defendants to establish express carload refrigerator rates not unduly prejudicial, complaint dismissed. C. C. Oyler & Son v. American Railway Express Co., 83 I. C. C. 160.

(v) First-class express rates on live poultry when movement is in excess of 400 miles, and second-class for distances of 400 miles and under, found not unlawful. Present adjustment was approved by commission in Express Classification, 1920, 59 I. C. C., 265, 279, following compromise agreement between shippers and express officials in recognition of hazardous character of traffic and high rate of mortality in case of long hauls, and present record is not convincing that any charge should be required. Express Rates, 1922, 83 I. C. C., 606, 666.

(w) No grounds appear in justification of express company's not accepting racing pigeons for transportation at same rates and conditions as to declared or released values, under which live poultry and pigeons for market are transported. No peculiar transportation conditions affect movement of racing pigeons to distinguish them from other live pigeons or poultry for assessment of higher rates; and as value and consequent liability constitute only other element for basing distinction, it follows that, whether shipped for food or other purposes, pigeons of same actual declared or released value should take same charges. Express Rates, 1922, 83 I. C. C., 606, 666.

(x) Increased interstate express rates and charges prayed in petition filed by American Railway Express Co., found not justified. Cost of operating express service or amount of property investment devoted thereto not properly determined, data in Mail Pay Case, 56 I. C. C., 1, are not applicable for purpose of arriving at expenses of express service, and method used in determining amount of investment is not such as to produce correct result. Express Rates 1922, 83 I. C. C. 606, 621, 635, 677.

(y) An express rating may not be based upon any one single consideration, and without regard to proper relationship that it should bear to ratings of other articles of similar transportation characteristics in express classification. Express Rates, 1922, 83 I. C. C. 606, 675.

ALL OTHER CITATIONS

Oak Grove Farm Creamery v. Adams Express Co., 19 I. C. C. 454, 455; Hartville Celery Growers' Ass'n. v. Pacific Express Co., 14 I. C. C. 590, 592; Fair-

mont Creamery Co. v. Pacific Express Co., 15 I. C. C. 134, 135; Sanford v. Western Express Co., 16 I. C. C. 32, 34, 36, Franklin, Stiles & Franklin v. Southern Express Co., 21 I. C. C. 88; Bannon v. Southern Express Co., 13 I. C. C. 516, 520; Davis v. West Jersey Express Co., 16 I. C. C. 214, 216; U. S. v. Adams Express Co., 16 I. C. C. 394, 395; Bridgman-Russell Co. v. Great Northern Express Co., 22 I. C. C. 573, 577; Merchants' Traffic Ass'n v. Pacific Express Co., 13 I. C. C. 131, 132, 133; Reynolds v. So. Express Co., 13 I. C. C. 536, 540; Ullman v. Adams Express Co., 14 I. C. C. 340, 342; rehearing denied, 14 I. C. C. 585; Ohio Face Brick Mfrs. Ass'n v. Adams Express Co., 20 I. C. C. 582; Cobb v. N. P. Ry., Co., 20 I. C. C. 100, 104; Ullman v. Adams Ex. Co., 14 I. C. C.585, 587; In Re Exp. Rates, Practices, Accounts and Revenues, 28 I. C. C. 131, 138, 152; In Re Express Rates, Practices, Accounts and Revenues, 24 I. C. C. 380, 383, 389, 397, 403, 413, 428, 433; In re Exp. Rates, 28 I. C. C. 132, 137; R. R. Com'rs. of Fla. v. S. Exp. Co., 28 I. C. C 634, 635, 636; Kindel v Adams Express Co., Unrep. Op. A-620; Lindsay & Co. v. Northern Exp. Co., 33 I. C. C. 394; National Ass'n of Ice Cream Mfrs. v. Express Co., 33 I. C. C. 441; American Steel Dredge Co. v. American Exp. Co., Unrep. Op. A-807; Express Rates, Practices, Accounts and Revenues, 35 I. C. C. 3; Robinson Co. v. American Express Co., 38 I. C. C. 733; Traffic Bureau, Sioux City Commercial Club v. Am. Exp. Co., 39 I. C. C. 703, 723; Furness Co. v. American Exp. Co., 42 I. C. C. 645; Kimberly Clark Co. v. Ameican Exp. Co., 45 I. C. C. 7, 8; Laundrymen's National Asso. v. American Express Co., 45 I. C. C. 361, 362; Golden & Co. v. Adams Exp. Co., 46 I. C. C. 541, 544; Elec. Controller & Mfg. Co. v. Am. Exp. Co., 50 I. C. C. 243; Proposed Increase of Express Rates, 50 I C. C. 385; Express Charges on Empty Fish Cars, 50 I. C. C. 24; Increase in Express Rates, 51 I. C. C. 263; Northwestern Trading Co. v. Adams Express Co., 51 I. C. C. 211; Proposed Increase in Express Rates, 50 I. C. C. 385; Public Service Commission of Washington v. American Ry. Express Co., 52 I. C. C. 266; Charles Lyons Co. v. Adams Exp. Co., 53 I. C. C. 633, 635; Booth Fisheries Co. v. American Express Co., 53 I. C. C. 735; Rio Grande Valley Creamery Co. v. Wells, Fargo, 55 I. C. C. 425; Haley & Lang Co. v. American Express Co., 55 I. C. C. 747; White Bros. & Crum Co. v. Director General, 57 I. C. C. 511, 512; Express Rates, 1920, 58 I. C. C. 281, 294, 295, 296, 297, 707, 711; Express Classification, 1920, 59 I. C. C. 265, 267, 268, 274, 277, 279, 280, 281, 282; Oyler & Son v. American Ry. Express Co., 59 I. C. C. 656, 657, 658; Armour & Co. v. Director General, 60 I. C. C. 663; Texas Company v. Director General, 62 I. C. C. 489; Gateway Produce Co. v. American Ry. Exp. Co., 61 I. C. C. 347; Increased Weights on Kale, Lettuce and Spinach, 61 I. C. C. 586; The Glacifer Co. v. American Railway Express Co., 63 I. C. C. 153; Express Rates on Bangor & Aroostook Railroad in Maine, 63 I. C. C. 452; Ault & Wiborg Co. v. Director General, 64 I. C. C. 186; Classification Rating on Flavoring Extracts, 64 I. C. C. 53; Express class rates between United States and Canadian Points, 68 I. C. C. 20, 24; Actual mileage to determine rates on milk and cream by express between points west of the Mississippi River, 68 I. C. C. 90; Actual Mileage to Determine Rates on Milk and Cream by Express between points west of the Mississippi R., 69 I. C. C. 90; Haley-Neeley Co. v. Director General, 73 I. C. C. 577; Express Rates on Milk and Cream between I. C. R. R. Points, 74 I. C. C. 427; Hanford Produce Co. v. Director General, 74 I. C. C. 763; Express Rates on Cake, 74 I. C. C. 234; Express Rates on Milk and Cream, 74 I. C. C. 427, 431; Payne v. Am. Ry. Exp. Co., 74 I. C. C. 757; Hanford Produce Co. v. Director General, as Agent, 74 I. C. C. 763; San Francisco Produce Exch. v. Am. Ry. Exp. Co., 78 I. C. C. 737; Hanford Produce Co. v. Director General, 80 I. C. C. 29; Haley Neeley Co. v. Director General, 81 I. C. C. 215; American Fruit & Veg. Shippers Asso. v. Amer. Ry. Exp. Co., 81 I. C. C. 87; Sebastopol Berry Growers Asso. v. Amer. Ry. Exp. Co., 83 I. C. C. 345; Express Rates, 1922, 83 I. C. C. 664, 680; Kirschbraun & Sons, Inc., v. American Railway Express Co., 88 I. C. C. 670; Express Rates on Milk and Cream in Virginia, 88 I. C. C. 687; Express Rates on Milk and Cream via C. & N. W. Ry., 88 I. C. C. 696.

§11. Specific rates.

See Comparative Rates.

(1). General special rates.

IMPORTANT CASES SINCE 1908

(a) There must be a new classification of express rates, in which the

standard of first-class rate shall be that on merchandise, and to which there shall be but one great class of exceptions, or second class, consisting of articles of food and drink, now carried under the term of 'general specials.' The rate on the latter class should be a certain percentage of the merchandise rate, and 75 per cent of the merchandise rate would yield a fair rate. Other rates may be made to meet traffic needs and develop industries, but all such rates should be based on conditions of service, and should likewise be stated in percentages of the merchandise rate. In Re Express Rates, 24 I. C. C. 380, 433.

ALL OTHER CITATIONS

Bannon v. Southern Express Co., 13 I. C. C. 516, 520; Merchants Traffic Ass'n v. Pacific Express Co., 13 I. C. C. 131, 132, 133; Reynolds v. Southern Express Co., 13 I. C. C. 536, 540; Ullman v. Adams Express Co., 14 I. C. C. 340, 342; rehearing denied, 14 I. C. C. 585; Davis v. West Jersey Express Co., 16 I. C. C. 214, 216; U. S. v. Adams Express Co., 16 I. C. C. 394, 395; Oak Grove Farm Creamery v. Adams Express Co. 19 I. C. C. 454, 455; Ohio Face Brick Mfrs. Ass'n v. Adams Express Co., 20 I. C. C. 582; Franklin, Stiles & Franklin v. Southern Express Co., 21 I. C. C. 88; Bridgeman-Russell Co. v. Great Northern Express Co., 22 I. C. C. 573, 577; Providence Fruit & Produce Exchange v. A. E. R. R., 51 I. C. C. 167; In Re Express Rates, Practices, Accounts and Revenues, 24 I. C. C. 380, 403, 433.

§11 (2). Rates based on value.

See Released Rates.

IMPORTANT CASES SINCE 1908

(a) The charges of express carriers based upon valuation in excess of $50, shall not exceed 10c for each $100 or fraction thereof in excess of $50, and this irrespective of the rate of carriage. In Re Express Rates, Practices, Accounts and Revenues, 24 I. C. C. 380, 397.

ALL OTHER CITATIONS

Hartville Celery Growers' Ass'n v. Pacific Express Co., 14 I. C. C. 590, 592; Fairmont Creamery Co. v. Pacific Express Co., 15 I. C. C. 134, 135; Acme Portland Cement Co. v. American Express Co., 28 I. C. C. 316.

§11 (3). Rates based on weight.

See Weights and Weighing.

IMPORTANT CASES SINCE 1908

(a) Rule 7 of express companies, providing for assessment of charges on actual weight requires no change. In Re Express Rates, 24 I. C. C. 380, 407.

(b) The weight basis of assessing charges on returned shipment should be the same as on shipments forwarded. In re Express Rates, 24 I. C. C. 380, 408.

(c) Complainant attacked practice of defendant in assessing charges on ice cream in 5 gallon wet containers based on an estimated or billing weight of 115 pounds, while contemporaneously assessing charges on ice cream shipped in 5 gallon dry containers based on actual weight as unduly prejudicial. Original report in 63 I. C. C. 153, wherein the Commission found this prejudice would be removed by billing the dry container and contents at 75% of the gross actual weight thereof. As a general rule, express charges are based on the gross weights of the articles transported or on estimated weights which closely approximate the gross weights. An exception is made in the case of food articles rated second class, among which is ice cream, when shipped in ice. HELD, original report affirmed. Glacifer Company v. American Railway Express Company, 81 I. C. C. 223.

(d) As a general rule, express charges are based on the gross weights of articles transported or on estimated weights which closely approximate gross weights. An exception is made, however, in case of food articles rated second class, among which is ice cream, when shipped in ice. Glacifer Co. v. Amer. Ry. Exp. Co., 81 I. C. C. 223, 225.

ALL OTHER CITATIONS

Providence Fruit & Produce Exchange v. A. E. R. R., 51 I. C. C. 167; Increased Weights on Kale, Lettuce, and Spinach, 61 I. C. C. 586; Glacifer Co. v. American Ry. Exp. Co., 63 I. C. C. 153; Weights on Berries in Pony Refrigerators, 64 I. C. C. 610; Estimated weights on berries in pony refrigerators, 64 I. C. C. 610; Express Rates on Cake, 74 I. C. C. 234; Payne v. American Ry. Exp. Co., 74 I. C. C. 757.

§11 (4). Block system.

IMPORTANT CASES SINCE 1908

(a) Block-system rates not to be disturbed because of showing that their use will increase cost of transporting bread, other bakery products, and yeast.

In the Matter of Express Classification of Bread, etc., Unrep. Op. A-671.

(b) The geographical block system prescribed in 24 I. C. C., 380, serves merely to locate and group express stations from and to which compounded rates apply; and only for cogent reasons should those long standing and well-known groups be broken up and rearranged. Express Rates, 1922, 83 I. C. C. 606, 653.

(c) For construction and application of revised express rates and charges, and to bring about closer coincidence between rate zones and accounting groups under uniform contract between American Railway Express Co. and rail lines over which it operates, the United States to be divided into three rate zones, delimited by parallels of latitude and meridians of longitude as described in report. Express Rates, 1922, 83 I. C. C. 606, 677, 679.

ALL OTHER CITATIONS

Sanford v. Western Express Co. 16 I. C. C. 32, 34, 36; Express Rates, 1922, 89 I. C. C. 297; Kindel v. Adams Express Co., Unrep. Op. A-620.

V. ROUTE

§12. In general.

IMPORTANT CASES SINCE 1908

(a) With respect to circuitous routing of shipments by express companies, it appeared that the companies, on shipments for delivery at points on the lines of railroad over which they operated, were accustomed to retain possession of the shipment, so as to receive the longest possible haul via their own lines. As a result, many shipments were carried by roundabout routes before being delivered to the final carrier, and excessive charges were assessed, based upon the long routing, instead of on the route over which the shipments should have traveled. HELD, the companies should establish and jointly publish through routes between the principal points in the United States, which routes should follow the main lines of travel, the most direct in point of time, measured by the schedule of those passenger trains by which normal schedules are observed. These joint through routes should be designated by number and filed with the Commission. The tariffs naming them should, merely as a matter of information, state the usual time occupied in carrying traffic between the termini. The tariffs publishing these through routes should contain the names of the termini and the number of the route, the gateways between points of origin and destination, the names, in alphabetical order, of all the principal stations on the through routes so established and an alphabetical index of stations, showing the route number or numbers by which each may be reached. In re Express Rates, Practices, Accounts and Revenues, 24 I. C. C. 380, 393.

(b) The consignor has the right to indicate, in writing, by what joint through route his express shipment shall move. In re Express Rates, 24 I. C. C. 380, 393.

(c) And express companies are not liable for misrouting where instructions of shipper are followed. Brackett Co. v. G. N. Express Co., 29 I. C. C. 667, 668.

(d) Contention that under paragraph (4) of section 1 of the Act, if an express company provides through routes and reasonable facilities for their operation, it has fulfilled its common-carrier duty to the public and commission can not require it to establish additional joint through routes which would short-haul it, not sustained. Limitation in act prior to 1910 restraining commission from establishing through routes where reasonable or satisfactory through routes existed has been removed, and commission is now required to establish such through routes whenever deemed necessary or desirable in public interest. Southeastern Express Co. v. American Ry. Express Co. 78 I, C. C. 126, 130.

(e) Contention that if a strict construction be given to "carrier by railroad" in section 15 (4) the phrase "any railroad corporation being a common carrier" in section 15 (8) also should be construed strictly, and that under such construction shipper would not have right to route express, not sustained. Right of shipper to route was part of system of express rates and practices prescribed in 24 I. C. C., 380, 28 I. C. C., 131, and is provided for in classification of express companies. Under section 15 (3) the commission has power to require through routes and joint rates, to prescribe terms and conditions under which they shall be operated, and under this power may provide for right of shipper to route. Southeastern Express Co. v. Amer. Ry. Exp. Co., 78 I. C. C., 126, 141.

(f) Fact that in vast majority of cases shippers do not route their express should not prevent shipper who is capable and who desires to, from routing express over reasonably direct routes. Southeastern Express Co. v. Amer. Ry. Exp. Co., 78 I. C. C. 126, 141, 142.

(g) Right of shipper to route shipments should not include right to direct movement via any and every transfer or connecting point between two express companies, but should include choice of alternative reasonable direct routes via designated transfer points. Southeastern Express Co. v. Amer. Ry. Exp. Co., 78 I. C. C., 126, 142.

(h) It became necessary, in 24 I. C. C., 380, and 28 I. C. C., 131, to forbid an express company from serving unduly its own interests by circuitous routing, and there is no more reason for a shipper to be allowed to route circuitously than there is for an express company. Southeastern Express Co. v. Amer. Ry. Exp. Co., 78 I. C. C., 126, 142.

(i) American Ry. Express Co. and Southeastern Express Co. required to recognize as "established routes" the reasonable direct routes to be established in accordance with findings herein, and to provide in its tariffs for right of shipper to designate routing of shipments over such routes; each company to have right, when traffic is unrouted, to use reasonable route giving it longest haul, but to obey routing instructions when given. Southeastern Express Co. v. Amer. Exp. Co., 78 I. C. C., 126, 143.

(j) Routes are not specified in express tariffs. They were required to be shown by In re Express Rates, Practices, Accounts and Revenues, 24 I. C. C. 380, but by supplemental order therein the express companies were relieved from so doing. Kellerman v. Director General, as Agent, 83 I. C. C. 347, 348.

(k) Express company's practice of using direct routes eliminated and closed all indirect or circuitous routes just as effectively as if by tariff publication. Southeastern Express Co., 78 I. C. C., 126, 140. Kellerman v. Director General, as Agent, 83 I. C. C. 347, 349.

ALL OTHER CITATIONS

Douglas Shoe Co. v. Adams Exp. Co., 19 I. C. C. 539, 542; Hamilton v. American Express Co., Unrep. Op. 355; Parlin & Orendorff Plow Co., of St. Louis, v. U. S. Express Co., 26 I. C. C. 561; In re Express Rates, Practices, Accounts and Revenues, 24 I. C. C. 380, 392, 423, 429, 431, 432, 424, 426, 427, 436; Atlantic Packing Co. v. Am. Exp. Co., 28 I. C. C. 244, 246; Yakima County Hort. Un. v. Northern Express Co., Unrep. Op. A-916; Providence Fruit and Produce Exchange v. Exp. Co., Unrep. Op. 1831; Actual Mileage to Determine Rates on Milk, 69 I. C. C. 90; Southeastern Express Co. v. Amer. Ry. Exp. Co., 78 I. C. C. 126, 143.

VI. TARIFFS.

See Tariffs; Released Rates.

§13. Construction.

CASES 1887-1908

(a) Complainant attacked action of defendants in operating a parcel express from Philadelphia, Pa., to certain points on the B. & O., whereby packages of not more than 50 pounds can be sent to such points by affixing a stamp, the charge for which varies according to weight, the privilege to be exercised by patrons of the road only. Subsequently the privilege was extended to apply to the complainant and the public generally. The practice was not covered by tariff, and until this is done the Commission will vouchsafe no opinion as to its lawfulness. HELD, complaint dismissed. J. E. Walker v. B. & O. R. R., 12 I. C. C. 196.

IMPORTANT CASES SINCE 1908

(b) Simplicity is the ultimate essential in express matters. Instead of becoming more and more involved in classification, rules and rates, as has been the tendency, there must be a complete reversal of policy. In re Express Rates, Practices, Accounts and Revenues, 24 I. C. C. 380, 413.

(c) The duly established and filed rates and contracts, such as a uniform express receipt, are binding on the shippers unless and until held unreasonable by the Interstate Commerce Commission or by the federal courts. Mozier v. Barrett, 193, N. Y. S. 579.

ALL OTHER CITATIONS

Ullman v. Adams Express Co., 14 I. C. C. 340, 341; California Commercial Ass'n v. Wells, Fargo & Co., 14 I. C. C. 442, 433; Interstate Remedy Co. v. Am. Exp. Co., 16 I. C. C. 436, 438, 439; Electric Controller & Mfg. Co. v. Am. Exp. Co., 50 I. C. C. 243, Northwestern Trading Co., Inc., v. Adams Express Co., 52 I. C. C. 552; Hinrichs (Inc.) v. Wells, Fargo & Co., 53 I. C. C. 362; Frank Livery & Undertaking Co. v. American Ry.

Express Co., (Mo. 1923), 247 S. W. 1031; Wilson v. American Ry. Express Co., 197 N. Y. S. 600; W. N. Payne v. American Railway Express Co., 74 I. C. C. 757.

§13½. Aggregate shipments.

IMPORTANT CASES SINCE 1908

(a) The rule of an express company that shipments made in one day from one consignor to one consignee shall be aggregated if thereby lower charges are imposed is construed to mean that not all such shipments need be aggregated but that the shipments must be combined in such a manner that the lowest possible amount of total charges shall be assessed. United States v. Skinner, 218 Fed. 870, 880.

(b) An express company's rule, that two or more packages forwarded by one shipper at the same time to one consignee at one address must be charged for on the aggregate weight, provided that any of the packages weighing less than 20 pounds each shall be charged for as weighing 20 pounds each, restricts aggregation to instances where one shipper forwards several packages at the same time, and permits agrregation in such cases without regard to the amount of the merchandise rate, established by the company as the basis for rates on all classes of articles transported. Barrett v. Gimbel Bros., 226 Fed. 623, 628.

(c) The Provision, in an express company's rule for aggregating weights and the charge on the aggregated weight that, where the merchandise rate per 100 pounds is $1.50 or more, two or more packages forwarded by the same company from the same city or town on the same date to one consignee at one address must be charged for on the aggregate weight, if a lower charge is thereby made, extends the practice of basing charges on aggregate weights to cases where several shippers forward two or more packages on the same date, resulting in a lower charge, but restricts the rule of aggregating weights to cases where the merchandise rate per 100 pounds is $1.50 or more. Barrett v. Gimbel Bros., 226 Fed. 623, 628.

(d) An express company's rule, that, where the basic merchandise rate per 100 pounds is $1.50 or more, two or more packages forwarded by the same company from the same city on the same date to one consignee at one address, whether from one or more than one shipper, must be charged for on the aggregate weight, if a lower charge is made thereby, and that, where the basic rate is less than $1.50, the aggregate charge on shipments from more than one shipper to one consignee forwarded from the same point on the same date must not be more than where the rate is $1.50, deals with two distinct situations, the first part of the rule dealing with aggregate weights, and the last with charges, and several packages shipped by several consignors between points at which the basic rate is $1.50 or more must be aggregated, if the charge thereby made is lower than the total of the graduated charges for the packages under the general merchandise rates, and where the basic rate is less than $1.50 the aggregate charges on nonagregated shipments must not be more than where the rate is $1.50, and the last provision of the rule fixes a maximum aggregated charge on nonaggregated weights of packages where the basic rate is less than $1.50, and the maximum charge is so fixed that the aggregate charges on nonaggregated packages shall not exceed the charge on aggregated packages shipped under the rate of $1.50 or more, thereby preventing a higher charge for a short haul than is demanded for the same gross weight on a long haul. Barrett v. Gimbel Bros., 226 Fed. 623, 624, 628.

§14. Double Graduate Charges.

ALL CITATIONS

Boise Commercial Club v. Adams Exp. Co., 17 I. C. C. 115, 119, 122; Browne v. American Express Co., Unrep. Op. 237.

§15. Graduate Scale System.

ALL CITATIONS

Kendel v. Adams Express Co., 13 I. C. C. 475, 478, 496; In re Express Rates, Practices, Accounts and Revenues, 24 I. C. C. 380, 428.

§16. Mixed Shipments.

See Classification §7; Mixed Carloads.

IMPORTANT CASES SINCE 1908

(a) The law gives to every shipper the right to bulk his shipment when but one delivery is to be made, and although the larger package may contain 100 or more smaller ones, the rate to be applied will be that fixed for the large package—the aggregation of packages. In re Express Rates,

Practices, Accounts and Revenues, 24 I. C. C. 380, 407.

(b) A rule that express packages containing articles of more than one class shall be charged at rate applicable to highest-rated article, unless otherwise provided, not found unreasonable. In re Express Rates, 24 I. C. C. C. 380, 412.

(c) Proposal of the American Railway Express Co., to modify its classification so as to eliminate from the item covering cake the provisions according net-weight and pound-weight bases on that commodity, and to restrict the quantity of cake which may be shipped at bread rates in mixed shipments with bread to 25 per cent of the combined weight, which would result in increased charges on cake, found not justified. While both commodities under the mixing rule would move at second-class rates, such rule would be discriminatory in favor of bakers of both bread and cake as against bakers of cake only. Express Rates on Cake, 74 I. C. C. 234.

ALL OTHER CITATIONS

Oak Grove Farm Creamery v. Adams Express Co., 19 I. C. C. 454, 455.

§16½. Released Rates.

See Released Rates.

IMPORTANT CASES SINCE 1908

(a) The Commission has authorized the express companies to file rates for the transportation by express of property ,except ordinary live stock, dependant upon the value declared in writing by the shipper or agreed upon in writing as the relased value. Released Rates, 43 I. C. C. 510.

§16¾. Reconsignment.

See Reconsignment.

ALL CITATIONS

Willson v. American Ry. Express Co., 197 N. Y. S. 600.

VII. EVIDENCE.

See Evidence.

§17. In General.

IMPORTANT CASES SINCE 1908

(a) In determining the reasonableness of express rates, inquiry must be had into the capital required, hazard involved, and especially the profits made under the rates attacked. Sanford v. Western Express Co., 16 I. C. C. 32, 35.

(b) A reasonable express rate is one which gives reasonable compensation to the rail carrier for carrying a small package upon a passenger train, or train going at passenger speed, plus a reasonable compensation for the service of gathering, care and delivering, which the express company as such renders. In re Express Rates, 24 I. C. C. 380, 424.

(c) Freight, when moved on a passenger train, should not pay the same charge as imposed on a passenger. There is no relationship between the carriage of dead freight and the carriage of a passenger. Value of service, risk, care given and costs of terminals and stations, widely differ In re Express Rates, 24 I. C. C. 380, 426.

(d) The Commission has given thought to the question of the relation between earnings by passenger train for passengers and for express matter; and while such a basis may not be accepted as in anywise conclusive or determinative of the express rate, the relation between the return for the carriage of a passenger and express matter has been borne in mind, especially with relation to the fact that the same speed is given to both passengers and express, and the rates for passenger service do not decline with distance in the same proportion as do freight rates. In re Express Rates, Practices, Accounts and Revenues, 24 I. C. C. 380, 427.

(e) Express companies are also investment companies, bankers, carriers on the high seas and in foreign lands, and agents, performing for pay a wide variety of services other than transportation, both at home and abroad. In re Express Rates, 28 I. C. C. 132, 149.

(f) Expense of franks not legitimately to be charged to paying patrons. In re Express Rates, 28 I. C. C. 132, 150.

(g) It is unreasonable to fix as rapid a decline in express rates for long distances as is made in freight rates; in this respect, express service is more analogous to passenger than freight service. In re Express Rates, 24 I. C. C. 380, 421.

(h) In compounding the express rate, the railroad should be allowed a compensation for bulk freight moved upon a passenger train, as to which it is relieved by contract from all liability for loss or damage, and is without ex-

pense for the furnishing of a receipt, the billing, the bookkeeping, and a great number of expenses. In re Express Rates, 24 I. C. C. 380, 421.

(i) Express rates are kept high enough to prevent the movement of so great a volume of tonnage as would impair the efficiency of passenger service. Railroad Commissioners of Fla. v. Southern Express Co., 28 I. C. C. 634, 636.

(j) Fact that the divisions of express rates accruing to the rail carrier are inequitable affords no justification for increasing those rates. Express Rates on Bangor & Aroostook R. R., 63 I. C. C. 452, 454.

ALL OTHER CITATIONS

Kindel v. Adams Express Co., 13 I. C. C. 475, 491; Sanford v. Western Express Co., 16 I. C. C. 32, 36; Traffic Bureau, Sioux City Commercial Club v. Am. Exp. Co., 39 I. C. C. 703, 720, 723; R. R. Commissioners of Florida v. Southern Exp. Co., 41 I. C. C. 645, 647; Rio Grande Valley Creamery Co. v. Wells, Fargo & Co., 55 I. C. C. 425; Haley & Lang Co. v. American Express Co., 55 I. C. C. 747; New Albany Box & Basket Co. v. American Ry. Exp. Co., 56 I. C. C. 720; San Francisco Produce Exchange v. Am. Ry. Exp. Co., 78 I. C. C. 737, 740.

§18. Bulk.

See Bulk.

IMPORTANT CASES SINCE 1908

(a) Bulk as an element is to be considered in determining the reasonableness of an express rate. Ohio Face Brick Mfrs. Ass'n v. Adams Express Co., 20 I. C. C. 582, 584.

ALL OTHER CITATIONS

In re Express Rates, 24 I. C. C. 380, 428.

§19. Commercial Conditions.

See Equalization of Rates §3.

IMPORTANT CASES SINCE 1908

(a) A community entitled to a certain express rate cannot have this rate denied it upon the ground that certain other communities have been benefited through a readjustment of rates. Douglas Shoe Co. v. Adams Express Co., 19 I. C. C. 539, 541.

ALL OTHER CITATIONS

In re Express Rates, etc., Unrep. Op. 2141.

§20. Comparisons.

See Comparative Rates.

IMPORTANT CASES SINCE 1908

(a) A comparison of the rates at which express companies do business at other localities is more important in the determination of the reasonableness of these rates than it would be in the determination of the reasonableness of freight charges, because of the manner in which express business is conducted. Sanford v. Western Express Co., 16 I. C. C. 32, 35.

ALL OTHER CITATIONS

Kindel v. Adams Express Co., 13 I. C. C. 475, 497.

§21. Competition in General.

See Competition.

IMPORTANT CASES SINCE 1908

(a) The establishment of the parcel post is not a justification for a higher scale of rates to be charged by the express companies. In re Express Rates, Practices, Accounts and Revenues, 28 I. C. C. 131, 152.

(b) In considering competition, time is not the only important element. Competition tends to make each express company improve its general treatment of the public, its practices, rules and regulations in regard to its methods of doing business. Southeastern Express Co. v. American Railway Express Co., 78 I. C. C. 126, 139.

ALL OTHER CITATIONS

Sanford v. Western Express Co., 16 I. C. C. 32; In re Express Rates, 24 I. C. C. 380, 463; Lindsay & Co. v. Northern Exp. Co., 33 I. C. C. 394, 398.

§21. (1) Parcel Post Competition.

See Parcel Post.

IMPORTANT CASES SINCE 1908

(a) The establishment of the parcel post is not a justification for a higher scale of rates to be charged by the express companies. In re Express Rates, Practices, Accounts and Revenues, 28 I. C. C. 131, 152.

ALL OTHER CITATIONS

In re Express Rates, 28 I. C. C. 132, 152.

§22. Long Maintenance of Rate.

IMPORTANT CASES SINCE 1908

(a) Where an express rate has been in effect for a long time it is presumed to be reasonable. Reynolds v. Southern Express Co., 13 I. C. C. 536, 540.

(b) It cannot be conceded that an alleged erroneous publication of a rate which remains in effect for a period of more than eight years is a sufficient reason for the increase of such rate. Franklin, Stiles & Franklin v. Southern Express Co., 21 I. C. C. 88.

§22½. Operating Expenses.

CASES 1887-1908

(a) Cost of service on a particular article is not conclusive as to the reasonableness of an express rate thereon. Society of American Florists and Ornamental Horticulturists v. United States Express Company, 12 I. C. C. 121, 126.

IMPORTANT CASES SINCE 1908

(b) A claim by express companies that expenses are increasing faster than gross revenues is not supported by statistics to that effect, where such statistics make no distinction in expense between the transportation and non-transportation activities of the companies. In re Express Rates, Practices, Accounts and Revenues, 28 I. C. C. 131, 148.

§23. Percentage of Freight Rates.

See Percentage.

IMPORTANT CASES SINCE 1908

(a) Where the only jusification of an increased express rate is a statement that it ought to be a certain percentage of the freight rate, it cannot be held that the express company has sustained the burden of proof imposed upon it by the Act. Franklin, Stiles & Franklin v. Southern Express Co., 21 I. C. C. 88.

(b) An express rate should not be lower than a normal freight rate, and in the construction of express rates the railroad which furnishes the larger portion of the service which the express company undertakes to give should receive a compensation that will have a relation to the charge which it makes for the carriage of freight. In re Express Rates, Practices, Accounts and Revenues, 24 I. C. C. 380, 424.

(c) Express rates have no fixed relation to freight rates; nor is there any relation between the carriage of a passenger and the carriage of dead freight. In re Express Rates, 24 I. C. C. 380, 426.

(d) Express rates cannot have any fixed relation to freight rates on account of the great diversity of this relation obtaining in the various parts of the country, and with a scale of rates so made for the United States would be a patchwork of incongruities and unjustifiable discriminations. In re Express Rates, Practices, Accounts and Revenues, 24 I. C. C. 380, 426.

(e) It does not appear that express rates were ever based upon a definite relationship to the freight rates between given points, and a scale of rates so made for the United States would be a patchwork of incongruities and unjustifiable discriminations. Express Rates on Bangor & Aroostook Railroad in Maine, 63 I. C. C. 452, 453.

ALL OTHER CITATIONS

In re Express Rates, Practices, Accounts and Revenues, 28 I. C. C. 131, 141; In re Express Rates, 28 I. C. C. 132, 140, 141, 150; Tyler Grocery Co., Unrep. Op. A-474; Express Charges on Empty Fish Cars, 50 I. C. C. 24, 26; Public Utilities Commission of the State of Colorado v. A. T. & S. F. Ry., 52 I. C. C. 439, 446; Missouri, K. & T. Ry. Co. of Texas et al., v. Empire Express Co. (Tex. 1920), 221 S. W. 590.

§24. Profit and Capitalization.

See Evidence §7; Interstate Commerce Commission §7; Reasonableness of Rates §5.

IMPORTANT CASES SINCE 1908

(a) A profit of 10 per cent of the gross earnings of express companies is, in view of the comparatively small value of the property invested, an extremely liberal rate. Kindel v. Adams Express Co., 13 I. C. C. 475, 493.

(b) Since the connection between the value of the express service rendered and the cost of the property employed in rendering it is so slight little reference can be had to such cost in determining the reasonableness of express rates. The same is true of capitalization, and to decide the question of reasonableness of rates, inquiry must be had into the character of the business, the amount of capital required for its conduct, the hazard involved, and, especially, the profits the companies are making under the rates attacked. Sanford v. Western Express Co., 16 I. C. C. 32, 35.

(c) There can properly be no relationship between the capitalization of an express company and its rates. To allow a return upon this basis would put a premium upon mere bookkeeping methods which have no foundation other than the capricious policy of its

owners. In re Express Rates, Practices, Accounts and Revenues, 24 I. C. C. 380, 421.

(d) There is no sacredness in the stated amount of the capital stock of any company. When the courts speak of a return upon capital of a public utility, they mean a return upon investment. The investor in a railroad, an express company, or a telegraph company should be compensated for the sacrifice that he has made and not paid a premium because of the manner in which he chooses to state his financial condition or his expectations. In re Express Rates, Practices, Accounts and Revenues, 24 I. C. C. 380, 421.

(e) An examination of the amount of cash supposedly invested in the express companies does not demonstrate the unreasonableness of existing rates, or give foundation for a sound argument in favor of the abolition of this utility. Where the express company has been enabled to secure especially favorable contracts from the railroads by the internal pressure of the railroad's own directors or the external pressure of financial interests allied to the express companies, it manifestly was impossible for the express company to make large profits without the imposition of exorbitant rates. In re Express rates, Practices, Accounts and Revenues, 24 I. C. C. 380, 387.

ALL OTHER CITATIONS

Maricopa County Commercial Club, v. Wells, Fargo & Co., 16 I. C. C. 182, 184; Ohio Face Brick Mfrs. Ass'n v. Adams Express Co., 20 I. C. C. 582, 584; In re Express Rates, Practices, Accounts and Revenues, 24 I. C. C. 380, 384, 385, 386, 391; Express Rates, 35 I. C. C. 3, 9, 10.

§25. Surplus.

IMPORTANT CASES SINCE 1908

(a) Even were it true that express companies have accumulated a surplus by the imposition of charges in the past which were, when made, unjust and unreasonable, the Commission cannot undertake to distribute that surplus to the public by putting into effect rates which are not fairly compensatory for the present service. Kindel v. Adams Express Co., 13 I. C. C. 475, 490.

§26. Value of Express Property.

IMPORTANT CASES SINCE 1908

(a) In determining the reasonableness of freight rates, the value of the property which a railroad company devotes to the use of the public is an important element, but in passing upon express company rates this element is of little importance, since the property devoted to such use is comparatively insignificant. Kindel v. Adams Express Co., 13 I. C. C. 475, 481.

(b) If the Commission is to base the express rates upon the value of property used, it must consider not alone the express company's property, but that of the railroad which is used in giving the express service. In re Express Rates, Practices, Accounts and Revenues, 24 I. C. C. 380, 419.

ALL OTHER CITATIONS

Former Report 78 I. C. C. 126; Southern Express Co. v. Amer. Ry. Exp. Co., 81 I. C. C. 247.

VIII. COLLECTION OF CHARGES.

§27. Overcharges and Revision of Bills.

See Overcharges.

IMPORTANT CASES SINCE 1908

(a) The practice of double collections must cease, and to avoid prosecutions therefor, a system of labels is herein prescribed by the Commission. In re Express Rates, 24 I. C. C. 380.

(b) With respect to the duplicate collection of lawful charges, it appeared that it had been the practice of the express company to receive a prepaid package and stamp it as prepaid. Upon delivery, however, the carrier's wagon was given a book which showed upon what packages collection should be made, and by this book, he was to be guided rather than by any marking upon the package. In many cases, the package when prepaid was not marked as prepaid, and in other cases, by an oversight of the agent at the point of delivery, the wagon driver's delivery record did not state the fact of prepayment; and at many intermediate stages between the point of origin and the door of the consignee there was an opportunity through slipshod methods of bookkeeping and checking, for the record to mistake the fact. HELD, that to every package should be attached at the point of origin by the driver or receiving clerk a prepaid (yellow) or collect (white) label of the form prescribed in the opinion (see p. 390); that the express agent at the forwarding office should

in turn attach to the package a copy of the way bill prescribed in the opinion (see p. 390), printed on the same colored paper as the label attachd to the package; and that the way bills should be made out in triplicate, one being attached to the package, one being reserved by the office of the carrier at point of origin, and one being forwarded to the point of destination. In re Express Rates, Practices, Accounts and Revenues, 24 I. C. C. 380, 390.

(c) Where a delivered express package has not been prepaid, the carrier must look in the first instance to the consignee for payment. In re Express Rates, 24 I. C. C. 380, 391.

(d) With respect to overcharges and undercharges by express companies, it appeared that the failure to collect the full legal charge resulted chiefly from the system of rates which were obscure and open to misconstruction. Some of the express companies were accustomed to offset the overcharges against the undercharges when discovered. Under the system attacked the seeker for a through rate between points widely removed must find first the local rates applying between the point of origin and the many transfer points by which the shipment might possibly move before he could determine which combination would produce the lowest through rate. In many instances from 5 to 15 different combinations might be found. HELD, that a new and simplified system of rates must be devised; and that a system of through and joint rates must be substituted whereby it would be possible for the agent at the point of origin to obtain the proper through charges by reference to a simple schedule which would give the same rate from the point of origin to destination, no matter by what route shipment might travel and without reference to the number of carriers participating in the haul. In re Express Rates; Practices, Accounts and Revenues, 24 I C. C. 380, 391.

(e) The express agent at the receiving station should, in every instance, revise the charges upon the receipt of the way bill before making collections on collect shipments, and the agent at point of origin should cause all prepaid way bills to be revised as to weights and charges, and refund of overcharges should be made within 24 hours. In re Express Rates, Practices, Accounts and Revenues, 24 I. C. C. 380, 391.

(f) For the purpose of the revision of way bills, the Commission recommends to the express companies that they shall organize a clearing house organization, or association of accounting officers. In re Express Rates, Practices, Accounts and Revenues, 24 I. C. C. 380, 392.

(g) Refund of charges should be made within 24 hours in the event of an overcollection on an express package through mistake. In re Express Rates, 380, 392.

(h) In the event of failure or neglect of forwarding agent to assess proper charges in first instances, the express company should first look to the consignor. In re Express Rates, 24 I. C. C. 380, 406.

(i) After delivery of an express shipment and collection of charges thereon, there should be no refund of charges. In re Express Rates, 24 I. C. C. 380, 408.

IX. CRIMINAL LIABILITY.

See Crimes.

§28. In General.

IMPORTANT CASES SINCE 1908

(a) To avoid prosecutions for illegal overcharges, double collections must cease. In re Express Rates, 24 I. C. C. 380, 433.

(b) The practice of giving rebates, which are concealed by indirection in the express tariffs, must cease. In re Express Rates, 24 I. C. C. 380, 433.

(c) Under section 10 of the Act, as amended June 18, 1920, making a common carrier criminally liable for will fully exacting more than its published charges, an express company, organized as a joint stock association, is so liable since section 1 of the Act, as amended June 29, 1906, makes the term "common carrier' include express companies. U. S. v. Adams Express Co., 33 Sup. Ct. 878, 879; 279 U. S. 381.

(d) Express companies are subject to the criminal provisions of the Hepburn Act. U. S. v. Am. Exp. Co., 199 Fed. 321, 323.

(e) Defendant express companies, calling themselves joint stock association, managed their business by directors and officers, and issued certificates of stock to their shareholders and themselves. They had the statutory right to sue and

be sued as legal entities under the names of their president and treasurer, and the shareholders could hold them liable for damages. They enjoyed perpetuity and succession of membership, and used the company name in the ownership of real and personal property. HELD, they resemble corporations rather than partnerships, and were indictable under the criminal provision of the Hepburn Act. U. S. v. Am. Ex. Co., 199 Fed. 321, 325.

X. RULES AND REGULATIONS

See Rules and Regulations; Thru Routes and Joint Rates.

§29. In General.

IMPORTANT CASES SINCE 1908

(a) Rule 15 of the express companies, governing carload and bulky shipments, should be amended to read as follows: "Property, which by reason of its great bulk, length, or weight, cannot be loaded or carried in the ordinary express car, and for which a special car must be provided, must not be accepted for shipment until the dimensions, the weight, and a complete description of the property has been reported to the superintendent, and arrangements have been made by him for handling and forwarding the shipment through to destination, if such arrangement can be made. The minimum charge on such shipments must be the charge on 10,000 lbs. at the merchandise rate; if the shipment consists of articles or commodities that, under the classification, are subject to higher than single merchandise rate, and the gross weight is less than 10,000 lbs., the charge must not be more than the charge for 10,000 lbs. at the merchandise rate; if weighing 10,000 lbs. or more, the charge shall be for the actual gross weight at merchandise rate. The charge on less-than-a-carload shipment, carried in regular express car, must not be greater than the charge on a carload shipment in a special car." In re Express Rates, Practices, Accounts and Revenues, 24 I. C. C. 380, 411.

(b) A directory of Express Stations fixing location of each such station by block number and sub-block letter should be published. Pick-up and delivery limits should be specifically defined. Block system of stating rates should be adopted. A new and uniform classification should be adopted. Rules and regulations proposed in former report should be adopted. Express receipt herein prescribed should be adopted. Joint rates proposed in former report should be published. Joint tariff as proposed in former report conforming to those contained herein should be published. Order of June 8, 1912, amended so as to require the attachment of the way bill and label therein prescribed to only one package in a shipment of two or more packages of perishable property. In re Express Rates, 28 I. C. C. 132.

(c) Directory of express stations shall be issued not later than October 15, 1913, when the block system of stating rates and new rates become effective. In re Express Rates, 28 I. C. C. 132, 136.

(d) Complainant attacked rules and practices of defendant whereunder it refuses to accept shipments unless the declared value thereof is marked on the package by complainant as unreasonable and unduly prejudicial. Basic rates applicable are conditioned upon a declared or released value not exceeding $50 for shipment of 100 pounds or less, and not exceeding 50c per pound in excess of 100 pounds. Rules of defendant requiring the value to be marked on packages are not on file with the Commission but are published in a book of general instructions to agents. The value of the shipments and the prices made its customers by complainant vary according to the season of the year, the quantity and quality shipped, and other circumstances. It has been complainants practice to furnish defendant a duplicate receipt showing the total value of each shipment and other pertinent information. The value is also shown on the waybill attached to the shipment where it is subject to observation. Since July 1, 1920 defendant has adopted the practice generally of retaining duplicate express receipts. Although it is possible to waybill shipments from the information shown in the receipts, it has been and is defendant's practice to waybill them from the marks on the package after weighing. Practically all of complainants shipments are made without prepayment of charges. Clearly defendant's rules and practice herein attacked limit, and in fact completely nullify the application of rates which otherwise would be available to complainant under defendant's published tariffs. The facts of record seem to show that it would be in the interest of operating efficiency and not unreasonable to require shippers to mark the value on packages, when shipments are subject to

rates based on valuation. But if defendant desires to enforce such a regulation, it should be plainly stated in its schedules and uniformly observed. HELD, defendants action in requiring shippers to mark value on package, is unlawful in absence of proper provisions in defendants schedules authorizing such action. Vicose Co. v. Amer. Ry. Express Co., 62 I. C. C. 32.

(e) Proposed restriction of express scale rates on milk and cream, in cans, destined to points on Great Northern and originating on other lines, to apply on basis of the separate mileages from and to the transfor points rather than on basis of continuous mileage, and thus considerably increasing the rates, found not justifiable. Express Rates on Milk and Cream, 74 I. C. C. 431.

ALL OTHER CITATIONS

In re Express Rates, 24 I. C. C. 380, 411, 433; Express Rates, Unrep. Op. 2139, 2141.

§30. Claims.

See Claims; Bills of Lading IV, VI; Loss and Damage.

IMPORTANT CASES SINCE 1908

(a) In the event of a claim made in writing, the company should immediately acknowledge its receipt and should, within six months from the date of filing such claim, notify the claimant in writing of the disposition to be made thereof. This rule applies to claims for either whole or partial loss or destruction of a shipment. In re Express Rates, 24 I. C. C. 380, 396.

(b) Proposal to amend the uniform express receipt relating to claims for loss and damage by limiting the time for filing of claims with the carrier to a definite period of four months and 15 days, in the case of undelivered shipments, approved. Express Classification, 1920, 59 I. C. C. 265, 268.

(c) The clause of the uniform express receipt limiting the period for filing suit to two years and one day after delivery or after a reasonable time for delivery was unreasonable in that it did not provide a reasonable time within which to file suit after claims which had been under consideration by the express companies had been declined. Consolidation of express companies, 59 I. C. C. 459, 469.

(d) The clause of the uniform express receipt limiting the period for filing suit to two years and one day after dlivery or after a reasonable time for delivery was unreasonable in that it did not provide a reasonable time within which to file suit after claims which had been under consideration by the express companies had been declined. Consolidation of express companies, 59 I. C. C. 459, 469.

ALL OTHER CITATIONS

Express Classification, 1920, 59 I. C. C. 265, 269.

§31. Inspection.

IMPORTANT CASES SINCE 1908

(a) Rule under which examination and partial delivery is permitted only when consignor has executed a contract releasing the express company from all loss, not found to be reasonable. In re Express Rates, 24 I. C. C. 380, 410.

§32. Marking and Packing.

See Marking and Addressing; Classification §14, §16.

IMPORTANT CASES SINCE 1908

(a) Prosposed rule under which fruit in packages weighing less than 10 pounds each, shipped in lots of ten or more, from one shipper to one consignee, must be crated or securely fastened together in bundles, each bundle to consist of not less than four or more than ten packages, to facilitate handling, found justified. Express Classification, 1920, 59 I. C. C. 265, 275.

(b) Rules and practices of American Ry. Express Co., whereunder shipments are refused unless the declared value thereof is marked on the package by the shipper found unlawful in the absence of proper provisions in schedules authorizing such action. Vicose Co. v. American Ry. Express Co., 62 I. C. C. 32.

(c) Carriers reasonably may require shippers to properly mark their shipments and if shippers object to showing the value of their shipments they may use the code which defendant has adopted for that purpose. Viscose Co. v. American Ry. Express Co., 62 I. C. C. 32, 33, 34.

(d) To require shippers to mark the value on packages, when shipments are subject to rates based on value, would seem to be in the interest of operating efficiency and not unreasonable, but if carriers desire to enforce such a regulation it should be plainly stated in its schedules and uniformly observed. Vis-

coe Co. v. American Ry. Express Co., 62 I. C. C. 32, 34, 35.

ALL OTHER CITATIONS

In re Express Rates, Practices, Accounts and Revenues, 24 I. C. C. 380, 405, 410, 412; Brackett Co. v. G. N. Exp. Co., 29 I. C. C. 667; In re Express Rates, 28 I. C. C. 132, 136; Express Classication, 1920, 59 I. C. C. 265, 276.

§33. Reconsignment.

See Reconsignment.

IMPORTANT CASES SINCE 1908

(a) Express rules 26 and 27, covering change of destination in transit and reconsignments, not found unreasonable. In Re Express Rates, 24 I. C. C. 380, 412.

(b) Proposed rule to compensate carrier in cases in which tender of delivery is made at a specified address, and driver is asked to deliver at an address on a route other than that including the address marked on the shipment, approved. Express Classification, 1920, 59 I. C. C. 271, 272.

§34. Returned shipments.

See Returned Shipments.

IMPORTANT CASES SINCE 1908

(a) Prepayment should be required, by proper rules, of shippers who decline to furnish a return address. In re Express Rates, 24 I. C. C. 380, 404.

(b) Rule 1 of the express companies should be amended so that the shipper may be induced to inscribe a return address on all packages, and it should be provided that a shipper who refuses to supply a return address should be required to prepay the charges. In re Express Rates, Practices, Accounts and Revenues, 24 I. C. C. 380, 404.

(c) Paragraph C of rule 10 of the express companies, relating to the return of undelivered packages, should be so amended as to provide that when the value of a shipment does not exceed $25, it may be returned by mail, when the order to so return is accompanied by the necessary postage stamps and postal registration fees. A reasonable charge by the express company for its service in this connection would be 10c. In re Express Rates, Practices, Accounts and Revenues, 24 I. C. C. 380, 408.

(d) Subdivision d of rule 10, relating to the return of undelivered packages, should provide: "Undelivered packages, originally forwarded by express, may, by shippers' order, be returned or forwarded by freight, under the following conditions: 1. When the shipper desires to instruct the agent at destination to return or reship undelivered packages, the charges on the outward shipment (if not prepaid), together with the reshipping charge provided in following section, must be forwarded to the agent at destination, with instructions covering the return or reshipment by freight. Any instruction to reship to a consignee other than the shipper must be accompanied by the approval of the agent at shipping point, or, in the absence of such approval, by the original shipping receipt, which must also be endorsed by the shipper, showing disposition. 2. If it is desired to have the outgoing charges and reshipping charge billed back to the shipper through the agent at shipping point, the instructions to reship must be filed with the originating agent. 3. The charge for return or forwarding by freight will be 10c per 100 lbs., with a minimum charge of 25c, in addition to all unpaid outgoing express charges. No charge shall be made for the return of bill of lading. 4. When shipments consist of two or more packages, or two or more shipments, the reshipping charge in section 3 shall be computed on the basis of the actual gross and established minimum charge, the same as if consisting of one package only." In re Express Rates, Practices, Accounts and Revenues, 24 I. C. C. 380, 408.

(e) Where a consignor orders the return of a shipment after delivery, the charges paid by the consignee must not be refunded. In re Express Rates, 24 I. C. C. 380, 408.

(f) The weight basis of assessing charges on returned shipments should be the same as on shipments forwarded. In re Express Rates, 24 I. C. C. 380, 408.

ALL OTHER CITATIONS

In re Express Rates, 24 I. C. C. 380, 410.

§34½. Stoppage in transit.

See Stoppage in Transit.

IMPORTANT CASES SINCE 1908

(a) Respondent proposed to incorporate in its classification a rule providing for stoppage of goods in transit, applicable on express shipments. Under the proposed rule respondents agent may, if he has doubts as to the financial ability of a consignor, require that one or more

well known and responsible sureties sign the agreement of indemnity. This clause should be condemned for its indefiniteness as to the number of sureties required, if for no other reason. It also reposes too much arbitrary power in respondent's agent to decide who is or is not responsible. Furthermore, compliance with this provision might require considerable time and result in loss of the right to stop because of delivery at destination. HELD, proposed schedules not justified. Stoppage of goods in transit. 66 I. C. C. 423.

(b) The right of stoppage in transit exists independent of statute and can not be added to or curtailed by anything in the carrier's tariffs. Stoppage in transit, 66 I. C. C. 423, 424.

§35. Storage

See Storage.

IMPORTANT CASES SINCE 1908

(a) Moderate storage charges should accrue against express consignment which is held because of consignee's refusal to accept. In re Express Rates, 24 I. C. C. 380, 407.

XI. THROUGH ROUTES AND JOINT RATES.

See Through Routes and Joint Rates.

§36. In general.

IMPORTANT CASES SINCE 1908

(a) The express companies must unite in direct through routes, reaching all cities and towns accessible to each other by the shortest route, measured in time. The Commission will leave this matter in the hands of the carriers for the present, but will undertake to see that this principle is recognized in routing express traffic. In re Express Rates, 24 I. C. C. 380.

(b) The Interstate Commerce Act now imposes upon all of the railroad carriers the obligation to make through routes and to furnish proper facilities for the transportation of freight. This rule applies to parcels as well as to carloads. In re Express Rates, Practices, Accounts and Revenues, 24 I. C. C. 380, 387.

(c) The joint through rates of express companies should be filed with the Commission. In re Express Rates, 24 I. C. C. 380, 393.

(d) Under the system of through routes and joint rates prescribed for the express companies by the Commission in the opinion, the consignor shall have a right to designate in writing the joint through route by which a specific shipment shall move; provided, that in an emergency, the originating, or any intermediate express company, shall have the right, in the interest of expedition, to send the shipment by some other route than the one designated by the shipper, if delivery is not delayed by such action, or the rate increased. In re Express Rates, Practices, Accounts and Revenues, 24 I. C. C. 380, 393.

(e) The Commission is required to establish through routes whenever deemed by it necessary or desirable in the public interest, and it is for the Commission to determine on the basis of a proper record what express routes are reasonable and in the public interest. Southeastern Express Co. v. American Railway Express Co., 78 I. C. C. 126, 130.

(f) Complainant attacked American Railway Express Company for its failure to establish specific through routes and joint rates between points on the lines of complainant and points on the American Express Co., as unreasonable and discriminatory. Original report found in 78 I. C. C. 126. The express companies were unable to agree as to the routes to be used, and the additional express routes have not been provided. HELD, upon rehearing it is necessary and desirable in the public interest that through routes and joint rates applicable thereto be established between all points in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island and Connecticutt, and New York and all points on the direct routes of the American Railway Express between New York and Washington, D. C., on the one hand, and all points on the main line of the Southern Ry. from Washington to and including Birmingham, Ala., on the other, with transfer at Washingon, D. C. Rates contemporaneously applicable are reasonable, tariffs to provide for the right of the shipper to designate in writing the routing of shipments of express over the routes herein prescribed. Southeastern Express Company v. American Railway Express Co., 81 I. C. C. 247.

ALL OTHER CITATIONS

In re Express Rates, 24 I. C. C. 380, 411; In re Express Rates, 28 I. C. C. 132, 136; New England Fish Co. v. C. M. & St. P. Ry. Co., Unrep. Op. A-924; Ex-

press Rates on Milk and Cream, 74 I. C. C. 427; Southeastern Express Co. v. Amer. Ry. Exp. Co., 78 I. C. C. 126, 130; American Ry. Exp. Co. v. U. S. (Ga. 1923), 293 Fed. 31.

§37. Divisions.

See Divisions.

IMPORTANT CASES SINCE 1908

(a) In the divisions of earnings between express carriers establishing through routes and rates, due consideration should be given by the connecting carrier to the surrender by the originating carrier of its right to retain possession of the shipment for the longest haul possible via its own lines, and divisions should be agreed upon which shall compensate the originating carrier for its sacrifice. In re Express Rates, Practices, Accounts and Revenues, 24 I. C. C. 3. 411.

§37½. Minimums.

See Minimums.

IMPORTANT CASES SINCE 1908

(a) Petitioners, are the Association of Railway Executives and the American Railway Express Company who ask the Commission to approve and authorize a propsed standard contract, to be entered into by the express company and the several rail carriers and which is to continue in force for a period of five years, with provisions for termination at the end of a period of two and one half years and for extension beyond the term of five years, to which the express company and a large majority of carriers represented by the petitioning association have given their assent. Under the terms of the transportation act, 1920, the express company was guaranteed against a deficit in operating income during the period of six months beginning on March 1, 1920. The form of standard contract here proposed is intended to define the relations of the parties after summation is dependent upon a continued expiration of that period, and its conconsolidation of the express companies referred to, which was approved by the Commission, 59 I. C. C. 459, as well as upon the authorization under section 5, paragraph 1, of the interstate commerce act, of the grouping or pooling arrangements detailed in Article 5 of the proposed agreement. The purpose of article 5 of the proposed contract is to divide into groups the carriers whose property the express business is to be conducted, and to deal with express transportation revenues and expenses by groups of carriers rather than by individual settlement ab initio. Article 5 of the proposed contract provides that for each year in which it is in force during which the amounts set aside for the express company at 2½ per cent of the income for division in the several groups shall exceed 6 per cent of the average value of the entire real property and equipment and other capital of the express company employed in the express business, with specified exceptions, such excess or profit shall be divided, one half to the express company and one half to the other carriers, and that the one half proportion of the profit thus accruing to the express company shall be accummulated by it until a sum equal to 10 per cent of the value of the entire real property and equipment and other capital of the express company then employed in the express transportation business and increases thereof, with specified exceptions shall have been reached, after which any such profit shall be divided in the ratio of one fourth to the express company and three fourths to the other carriers. The question at the threshold is, whether the proposed contract embodies a pooling arrangement within the purview of section 5 of the act, to the lawful consummation of which the approval of this Commission is an essential requisite. The Commission concurs in the view that the plan proposed is a pooling arrrangement, prescribing the division of the proceeds of the earnings of such railroads otherwise than according to individual performance. While theoretical considerations support the view that the consolidation will eventually remove the element of competition, those considerations are of but slight value in the instant proceedings. An element of potential competition of no slight importance was and must always be a factor in the plan under which the express business is conducted in this county. Held the proposed grouping and the division of the earnings in the manner outlined will faciliate the conduct of the express business of the country, will be in the interest of better service to the public, will promote economy in operation, and will not unduly restrain competition. Under the provisions of Section 5, paragraph 1 of the interstate commerce act approval and authorization of such division of earnings are conditioned upon assent by the carriers in-

only to contracts with rail carriers that have assented or may hereafter assent to the proposed arrangement, and it is limited to the general plan embraced in article 5 of the proposed contract in so far as it comes within the provisions of section 5 of the act. With regard to the requested approval of provisions of the proposed contract it does not rest with the Commission to give or withhold approval further than as above under section 5 of the act. If the contract is entered into and controversies should arise between the parties thereto the courts constitute the forum in which they could and should be adjudicated, and the Commission therefore, declined to express any opinion with regard to the particular provision of article 5 or any other part of the contract. Express Contracts, 1920, 59 I. C. C. 518.

ALL OTHER CITATIONS

Increased Weights on Kale, Lettuce, and Spinach, 61 I. C. C. 586.

XII. LIABILITY FOR DAMAGES.

See Loss and Damage; Reparation.

§38. In General.

IMPORTANT CASES SINCE 1908

(a) In the event of the non-delivery or loss or destruction of a shipment by an express company, a notice should immediately be mailed by the agent of the carrier at destination to both the consignor and consignee, if known; and in the event of claim made in writing, the company should immediately acknowledge its receipt and should, within 6 months from date of filing of such claim, notify the claimant in writing of the disposition made thereof. In Re Express Rates, Practices, Accounts and Revenues, 24 I. C. C. 380, 396.

(b) The services of an express company, in allowing the consignee to examine and select such articles from a shipment as he may wish to buy and return the remainder are not such as the company is required to perform. If the carrier, as a matter of accommodation to the shipper, performs this service for him, it has the right to prescribe conditions designed to protect it from possible fraud, and may perform such service only upon condition that the consignor execute a contract releasing the carrier from all liability from loss. In Re Express Rates, Practices, Accounts and Revenues, 24 I. C. C. 380, 410.

(c) Proposal to amend the uniform express receipt relating to claims for loss and damage by limiting the time for filing of claims with the carrier to a definite perod of four months and 15 days, in the case of undelivered shipments, approved. Express Classification, 1920, 59 I. C. C. 265, 268.

ALL OTHER CITATIONS

In Re Express Rates, Practices, Accounts and Revenues, 24 I. C. C. 380, 406; Howatt v. Barrett (N. Y., 1913), 142 N. Y. S. 135, 137; reversing Howatt v. Barrett (N. Y., 1912), 137 N. Y. S. 915, 916; The Cummins Amentdment, 33 I. C. C. 682, 698; Southern Express Co. v. Essig Bros. (Ga. 1916), 87 S. E. 1090; Express Classification 1920, 59 I. C. C. 265, 269.

XIII. PROCEDURE AND EVIDENCE.

See Procedure Before Commission.

§39. In General.

IMPORTANT CASES SINCE 1908

(a) Defendant express companies have been merged into one operating company since record in this proceeding was closed, and as defendant company herein is not a party to the proceeding an order directing the removal of the undue prejudice to which certain of the complainants have been found to be subjected, can not be entered upon the present pleadings. Butterworth-Judson Corp. v. Adams Exp. Co., 51 I. C. C. 386, 389.

(b) Complaint seeking order for the future requiring establishment of refrigerator-express rates on strawberries c. l., such shipments to be carried in passenger trains or trains making passenger-train time, dismissed as Director General not made a party defendant, although opportunity for such action afforded. Campbell v. Southern Exp. Co., 55 I. C. C. 633.

XIV. RELATION TO RAILROADS.

§40. In General.

CASES 1887-1908

(a) Express business conducted by a railroad company is within the Interstate Commerce Act; aliter as to independent express companies. Re Express Companies, 2 I. C. R. 677.

(b) A railroad company is not under obligation to furnish an express company with facilities for doing an express

business upon its road such as it provides for itself or some other express company, unless it holds itself out as a common carrier of express companies. Atlantic Express Co. v. Wilmington & W. R. Co., 4 I. C. R. 294.

IMPORTANT CASES SINCE 1908

(c) The supreme court of the United States early recognized the binding force of contracts between express and railroad companies under which the former operate and observed that regulation of matters of this kind is legislative in its character and not judicial. For the commssion to decline to permit the establishment of schedules in conformity with such contracts would amount to a revision of the contracts. The commission is aware of no legislative authority for doing this. Express Rates on Milk and Cream, 74 I. C. C. 427, 431.

(d) In case of controversies between express companies and railroad companies over contracts, their respective rights and duties are matters within the jurisdiction of the courts. Express Rates on Milk and Cream, 74 I. C. C. 427, 431.

(e) Express companies operate over the lines of railroads under contracts in which the rights and duties of the respective parties are fixed and defined. C. C. Oyler & Son v. Amercan Railway Express Co., 83 I. C. C. 160, 163.

(f) Railroads are primarily responsible for the proper transportation of all commodities offered to them and for the furnishing and adequate service. If the requirements of the traffic demand more exepditious service it is the duty of the railroad either to furnsh such reasonable service itself or to delegate that duty to an express company. C. C. Oyler & Son v. American Railway Express Company, 83 I. C. C. 160, 163.

ALL OTHER CITATIONS

Director General of Railroads v. People's Express (Mass. 1920), 126 N. E. 417; Missouri, K. & T. Ry. Co. of Texas v. Empire Express Co. (Tex. 1920), 221 S. W. 590.; Consolidation of Express Companies, 59 I. C. C. 459, 464, 465; Express Contracts, 1920, 59 I. C. C. 518; Southeastern Express Co., 78 I. C. C. 126, 130.

§41. Consolidation.

See Finance Dockets §3.

IMPORTANT CASES SINCE 1908

(a) Consolidation of Adams, American, Wells Fargo, and Southern express companies into the American Railway Express Co., approved and authorized. Consolidation of Express Companies, 59 I. C. C. 459.

ALL OTHER CITATIONS

Express Contract, 1920, 59 I. C. C. 518, 520.

EXTRA FARES

See Passenger Fares and Facilities §5¼.

FABRICATION IN TRANSIT

See Facilities and Privileges §15 (a); Transit.

FACILITIES AND PRIVILEGES

I. JURISDICTION OF COMMISSION
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II. CARRIER'S DUTY TO FURNISH OR PERMIT
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§ 2½. Bulkheads.
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§16¾. In general.
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IV. DISCRIMINATION.
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CROSS REFERENCES

See Allowances; Auction; Baggage Transfer; Car Ferry; Cars and Car Supply; Cartage; Eating Houses; Electric Lines V; Evidence §22; Express Companies II; Lease Penalty Charges; Perishable Freight; Reconsignment; Refrigeration §4¼; Special Rates and Service; Stoppage in Transit; Stock Yard Companies II; Tap Lines; Telephone and Telegraph Companies II; Terminal Facilities §6; Through Routes and Joint Rates; Transfer; Transportation; Water Carriers §4½; Weights and Weighing.

I. JURISDICTION OF COMMISSION.

§1. In general.

See Interstate Commerce Commission I; Jurisdiction of Commission I.

CASES 1887-1908

(a) While a complete system of interstate railway regulations would probably give the regulating body authority to determine when the privilege of milling in transit, and privileges of that nature, should be accorded, and upon what terms, no such authority is conferred upon the Commission by the present Act. Diamond Mills v. Boston & Maine R. Co., 9 I. C. C. 311.

(b) The Commission is authorized by the Act to Regulate Commerce, after investigation, to order carriers to cease and desist from subjecting any particular person, locality, or description of traffic to undue or unreasonable prejudice or disadvantage in any respect whatsoever; and its jurisdiction extends to a case of alleged unlawful prejudice and disadvantage to shippers of outbound package freight through enforcement by carriers of a regulation providing for the earlier closing of depots used for the reception of such freight. Cincinnati Chamber of Commerce and Merchants' Exchange v. Baltimore & O. S. W. R. Co., 10 I. C. C. 378.

IMPORTANT CASES SINCE 1908

(c) The Commission has power to forbid discrimination in making allowances at one point while denying them at another similarly situated. Suffern Grain Co. v. I. C. R. R. Co., 22 I. C. C. 178, 183.

(d) But there is nothing in the law which confers upon the Commission power to compel a carrier to acquire facilities which it does not possess or to acquire better facilities than those it possesses, not with the object of preventing discrimination and preferences, but in order that the shipper may have larger, better, and perhaps more economical facilities. R. R. Commissioners of Fla. v. Southern Express Co., 44 I. C. C. 645, 648.

(e) So there is no question as to its power to establish privileges such as transit arrangements in appropriate cases by virtue of its jurisdiction over the practices and the regulations of carriers. Southern Hardwood Traffic Asso. v. Director General, 61 I. C. C. 132, 139.

(ea) Prior to February 28, 1920, the commission had no power to require a carrier to provide itself with reasonable facilities such as equipment, no question of discrimination being involved. United States v. Pennsylvania R. R. Co., 242 U. S., 208. Assigned Cars for Bituminous Coal Mines, 80 I. C. C. 520, 562.

(f) Under the Interstate Commerce Act requiring carriers to establish in connection with their rates reasonable rules and regulations, the Commission could require carriers establishing joint rates either to grant to, or to withdraw from, shippers the privilege of creosoting in transit. Central R. Co. of New Jersey v. United States, 42 Sup. Ct. 80.

ALL OTHER CITATIONS

California Commercial Ass'n. v. Wells,

Fargo & Co., 14 I. C. C. 410, 425; Wholesale Fruit & Produce Ass'n. v. A. T. & S. F. Ry. C., 14 I. C. C. 410, 421; Traffic Bureau Merchants' Exchange v. C. B. & Q. R. R. Co., 14 I. C. C. 317, 330; Douglas & Co. v. C. R. I. & P. Ry. Co., 16 I. C. C. 232, 245; Merchants' Cotton Press & Storage Co. v. I. C. R. R. Co., 17 I. C. C. 98, 105; Hood & Sons v. Del. & Hud. Co., 17 I. C. C. 15, 19; Querbacker Coffee Co. v. Southern Ry. Co., 18 I. C. C. 566, 570; Schmidt & Sons v. M. C. R. R. Co., 19 I. C. C. 535, 537; National Hay Ass'n. v. M. C. R. R. Co., 19 I. C. C. 34, 38; Southwestern Produce Distributors v. Wabash R. R. Co., 20 I. C. C. 458, 481; Brock-Rauch Mill & Elevator Co. v. St. L. I. M. & S. Ry. Co., 21 I. C. C. 651, 654; Douglas & Co v. C. R. I. & P. Ry. Co., 21 I. C. C. 541, 542; Mobile Chamber of Commerce v M. & O. R. R. Co., 23 I. C. C. 417, 421; In Re Transportation of Wool, Hides and Pelts, 23 I. C. C. 151, 174; N. Y. C. & H. R. R. R. Co. v. I. C. C., 168 Fed. 131, 136; Larkin Co. v. E. & W. T. Co., 24 I. C. C. 645, 647; Transit Case, 24 I. C. C. 340, 343; Anacostia Citizens' Assn. v. B. & O. R. R. Co., 25 I. C. C. 411, 414; Speigle v. S. Ry. Co., 25 I. C. C. 71, 73; Southwestern Missouri Millers Club v. St. L. & S. F. R. R. Co., 26 I. C. C. 245, 250; Morris Iron Co. v. B. & O. R. R. Co., 20 I. C. C. 240, 243, 214; The Transit Case, 26 I. C. C. 204, 210; Washington, D. C., Store-door Delivery, 27 I. C. C. 347, 348; L. & P. Ry. Co. v. United States, 209 Fed. 244, 250; Pennsylvania Parafine Works v. Penn. R. R., 34 I. C. C. 179, 189; 1915 Western Rate Advance Case, Part II, 37 I. C. C. 114, 160; Graustein v. B. & M. R. R., 45 I. C. C. 393, 406; Pacific Coast Beef & Provision Co. v. O. S. L. R. R., 46 I. C. C. 401, 402; Nat'l Live Stock Exch. v. C. B. & Q. R. R., 47 I. C. C. 380, 395, 396; Midway Co-op. Elevator Co. v. Great Northern Ry. Co., (N. Dak. 1918), 169 N. W. 494; Mount Pleasant Fertilizer Co. v. L. & N. R. R., 50 I. C. C. 253, 258; Guyton & Harrison Mule Co. v. L. & N. R. R., 50 I. C. C. 546, 552; Southern Rice Growers Asso. v. T. & N. O. Ry., 53 I. C. C. 197, 203, 204; Swift & Co. v. Director General, 55 I. C. C. 42. 49; Peoria Board Trade v. A. T. & S. F. Ry., 55 I. C. C. 42, 49; Swift & Co. v. Director General, 56 I. C. C. 309; Frank Samuel v. Director General, 59 I. C. C. 190, 192; Lake Charles Rice Milling Co. v. A. & N. Ry. Co., 63 I. C. C. 18, 23.

II. CARRIER'S DUTY TO FURNISH OR PERMIT.

§2. In general.

See Allowances §10; Bills of Lading II; Branch Lines IV; Cars and Car Supply IV, V; Express Companies §1¾; Lighterage V; Reconsignment §3½; Refrigeration II; Terminal Facilities II; §3; Through Routes and Joint Rates VII; Transportation II.

CASES 1887-1908

(a) There is nothing in the law or in railroad practice that authorizes a shipper who has hired a car for a movement between two points to load it with a commodity or with human beings, according to his pleasure, or to carry the two together under a car rate, whether that rate be established as a commodity rate or as a passenger rate. Transportation of newspaper employees, 12 I. C. C. 16, 19.

(b) A carrier may not reasonably be required to accept and deliver free of charge traffic which is moved by its competitor. Laning Harris Coal & Grain Co. vo. A. T. & S. F. Ry., 12 I. C. C. 479, 480.

IMPORTANT CASES SINCE 1908

(c) The carrier upon whose line shippers are located must assume the responsibility of furnishing transportation facilities. Coal Rates on the Stony Fork Branch, 26 I. C. C. 168, 174.

(d) It is the duty of the carriers, under the law, to furnish suitable facilities for the transportation of perishable products. Protection of Potato Shipments in Winter, 26 I. C. C. 681, 684.

(e) In general, custom has largely determined what is reasonable service. it has determined that it is the duty of a railway company to afford the shipper desiring its service a reasonable opportunity to deliver his freight with reasonable dispatch and safety, and to place it in a reasonably accessible place for the consignee to receive. The service also includes the care of the freight, after the actual movement, for a time sufficient to afford the consignee a reasonable opportunity to remove it. For all of this service, the carrier is entitled to reasonable compensation. It is the practice of American railroads to fix their charge for the entire service thus described, in a single item, which is termed the freight rate. Lighterage and Storage Regulations at New York, 35 I. C. C. 47, 52.

(f) Whatever transportation service or facility the law requires carriers to supply they have the right to furnish. Sun Co. v. Director General, 68 I. C. C. 11, 16.

(g) It is the duty of shipper properly to prepare his goods for shipment, and if special protection be needed, this also he must furnish. When suitable car is furnished, it is proper that shipper secure his shipment within it, by staking or otherwise, and so protect it from damage. Slatting Cars for Watermelons, 78 I. C. C. 732, 735.

ALL OTHER CITATIONS

Pittsburgh, etc., R. R. Co. v. R. R. Comm., 171 Ind. 189, 210, 86 N. E. 328; Electric Malting Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 504; Blackwell Milling & Elevator Co. v. A. T. & S. F. Ry. Co., Unrep. Op. 483; In the Matter of Allowances for the Transfer of Sugar, 14 I. C. C. 619, 627; New York Hay Exchange v. Penn. R. R. Co., 14 I. C. C. 178, 185; Rail and River Coal Co. v. B. & O. R. R. Co., 14 I. C. C. 86, 88; In Re Through Passenger Routes, 16 I. C. C. 300, 309; Wilson Produce Co. v. Pa. R. R. Co., 16 I. C. C. 116, 122; Brook-Rauch Mill & Elevator Co. v. M. P. Ry. Co., 17 I. C. C. 158; Merchants' Cotton Press & Storage Co. v. I. C. R. R. Co., 17 I. C. C. 98, 104; Hillsdale Coal & Coke Co. v. P. R. R. Co., 19 I. C. C. 356, 368; Federal Sugar Refining Co. v. B. & O. R. R. Co., 20 I. C. C. 200, 213; Southern Illinois Millers' Ass'n. v. L. & N. R. R. Co., 23 I. C. C. 672, 678; Blodgett Milling Co. v. C. M. & St. P. Ry. Co., 23 I. C. C. 448, 451; Chamber of Commerce of Newport News v. S. Ry. Co., 23 I. C. C. 345, 357; In Re Transportation of Wool, Hides and Pelts, 23 I. C. C. 151, 171; Merchants & Mfrs. Ass'n. v. Penn. R. R. Co., 23 I. C. C. 474, 476; Van Natta Bros. v. C. C. C. & St. L. R. R. Co., 23 I. C. C. 1, 5; Flour City S. S. Co. v. L. V. R. R. Co., 24 I. C. C. 179, 190; Commercial Club of Superior v. G. N. Ry. Co., 24 I. C. C. 96, 112; In re Advances on Hay, 25 I. C. C. 680, 682; In re Suspension of Western Classification No. 51, 25 I. C. C. 442, 497, 498; Benisch Bros. v. L. I. R. R. Co., 25 I. C. C. 439, 440; Cathedral of the Incarnation v. L. I. R. R. Co., 25 I. C. C. 399, 400; In re Advances in Demurrage Charges, 25 I. C. C. 314, 323; Spiegle v. S. Ry. Co., 25 I. C. C. 71, 76; Dubuque Shippers' Assn. v. C. & N. W. Ry. Co., 26 I. C. C. 565, 566; Regulations Restricting the Dimensions of Baggage, 26 I. C. C. 292, 301; Southwestern Mo. Millers Club v. St. L. & S. F. R. R. Co., 26 I. C. C. 245, 252; St. Louis Springfield & Peoria R. R. v. P. & P. U. Ry. Co., 26 I. C. C. 226, 234; Lumber from Louisiana to North Atlantic Points, 26 I. C. C. 186, 192; Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 26 I. C. C. 53, 59; Reconsignment and storage of Lumber and Shingles, 27 I. C. C. 451, 456; Industrial Railways Case, 29 I. C. C. 212, 217; Merchants' & Manufacturers' Assn. v. B. & O. R. R. Co., 30 I. C. C. 38, 39; Merchants' & Manufacturers' Assn. v. B. & O. R. R. Co., 30 I. C. C. 388, 393; Allowances at Kansas City, 34 I. C. C. 442, 446; Second Industrial Railways Case, 34 I. C. C. 596, 607; Lighterage and Storage Regulations at New York, 35 I. C. C. 47, 53; City of Nashville v. L. & N. R. R. Co., 33 I. C. C. 76, 85; Atchison, Topeka & Santa Fe Ry. Co. v. Kansas City Stock Yards Co., 33 I. C. C. 92, 98; Grain Rates from Milwaukee, 33 I. C. C. 417, 421; Newport Mining Co. v. C. & N. W. Ry. Co., 33 I. C. C. 645, 651; Second Industrial Railway case, 34 I. C. C. 596, 607; Car Spotting Charges, 34 I. C. C. Works v. P. R. R. Co., 34 I. C. C. 179; Lighterage and Storage Regulations at New York, 35 I. C. C. 47, 53; Regulations as to Storage of Dairy Products, 35 I. C. C. 469, 473; Allowances on Anthracite Coal, 36 I. C. C. 164, 169; Andrews Bros. Co. v. Penn. R. R., 38 I. C. C. 165, 167; Longo Fruit Co. v. Illinois Traction Co., 38 I. C. C. 487, 489; Emery & Co. v. B. & M. R. R., 38 I. C. C. 636; Hunter-Robinson-Wenz Milling Co. v. St. L. I. M. & S. Ry., 38 I. C. C. 695; Board of Trade of Chicago v. A. A. R. R. Co., 643, 651; Frankfeld & Co. v. N. Y. C. R. R. Co., 40 I. C. C. 555, 558; Iron Ore Rate Cases, 41 I. C. C. 181, 206, 207; American Paper & Pulp Asso. v. B. & O. R. R. Co., 41 I. C. C. 506, 512; Baltimore Chamber of Commerce v. B. & O. R. R., 45 I. C. C. 40, 44; Milk and Cream Rates to New York City, 45 I. C. C. 412, 417; Export Freight Free Time, 47 I. C. C. 162, 197; Dimmitt-Caudle-Smith Live Stock Comm. Co. v. C. B. & Q. R. R., 47 I. C. C. 287, 318; Nat'l. Live Stock Exchange v. C. B. & Q. R. R., 47 I. C. C. 380, 396, 401; Reconsignment Case, 47 I. C. C. 590, 624; Minneapolis Traffic Assn. v. C. B. & Q. R. R., 49 I. C. C. 308; Tulsa Traffic Asso. v. St. L. S. F. Ry. Co., 49 I. C. C. 644, 647; Merchants Exchange of St. Louis v. T. R. R. Asso. of St. Louis, 50 I. C. C. 474, 475;

Cardwell v. C. R. I. & P. Ry., 51 I. C. C. 390; Graustein v. B. & M. R. R., et al, 52 I. C. C. 269; Southern Rice Growers' Asso. v. T. & N. O. R. R. Co., 53 I. C. C. 197, 202; Tanner & Co. v. C., B. & Q. R. R. Co., 53 I. C. C. 401, 407; Merc. Lbr. Co. v. I. C. R. R. Co., 53 I. C. C. 663, 666, 667; Pacific Engineering & Construction Co. v. C. R. I. & P. Ry., 56 I. C. C. 247, 249, 259; Perishable Freight Investigation, 56 I. C. C. 449, 486; United States Cast Iron Pipe & Foundry Co. v. Director General, 57 I. C. C. 677, 681, 682, 683; Natchez Chamber of Commerce v. L. & A. Ry. Co., 58 I. C. C. 610, 631; Pittsburgh Forge & Iron Co. v. Director General, 59 I. C. C. 29, 31; Postal Telegraph-Cable Co. v. W. U. Telegraph Co., 59 I. C. C. 512, 516; Wyandotte Terminal Ry., 62 I. C. C. 1, 26; Transcontinental Freight Co. v. Director General, 62 I. C. C. 127, 128; Dering Mines Co. v. Director General, 62 I. C. C. 265; U. S. Cast Iron Pipe & Foundry Co. v. Director General, 62 I. C. C. 339, 342; Edge Moor Iron Co. v. Director General, 61 I. C. C. 537, 539; National Industrial Traffic League v. A. & R. R. R. Co., 61 I. C. C. 120; Omaha Packing Co. v. A. T. & S. F. Ry. Co., 66 I. C. C. 44, 49; Handling Charges at Certain Ports, 78 I. C. C. 4.

§2½. Bulkheads.

IMPORTANT CASES SINCE 1908

(a) Back hauling should be reduced to the minimum compatible with commercial necessities. But if transit involving a back haul is voluntarily granted by carriers to certain communities or individuals and withheld from others, the practice, though itself wasteful, becomes nevertheless an agency for violating section 3 of the act. Thomas Cotton Co. v. I. C. R. R. Co., 63 I. C. C. 89, 91.

ALL OTHER CITATIONS

New York Shippers' Protective Association v. N. Y. C. & H. R. R. Co., 30 I. C. C. 437, 438.

§3. Compression.

See Compress Companies and Charges.

ALL CITATIONS

Merchants' Cotton Press & Storage Co. v. I. C. R. R. Co., 17 I. C. C. 98, 104, 106; Elimination of Transit Privileges on Export Cotton, 80 I. C. C. 235.

§4. Concentration.

See Concentrating Rates and Privileges.

ALL OTHER CITATIONS

Central Lumber Co. v. C. M. & St. P. Ry. Co., 18 I. C. C. 495; St. Paul Board of Trade v. M. St. P. & S. Ste. M. Ry. Co., 19 I. C. C. 285, 288, 289; Red River Oil Co. v. T. & P. Ry. Co., 23 I. C. C. 438, 447; Meredith v. St. L. S. W. Ry. Co., 23 I. C. C. 31, 48; Memphis Freight Bureau v. M. P. R. R. Co., 80 I. C. C. 88, 90, 91.

§5. Cooperage and bailing.

IMPORTANT CASES SINCE 1908

(a) Cooperage and bailing do not affect the rate as such; they are simply special services performed by the carrier in transit when it is necessary to protect the shipment from damage or loss, and such services neither increase nor diminish the rate, but are charges entirely apart from it. Rail and River Coal Co. v. B. & O. R. R. Co., 14 I. C. C. 86, 90.

(b) The proposition that loose boards and other cooperage accessories shall be furnished by the carriers is in harmony with the practice now uniformly required by General Order 57-A of the Director General, with the practice voluntarily observed by many carriers in the past, with the general requirement of law that it is the duty of carriers to provide suitable cars. The amount and character of the material furnished shippers for grain doors and for incidental coopering and repairing should be uniform and adequate for the purpose. Claims for loss and damage of grain, 56 I. C. C. 347-350.

(c) Rule 45, providing that shippers must properly prepare goods for shipment, including such matters as packing, stowing, and bracing; and also install false floors when necessary for safe transportation, approved with modification. Perishable Freight Investigation, 56 I. C. C. 449, 557.

ALL OTHER CITATIONS

Farmers Cooperative Asso. v. C. B. & Q. R. R. Co., 34 I. C. C., 60, 64.

§5½. Disinfecting and cleaning.

IMPORTANT CASES SINCE 1908

(a) It is not unreasonable to expect shipper to do a reasonable amount of cleaning cars. Farmers Cooperative Asso. v. C. B. & Q. R. R. Co., 34 I. C. C. 60, 64.

(b) Where a special charge for cleaning and disinfecting cars in compliance with government quarantine regulations

is in issue, the fact that a similar service had for a time been performed without charge is not of particular value as tending to prove that the cost of the service required is already provided for in the transportation rate. Hammond, Standish & Co. v. M. C. R. R., 42 I. C. C. 102, 104.

(c) Cars can not be disinfected properly unless they are thoroughly cleaned; that is to say, disinfecting a car includes cleaning it in a manner satisfactory to a government inspector. A car cleaned for shipments of live stock is simply one from which the refuse has been removed from the floor space. Natl. Live Stock Exchange v. A. & S. Ry., 50 I. C. C. 578, 582.

ALL OTHER CITATIONS

Fruits and Vegetables, 43 I. C. C. 291, 299; Dunlevy Packing Co. v. Penn. Co., 43 I. C. C. 429; South Omaha Live Stock Exchange v. C. G. W. R. R., 43 I. C. C. 755; Hammond, Standish & Co. v. M. C. R. R. Co., 42 I. C. C. 102, 105.

§6. Dumping and trimming.

IMPORTANT CASES SINCE 1908

(a) The regulation of charges for "trimming" or leveling coal on vessels, loaded from the piers of coal-carrying railroads, is within the jurisdiction of the Commission, when the railroads do perform this service irrespective of whether or not they may be compelled to perform it. New England Coal and Coke Co. v. N. & W. Ry. Co., 22 I. C. C. 398, 401.

(b) So publication of a separate charge for dumping coal from piers into vessels at Norfolk and Newport News, Va., when for beyond the capes, not found unlawful. New England Coal and Coke Co. v. N. & W. Ry. Co., 33 I. C. C. 276, 280.

ALL OTHER CITATIONS

New England Coal and Coke Co. v. N. & W. Ry. Co., 22 I. C. C. 398, 404; Dilkes & Co. v. B. & O. R. R. Co., Unrep. Op. A-430; New England Coal and Coke Co. v. N. & W. Ry. Co., 33 I. C. C. 276, 280; Dougherty Co. v. B. & O. R. R., 48 I. C.

§6½. Dressing in Transit.

See Transit.

ALL CITATIONS

Illinois Central Railroad Co. v. N. O. G. N. R. R. Co., 68 I. C. C. 505.

§7. Back haul.

See Back Haul.

IMPORTANT CASES SINCE 1908

(a) An additional charge may properly be made for a back haul. Spiegle v. S. Ry. Co., 25 I. C. C. 71, 72.

(b) Back hauling should be reduced to the minimum compatible with commercial necessities. But if transit involving a back haul is voluntarily granted by carriers to certain communities or individuals and withheld from others, the practice, though itself wasteful, becomes nevertheless an agency for violating section 3 of the act. Thomas Cotton Co. v. I. C. R. R. Co., 63 I. C. C. 89, 91.

(c) A back haul is contrary to the purpose of transit and generally should be permitted only to meet unusual situations. Lake Charles Rice Milling Co. v. L. W. R. R., 69 I. C. C. 508, 513.

(d) Although carriers may under certain conditions voluntarily establish a free back haul in connection with transit, the Commission will not under ordinary circumstances require them to do so, unless to remove undue prejudice. Lake Charles Rice Milling Co. v. L. W. R. R. Co., 69 I. C. C. 508, 509, 513, 514.

(e) While movement of flat cotton should be restricted to a minimum and wasteful back hauls to transit points should not be encouraged, these considerations may not be ignored in some instances and enforced in others if undue prejudice would result. Memphis Freight Bureau v. M. P. R. R. Co., 80 I. C. C. 88, 97.

(f) In absence of undue prejudice back-haul charges if reasonable in amount receive approval of the commission. Back Haul Charges on Grain, 83 I. C. C., 693.

ALL OTHER CITATIONS

Celina Mill & Elevator Co. v. St. L. S. W. Ry. Co., 15 I. C. C. 138, 141, 143, 144; In re Milling-in-Transit Regulations, 25 I. C. C. 90; Gamble-Robinson Commission Co. v. C. & N. W. Ry. Co., Unrep. Op. A-96; Stock & Sons v. L. S. & M. S. Ry. Co., 31 I. C. C. 150, 153; Commodity Rates to Pacific Coast Terminals, 34 I. C. C. 13, 17; Chestnut Lumber Co. v. N. O. & N. E. R. R. Co., Unrep. Op. 1857; Consolidated Fuel Co. v. C. B. & Q. R. R. Co., Unrep. Op. 1993; Red Cedar Shingle Mfrs. Assn. v. C. B. & Q. R. R. Co., 41 I. C. C. 422; Graves Coal & Coke Co. v. St. L. & S. F. R. R., 43 I. C. C. 579; Randolph Fruit Co. v. S. P. Co., 49 I. C. C. 707; United Shoe Machinery Co.

v. B. & M. R. R., 55 I. C. C. 206; Reconsignment and Diversion Rules, 58 I. C. C. 568, 573; Thomas Cotton Co. v. I. C. R. R. Co., 63 I. C. C. 89, 91; Amendt Milling Co. v. N. Y. C. R. R. Co., 230, 232, 233; Groton Iron Works v. N. Y., N. H. & H. R. R. Co., 57 I. C. C. 704; Northern Brokerage Co. v. Director General, as Agent, 60 I. C. C. 182; Amendt Milling Co. v. N. Y. C. R. R. Co., 63 I. C. C. 230, 232, 233; Boston Wool Trade Asso. v. A. & S. Ry., 64 I. C. C. 365, 387; Indianapolis Board of Trade v. B. & O. R. R., 64 I. C. C. 416, 419; St. Louis Independent Packing Co. v. C. & A. R. R. Co., 73 I. C. C. 459, 465; Transit Rules on Grain Products, 81 I. C. C. 25.

§7½. False floors and insulation.

IMPORTANT CASES SINCE 1908

(a) Climatic and transportation conditions may vary kind and quantity of bedding essential to safe transportation of live stock, but whatever is reasonably necessary the carrier is by law required to furnish, and injuries to stock resulting from failure properly to bed cars will render carrier liable in damages for its negligence. East Tennessee, etc., R. Co. v. Johnson, 75 Ala., 596; Allen v. C. B. & Q. R. R. Co., 82 Nebr., 726; 10 Corpus Juris, pp. 88 and 89; Michie on Carriers, sections 1742 and 1743; National Live Stock Exchange v. A. T. & S. F. Ry. Co., 80 I. C. C. 748.

(b) Duty resting upon carriers to bed cars for transportation of live stock carries with it a correlative right to make a reasonable charge therefor, but it is unnecessary that charge must be included in transportation rate. A railroad may make a reasonable separate charge for bedding cars or include a reasonable amount therefor in transportation rate, but it can not for same service do both. National Live Stock Exchange v. A. T. & S. F. Ry. Co., 80 I. C. C. 747, 749.

(ba) To give shipper right to place additional bedding in cars and charge carrier therefor whenever in his judgment car furnished is not properly bedded, is inconsonant with principles established by Balfour, Guthrie & Co., 21 I. C. C., 539, and Farmers' Cooperative Asso., 34 I. C. C., 60. National Live Stock Exchange v. A., T. & S. F. Ry. Co., 80 I. C. C., 747, 749.

(c) Contention that uniform live-stock contract, approved in 64 I. C. C., 357, places upon shipper obligations to bed cars, not sustained. Section 4 (b) of contract was prescribed by the commission in lieu of one proposed by railroads which would have required shipper to bed cars, and was drafted in light of the law which places upon carrier duty to furnish ordinary bedding and upon shipper burden of supplying extraordinary bedding when special character of his traffic or his caprice demands such bedding. National Live Stock Exchange v. A. T. & S. F. Ry. Co., 80 I. C. C. 747, 749, 750.

ALL OTHER CITATIONS

Balfour, Guthrie & Co., 21 I. C. C. 539; Farmers' Cooperative Asso., 34 I. C. C. 60; Perishable Freight Investigation, 56 I. C. C. 449, 555, 556, 557, 596; Rutherford-Brede Co. v. Director General, 61 I. C. C. 515.

§8. Free Storage.

IMPORTANT CASES SINCE 1908

(a) Competition at one point may justify a longer free time for unloading than at another. Brey v. P. R. R. Co., 16 I. C. C. 497.

ALL OTHER CITATIONS

Commercial Club of Duluth v. N. P. Ry. Co., 13 I. C. C. 288, 291; Brey v. P. R. R. R. Co., 16 I. C. C. 497, 500, 501.

§9. Grain Doors.

IMPORTANT CASES SINCE 1908

(a) If the installation of grain doors and cooperage is a shippers' duty, there necessarily exists an obligation to use due care in performing it. Where the carriers furnish adequate grain doors, lumber or other cooperage material, which they do not always do, and specifications for the use thereof, they should not be expected to pay for losses occasioned by the shippers' negligence. Claims for Loss and Damage of Grain, 48 I. C. C. 530, 546.

ALL OTHER CITATIONS

National Wholesale Lumber Dealers' Ass'n v. A. C. L. R. R. Co., 14 I. C. C. 154, 163; Farmers' Cooperative Asso. v. C. B. & Q. R. R. Co., 34 I. C. C. 60, 64, 65; Claims for Loss and Damage of Grain, 56 I. C. C. 347, 350, 351.

§9 (a). Heater Service.

See Heater Service.

IMPORTANT CASES SINCE 1908

(a) Complainant attacked heater transit rates charged on numerous carloads of potatoes shipped in Eastman

heater cars since October 8, 1920, from points in Aroostook County, Maine, to certain group destinations, principally Boston, Mass., New York, N. Y., Philadelphia, Pa., and intermediate points as unjust and unreasonable to extent they exceeded heater transit rates in effect immediately prior to October 8, 1920. Most of the traffic originates on the Bangor & Aroostook R. R. Eastman Heater cars are operated by the Eastman Car Company, and are used only in shipments from Maine producting territory. They're especially designed for protection against cold and contain permanently installed heaters as a part of the car equipment. The Eastman Company furnishes fuel and inspection service in connection with all cars, and furnishes filling and refilling stations and attendants who look after the equipment during the time it is in transit. This service is performed under contracts by which the Eastman Comapny receives 75 percent and the carriers 25 percent of all heater transit and detention charges owned by the carriers. For the use of the cars owned by the Eastman Company the carriers pay mileage and turn over the full 100 per cent of the heater car charges to the Eastman Company. The Eastman Company assumes all liability for damage resulting from improper heating of the car. Heater transit charges for the use of Eastman heater cars are published by the carriers as a separate charge in addition to the line haul rate. In all cars except Eastman cars, the shippers place their own stoves, provide fuel, furnish their own caretaker, and assume all the risk of improper heating of the car. For this reason the Eastman cars are more satisfactory to small shippers, as the providing of a caretaker for one or two cars makes the charges per car higher. There is a substantial disparity between the heater transit rates here attacked and the heater transit rates maintained by carriers in western trunk line and northwestern territory. Traffic and transportation conditions are shown to be dissimilar. The competitive conditions in the two territories are not the same. It can not be said upon this record that the rates attacked are unreasonable for the service performed. HELD, rates attacked not unreasonable, complaint dismissed. American Fruit & Vegetable Shippers Asso. v. B. & A. R. R., 68 I. C. C. 446.

§9¼. Inspection.

See Inspection.

IMPORTANT CASES SINCE 1908

(a) Inspection is a necessary and valuable commercial adjunct of the marketing of commodities, and the stoppage and necessary detention of shipments for the purpose is a reasonable and proper service, but the Commission does not hold that carriers must perform this service without adequate compensation. Reconsignment Case, 47 I. C. C. 590, 641.

ALL OTHER CITATIONS

Boston Wool Trade Asso. v. A. & S. Ry. Co., 64 I. C. C. 365, 388.

§9½. Milling, Mixing and Elevation.

CASES 1887-1908

(a) The New York law of 1888, regulating the fees for elevating and discharging grain by elevators is not contrary to the 14th Amendment to the Constitution of the United States, and does not deprive the citizen of his property without due process of law; and is not unconstitutional in fixing the maximum charges which it specifies, nor in limiting the charge for shoveling to the actual cost thereof, and it is a proper exercise of the police power of the state. Budd v. State of New York, 4 I. C. R. 45.

(b) The business of elevating grain is a business charged with a public interest, and those who carry it on occupy a relation to the community analogous to that of the common carriers, and may be controlled by public legislation for the common good. Budd v. State of New York, 4 I. C. R. 45.

(c) One who enters upon the business of elevating and storing the grain of other persons for profit in North Dakota becomes subject to the statutory regulations, although he also elevates and stores his own grain in the same warehouse. Brass v. North Dakota, Stoeser (U. S. Sup. Ct.), 4 I. C. R. 670.

(d) Owners of a grain elevator are not deprived of the equal protection of the laws by a statute regulating fees and establishing maximum charges. Brass v. North Dakota, Stoeser (U. S. Sup. Ct.), 4 I. C. R. 670.

(e) The U. P. R. Co. entered into contracts with Peavey & Co. under which the latter erected grain elevators

at Council Bluffs and Kansas City for the transfer of grain at those terminals of the U. P. System, and for the service of transferring grain by elevator at said points the U. P. agreed to pay Peavey & Co. 1¼ cents per 100 lbs. Corporations controlled by Peavey & Co. were formed to conduct the elevators at each point. Peavey & Co. are large buyers and shippers of grain in the northern and western grain producing states and control a large number of country elevators. In making this arrangement the U. P. acted in good faith, and the facts indicate that 1¼ cents per 100 lbs. is not an excessive charge for the service as conducted by the elevator companies. The real complainants in the proceeding are carriers competing with the U. P. who claim that if this arrangement is not declared illegal they will be compelled to make similar allowances at transfer points on their lines, and no shipper nor any dealer in competition with Peavey & Co. has appeared to complain or protest in any manner against this arrangement. HELD:—

1. That the compensation paid for the elevator or transfer service is not unreasonable.

2. That the U. P. is entitled to perform the work itself or hire it done by others and is not legally at fault or guilty of wrong doing because incidentally those employed by the carrier to transfer the grain are aided more or less in another line of business in which they are engaged.

3. That any injury or detriment resulting to rival carriers under the arrangement is something which the law does not seek to prevent. Matter of Allowances to Elevators 10 I. C. C. 309.

(f) A railroad company may perform elevator or transfer service for itself, or, if it sees fit, hire it done by others, and in so doing it is not legally at fault or guilty of wrongdoing because those employed by the carrier to transfer the grain are also shippers of grain, and are thereby incidentally aided in their business of buying and shipping grain. Matter of Allowances to Elevators, 10 I. C. C. 309.

(g) Carriers may grant elevation to grain in transit. Re Allowances to Elevotars by Union P. R. R. Co., 12 I. C. C. 85.

(h) A carrier subject to the act to regulate commerce may either construct and operate the elevator itself or furnish elevation by arrangement with the owner of an elevator; and the amount of compensation paid by the carrier to such owner is of no concern to shippers or to other carriers, unless it operates to affect the rates on grain or by some device a portion of the allowance is returned to shippers and thus becomes a rebate. Re Allowances to Eelevators by Y. P. R. Co., 12 I. C. C. 85.

(ij) The law clearly recognizes elevation as a facility which the carrier may provide, and this authorizes the carrier to grant grain elevation at destination or while the traffic is in transit, subject only to the restriction imposed by the fact that elevation, like any other service offered by the carrier to shippers, must be open to all on equal and reasonable terms In the matter of allowances to elevators by the U. P. R. R., 12 I. C. C. 86, 88.

(kl) Elevation is defined as unloading grain from cars or grain-carrying vessels into a grain elevator and loading it out again after a period of not to exceed ten days; it does not include treatment or grading, cleaning, and clipping of grain; and retention in an elevator beyond ten days becomes storage and is not a part of the service of elevation as that word is used in the statute. In the matter of allowances to elevators by the U. P. R. R., 12 I. C. C. 86, 88.

(m) The only restriction imposed by the act is that the elevation offered like any other service a carrier may hold out to perform for shippers as an inducement to send their traffic over its lines, must be open to all on equal and reasonable terms. Allowances to elevators by U. P. R. R., 12 I. C. C. 85, 86, 88.

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(n) The meaning generally conveyed by "milling" is that of grinding, as from grain, while mixing is generally understood to mean the working together of various ingredients. Nashville Flour Transit Rules, 41 I. C. C. 483, 497.

(o) Elevation and transfer in transit have frequently been found by the Commission and the courts to constitute necessary steps in the transportation of various kinds of property. Guaranty Claim of Central Elevators & Warehouse Co., 72 I. C. C. 169, 176.

ALL OTHER CITATIONS

Strasburg Steam Flouring Mills v. S. Ry., 53 I. C. C. 53; Weiss Milling Co. v. A., T. & S. F. Ry. Co., 64 I. C. C. 189; Lake Charles Rice Milling Co. v. La. Western R. R. Co., 69 I. C. C. 508; Cincinnati Grain & Hay Exchange Co. v. B. & O. R. R. Co., 72 I. C. C. 104, 108; Transit Privileges on Grain and Grain Products, 77 I. C. C. 681; Lake Charles Rice Milling Co. v. A. & N. Ry. Co., 77 I. C. C. 700; Dean Mill Co. v. M. P. R. R. Co., 80 I. C. C. 174; Portland Flouring Mills Co. v. S. P. & S. Ry., 88 I. C. C. 99.

§10. Loading, Unloading, Delivering, Insulating, Bracing, Etc.

See Classification §13; Evidence §65; Express Companies §2; Loading and Loading; Transportation §10.

CASES 1887-1908

(a) Any relaxation of established and commonly enforced rules of carriers for the prompt removal of goods from freight depots or sheds, or for the loading or unloading of cars on railway tracks or private sidings, constitutes an obvious advantage to the shipper or consignee so favored, and according to the extension of time permitted such exceptional use of railway facilities is of often of no little value. American Warehouse Asso. v. I. C. R. Co., 7 I. C. 556, 562.

(b) There is no violation of section 2 of the Commerce law shown in this case in the application of the rule allowing 96 hours for unloading cars at Philadelphia; neither is there any violation of that section in the facts, that on all other commodities besides those to which the 96-hour rule is applied, only 48 hours are allowed at Philadelphia, and on coal, coke, pig iron and iron ore 72 hours are allowed at interior points, while only 48 hours are allowed on other trafic at interior points. Section 2 prohibits unjust discrimination in "the transportation of a like kind of traffic," and does not apply where the traffic is of different kinds or classes not competitive with each other. Pa. Millers' State Asso. v. Phila. & R. Ry. Co., 8 I. C. C. 531.

(c) A common carrier may,if it sees fit, divide the total rate charged for the shipment of live stock, and make the cost of delivery a separate charge by itself. Cattle Raisers' Asso. v. Fort Worth & D. C. R. Co., 7 I. C. C. 513.

(d) That different periods of time are allowed for loading and unloading different commodities, without charge for use of cars, does not violate §2 of the act, which prohibits unjust discrimination "in the transportation of a like kind of traffic," and does not apply where the traffic is of different kinds or classes not competitive with each other. Pennsylvania Millers' State Asso. v. Philadelphia & R. R. Co., 8 I. C. C. 531.

(da) If the time allowed at terminals for loading or unloading is reasonable, and that allowed at interior points is unreasonably small, then an undue prejudice to the interior points, in violation of §3 of the law, may result. Pennsylvania Millers' State Asso. v. Philadelphia & R. R. Co. 8 I. C. C. 531.

(e) Transportation between defendant's terminal in Brooklyn and its rail terminus in Jersey City is effected by water carriage across New York Harbor. The action of defendant in discontinuing "track delivery" for hay in carloads at its station in Brooklyn. though it continued to make such delivery for other carload traffic, was taken to relieve a state of chronic congestion at that station resulting largely from consignments of hay thereto. It still continues delivering carload hay alongside wharves in Brooklyn as it does other points within the lighterage district of New York. HELD. that the resulting discrimination against hay in carloads was not "unjust" within the meaning of the Act to regulate commerce, and as no violation of the regulating statute is shown the complaint should be dismissed. Palmers Dock H. & P. Bd. of Trade v. Penn. R. R. Co., 9 I. C. C. 61.

(f) Defendant's tracks in Providence. R. I., are so located that competitors of complainant occupying places of business abutting on its Canal Street Yard are able to unload carloads of fresh meat directly into their warhouses; and the privilege of unloading meat in that yard was formerly accorded to complainant, whose storehouse is across the canal and about 300 feet from the railroad yard; but such privileges to complainant was recently withdrawn. Denial of such privilege entails the hauling of complainant's meat from another yard about half a mile distant, and damages

his business from $20 to $100 per car, HELD, that complainant is thereby subjected to undue prejudice. Miner v. New York, N. H. & H R. Co., 11 I. C. C. 422.

(g) Defendant's tracks in Providence, R. I., are so located that competitors of complainant occupying places of business abutting on its Canal Street Yard are able to unload carloads of fresh meat directly into their warehouses, and the privilege of unloading meat in that yard was formerly accorded to complainant, whose storehouse is across the canal and about 300 feet from railroad yard, but such privilege to complainant was recently withdrawn. Denial of such privilege entails the hauling of complainant's meat from another yard about one-half mile distant and damages his business from $20 to $100 per car. The capacity in and about the Canal Street Yard of the track which may be used for unloading meat is limited, and defendant's refusal to continue the privilege is apparently upon the assumption that its allowance would involve extension of the privilege to the unloading of all perishable commodities at that point. HELD: 1. That there is no such competitive relation between fresh meat and, for example, fresh fruit that it is of necessity undue discrimination to accord a privilege to the one commodity which is refused to the other. That complainant is subjected to undue prejudice under the circumstances of this case. Miner v. N. Y., N. H. & H. R. Co., 11 I. C. C. 422.

(h) It is the usual practice for consignees to do their own unloading at destination. But clearly there is nothing in the law or in public policy that forbids a carrier to unload for them if it does so for all shippers alike. Allowances to Elevators by U. P. R. R. Co., 12 I. C. C. 87, 88.

(i) Delivery. Carrier's regulation discontinuing delivery at its Brooklyn terminal of petroleum oil in tank cars shipped to complainants, practically depriving complainants of opportunity to continue their business in competition with the Standard Oil Company, and subjecting them to unlawful prejudice and disadvantage, required to be rescinded, and such delivery for complainants to be allowed under reasonable rules and condition as to the time and manner of unloading the cars. Preston & Davis v. D. L. & W. R. R. Co., 12 I. C. C. 114.

(j) Defendant's regulation put in effect October 15, 1906, discontinue the delivery at its Brooklyn terminal of petroleum oil in tank cars shipped to complainants, practically deprives complainants of opportunity to continue their business in competition with the Standard Oil Company and subjects complainants to unlawful prejudice and disadvantage. Defendant required to rescind the regulation and henceforth allow such delivery for complainants under reasonable rules and conditions as to the time and manner of unloading the cars. Preston & Davis v. D. & W. R. R. Co., 12 I. C. C. 115.

(k) Complainant attacked rule of defendant whereby it discontinued the delivery of petroleum oil in tank cars to its so-called Brooklyn terminal as unreasonable and discriminatory. The defendant issued a circular that petroleum oil in tank cars would not be accepted for delivery to freight stations and piers in New York Harbor evidently upon some agreement between the lines reaching New York, although the rule was not generally enforced. Complainants are the only receivers of oil from defendant at this terminal in Brooklyn, and they have built up and enlarged their business to substantial proportions. It is unquestionably the defendant's right and duty to take all needful precautions against a conflagration or other liability to accident, but the Commission is not convinced that it was necessary in this case to take such extreme measures as to prohibit further delivery of tank cars at the terminal in question. HELD, discontinuance of this delivery subjected complainant to undue prejudice and defendant should restore its former practice. Preston & Davis v. D. L. & W. R. R., 12 I. C. C. 115.

(l) Trucking firm. Preference given at carrier's pier, the inadequacy of which for the business results in congestion and delay, to the through traffic transferred by a trucking firm employed by the carrier to transport through shipments via its line from New York city railroad depots to such pier, over traffic originating in New York and vicinity and brought to the pier by other trucking firms, it appearing that the pier is not closed at night until all waiting trucks are unload-

ed, and is soon to be considerably enlarged, no instance of injury resulting to shippers or their traffic, and no discrimination amounting to exclusion from the pier, being shown,—held not to operate unduly or unreasonably against other truck owners. New York Team Owners Asso. v. Southern P. Co., 12 I. C. C. 204.

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(m) Staking a load of lumber on an open car is in reality a part of the operation of loading. National Wholesale Lumber Dealers' Ass'n. v. A. C. L. R. R. Co., 14 I. C. C. 154, 160.

(n) Lining and padding cars for flour shipments is in nature of private packing. Southwestern Missouri Millers' Club v. St. L. & S. F. R. R. Co., 62 I. C. C. 245, 251.

(o) Reasonable charges may be assessed for the service of loading and unloading. There are good reasons for basing carload rates upon carload minima, but there is no apparent reason for basing loading or unloading charges on the carload minimum weight. The amount of the service performed for the transportation charge does not vary substantially with the variations in the weight of shipments below minimum, while the amount of the service performed in loading and unloading varies directly with the quantity of freight in the car. The reasonableness of such charges depends upon the service performed on the traffic actually handled. If the compensation to carriers is insufficient to cover the cost of service, the method proposed is not the proper course to remedy that condition. L. C. L. Minimum Handling Charges, 43 I. C. C. 266, 267.

(p) In the absence of tariff provisions to the contrary, loading or unloading is a separate and distinct service not included in the transportation rate; and for loading and unloading, and for all other special services apart from conveyance, the carriers may properly make a reasonable charge since they are not accessorial parts of the transportation which section 1 requires to carriers to furnish. Citing Dunnage Allowances, 30 I. C. C. 538, 543; Chicago Live Stock Exchange v. A. T. & S. F. Ry. Co., et al. 52 I. C. C. 209, 223.

(q) To comply with the legal obligation of delivery, a carrier may employ the owner of the property transported and pay an allowance not more than is just and reasonable. Any service performed by a shipper in excess of the carrier's legal obligation as to delivery is a voluntary service for the shipper's own convenience and for which it is entitled to receive no compensation. Hence, a proper switching or spotting allowance represents payment for the difference between the service in delivery which a carrier actually performs and the service which the carrier is legally obligated to render. United States Cast Iron Pipe & Foundry Co. v. Director General, 57 I. C. C. 677, 683.

(r) The Commission expresses the opinion that defendant carriers may properly provide in case of mixed shipments of livestock that the shippers shall, at his own expense, install separate partitions. National Livestock Exchange v. Ann Arbor R. R. Co., 69 I. C. C. 125, 134.

(s) The furnishing by an interstate carrier of bulkheads with cars for the transportation of grain does not constitute the granting of the "privileges or facilities" which are required to be published with the Interstate Commerce Commission by section 6 of the Interstate Commerce Act; and a shipper, where the carrier fails to furnish bulkheads, may therefore recover in an action at law in a state court for the expense of supplying them, although the published schedules make no allowance for furnishing the same. Loomis v. Lehigh Valley R. R. Co. (N. Y., 1911), 132 N. Y. Supp. 138, 141.

ALL OTHER CITATIONS

Wholesale Fruit & Produce Ass'n. v. A. T. & S. F. Ry. Co., 14 I. C. C. 410, 418, 419, 420; N. Y. Hay Exchange Assn. v. Penn. R. R. Co., 14 I. C. C. 178, 182, 185; Enterprise Fuel Co. v. Penn. R. R. Co., 16 I. C. C. 219, 224; Davies v. I. C. R. R. Co., 17 I. C. C. 186, 188; Davies v. L. & N. R. R. Co., 18 I. C. C. 540, 542, 543; Utica Traffic Bureau v. N. Y. C. & H. R. R. R. Co., 18 I. C. C. 271, 272; Schultz-Hansen Co. v. S. P. Co., 18 I. C. C. 234, 235, 237, 238, 239; Ponchatoula Farmers' Asso. v. I. C. R. R. Co., 19 I. C. C. 513, 515; Davies v. I. C. R. R. Co., 19 I. C. C. 3; In Re Restricted Rates, 20 I. C. C. 426, 435; California Pole & Piling Co. v. S. P. Co., 22 I. C. C. 507, 509; Galveston Commercial Assn. v. A. T. & S. F. Ry. Co., 25 I. C. C. 216, 222; Leach v. N. P. Ry. Co., 25 I. C. C. 275, 276; Benisch Bros. v. L. I. R. R. Co., 25 I. C. C. 439, 440; Southwestern

Missouri Millers' Club v. St. L. & S. F. R. R. Co., 26 I. C. C. 245, 251; Colorado Mfrs. Association v. A. T. & S. F. Ry. Co, 28 I. C. C. 82, 87; New Orleans Storage Rules and Regulations, 28. I. C. C. 605, 606; Industrial Railways Case, 29 I. C. C. 212, 225, 236; American Tobacco Co. v. P. R. R., Unrep. Op. A-160; Frick Co. v. C. V. R. R. Co., Unrep. Op. A-382; New Eng. Coal & Coke Co. v. N. & W. Ry. Co., 33 I. C. C. 276, 280; Car Spotting Charges, 34 I. C. C. 609, 618; Keystone Wood Co. v. Penn R. R., 37 I. C. C. 622; Crown-Columbia Paper Co. v. O. W. R. R. & Nav. Co., 38 I. C. C. 231; Commercial Exch. of Philadelphia v. Penn. R. R., 38 I. C. C. 675; City of Memphis v. .C. R. I. & P. Ry. Co., 39 I. C. C. 256, 272; St. Louis (Cupples Station) Terminal Regulations, 40 I. C. C. 425, 433, 434; Iron Ore Rates Cases, 41 I. C. C. 181, 200; Acosta v. M. & M. Transp. Co., 41 I. C. C. 376; Orange Rice Mill Co. v. O. & N. W. R. R. Co., 42 I. C. C. 475; In Re Arlington Hotel Co., 98 Atl. (Del. 1916) 186, 187; Swift & Co. v. N. Y., N. H. & H. R. R., 44 I. C. C. 481, 486; Castle v. Swedish American Mexico Line, 245 Fed. 911; Internatl. Transp. Co. v. N. Y. C. R. R., 49 I. C. C. 201; Brunswick-Balke-Collender Co. v. P. M. R. R., 49 I. C. C. 530; Roberts & Schaefer Co. v. Director General, 55 I. C. C. 277; Swift & Co. v. Director General, 56 I. C. C. 309, 313; Perishable Freight Investigation, 56 I. C. C. 449, 596; Livestock Loading and Unloading Charges, 58 I. C. C. 164; Memphis-Southwestern Investigation, 55 I. C. C. 515, 550, 575; Central Pennsylvania Lumber Co. v. Director General, 53 I. C. C. 523, 524; United States Cast Iron Pipe & Foundry Co. v. Director Gen., 57 I. C. C. 677, 681, 682, 684; Waste Merchants Asso. v. Director General, 57 I. C. C. 686, 689; Philip Carey Mfg. Co. v. Director General, 59 I. C. C. 640, 644; Carey Mfg. Co. v. Director General, 59 I. C. C. 640, 644; Natchez Chamber of Commerce v. Director General, 60 I. C. C. 397; National Box Co. v. M. P., 61 I. C. C. 211; Livestock Loading and Unloading Charges, 61 I. C. C. 223; Edge Moor Iron Co. v. Director General, 61 I. C. C. 537, 540; Live Stock Loading and Unloading Charges, 61 I. C. C. 223; Omaha Packing Co. v. A. T. & S. F. Ry., 66 I. C. C. 44; Arizona Packing Co. v. A. E. R. R., 74 I. C. C. 223; Definition of the Term "Handling" at Virginia, South Atlantic, and Gulf Ports, 78 I. C. C. 4; Slatting Cars for watermelons, 78 I. C. C. 732, 735; Gerard Ragone & Son v. Director General, 80 I. C. C. 491; Sugarland Industries v. Galveston Wharf Co., 80 I. C. C. 655; Grasselli Chemical Co. v. Director General, as Agent, 81 I. C. C. 562, 564..

§10½. Protective Service.

See Protective Service; Heater Service.

IMPORTANT CASES SINCE 1908

(a) Rule 145, governing shipments stored in transit should be revised so as to provide for the application of protective service charges into and out of storage, respectively, applicable under the tariff at the times of the respective movements. Perishable Freight Investigation, 56 I. C. C. 449, 566, 568.

ALL OTHER CITATIONS

Carnation Milk Products Co. v. A. T. & S. F., 63 I. C. C. 60.

§11. Notifying Shipper or Consignee.

See Notice.

IMPORTANT CASES SINCE 1908

(a) It appeared a carrier's practice was, when there was no consignee to receive a shipment, to have its local agent telegraph the freight claim agent, who in turn communicated by telegraph with the connecting carrier delivering the freight to his line, and in this way the original consignor was finally reached. HELD, this practice was a proper one and the Commission would refuse to order the local agent at the point of destination to telegraph directly to the consignor, informing the latter of the rejection of the shipment. Kehoe & Co. v. N. C. & St. L. Ry. Co., 14 I. C. C. 555, 557.

(b) Complainant attacked failure of the M. C., to advise them of the arrival of a shipment at Buffalo, N. Y., in time to comply with the tariff requirements necessary to secure the benefit of transit arrangement on the basis of the through rate to ultimate destination, as unreasonable and unjust the charges assessed on a carload of livestock feed from Chicago, Ill., to Buffalo, N. Y., there stored, and thence shipped to Montrose, Pa. The shipment moved from Chicago on April 13, 1918, over the M. C. It was consigned to S. F. Scattergood & Co., complainant, care of Union Dock & Warehouse Co., Buffalo, N. Y. On arrival at Buffalo, apparently on April 28 or 29,

1918, it was placed in storage in the warehouse of the Union Dock & Warehouse Co. On June 24, 1918, complainants received in the mail at Philadelphia, from the agent of defendant at Black Rock, N. Y., a freight bill dated June 20, 1918 for charges to Buffalo based on a rate of 11.5c accompanied by a "Notice of arrival of freight" which was merely a carbon copy of the freight bill. The freight bill and notice of arrival bore the notation "Transit privileges canceled." Upon receipt of the freight bill, complainants upon the same day sent a check in payment thereof to the agent at Black Rock. The shipment remained in storage until July 17 1918, was then forwarded to Montrose, and charged at local rate of 16.5c Buffalo to Montrose. There was a joint rate of 19c in effect from Chicago to Montrose. Complainants do not maintain that failure of defendant to present freight bills within five days was reported to the inspection and weighing bureau. The tariff containing a provision that all necessary arrangements for storing or otherwise handling grain, grain products, or feed at warehouses, including loading in and loading out, must be made with such warehouses by shippers or owners. Such arrangements had been made by complainants with the Union Dock and Warehouse Co., and included an agreement that the warehouse company would advise complainants of the arrival of the freight. Delivery to the warehouse was delivery to complainants. HELD, the transportation charges collected and the transit rule attacked were not unreasonable, complaint dismissed. Scattergood & Co. v. Director General, 60 I. C. C. 155.

ALL OTHER CITATIONS

Rates on Hay from the Northwest, 25 I. C. C. 680, 682.

§11½. Reshipping Rates.

See Infra §15 Reshipping Rates.

IMPORTANT CASES SINCE 1908

(a) The Commission considered the reasonableness of regulations requiring shippers of grain at St. Louis, Mo., to surrender expense bills covering inbound shipments to obtain benefit of reshipping rates to central freight association and trunk line territories. There were no joint through rates from local Missouri points to destinations indicated, and the through rate, made up of the interstate rate to St. Louis, plus the rate beyond, was higher than the intrastate rate to St. Louis plus the rate beyond. In order to insure application of the interstate rate where grain was subsequently shipped out on the reshipping rate, carriers required unloading at St. Louis and the surrender of expense bills complained of, defendants maintaining that the reshipping rate was part of a through rate to which the shipper was entitled only where he had paid the part thereof applicable to the shipment into St. Louis. There was no commodity rate on the traffic in question, but while there was no class rate on grain to central freight association territory, there was to trunk line territory. HELD, that the regulation was reasonable on shipments to trunk line territory, as it is necessary to know the point of origin of the shipment to determine whether the reshipping commodity rate applying to shipments "from beyond" should be applied, or the local or flat class rate, but shipments to central freight association territory were entitled to move out on the reshipping rate regardless of point of origin or of rate on inbound shipment, as there was no other rate on which such shipments could move to that territory. Directed that case be re-opened and heard with Southwestern Missouri Millers Club and C. & A. R. R. Co., Docket No. 6662, on notice. Merchants Exchange of St. Louis v. B. & O. R. R. Co., 30 I. C. C. 700.

(b) Impossible under the present system of rate making in this country to so adjust rates that the in-and-out charges will be the same in the aggregate for all jobbing points which buy and sell in the common markets. Ft. Dodge Commercial Club v. Director General, 57 I. C. C. 343, 345.

ALL OTHER CITATIONS

Harrisburg Milling Co., et al v. Ann Arbor R. R. Co., et al., 52 I. C. C. 63; Three States Tie Co. v. C. & E. I. R. R. Co., 57 I. C. C. 24.

§11¾. Sacking.

CASES 1887-1908

(a) A published tariff regulation permitting grain to be shipped through from a point of origin to final destination with a stop-over privilege in East St. Louis for cleaning, sacking or other legitimate purpose, the shipment covering a proportional or balance of a

through rate from East St. Louis, is not shown to be objectional in this case, but that part of defendant's tariff regulation which provides that grain may be shipped to East St. Louis on a local rate and forwarded as a new shipment from that point on a 12c proportional rate to Vicksburg, Miss., and common points desregards the higher 15-cent local rate from East St. Louis to those destinations and is not in accord with the doctrine announced by the Commission in Re Alleged Unlawful Rates and Practices in the Transportation of Grain and Grain Products by the A. T. & S. F. Ry. Co. et al., 7 I. C. C. Rep. 240; Re Rates and Practices of M. & O. R. Co. 9 I. C. C. 373.

IMPORTANT CASES SINCE 1908

(b) The general practise is that the charge in effect for handling grain from cars into elevator, sacked, owners to furnish sacks and twine, and delivered to vessels, is to include sacking and elevation. Powell Grain Co. v. St. L. I. M. & S. Ry. Co., Unrep. Op. 1876.

§12. Scaleage, Deductions and Shrinkage.

See Weights and Weighing §7.

IMPORTANT CASES SINCE 1908

(a) Complainant, grain dealers at Baltimore, attacked the "scaleage deductions" made by defendant carriers upon grain passing through elevators owned by defendants at that port. In process of elevation grain loses in weight through loss of dust, chaff and dirt, which remains behind in the elevator rooms and spouts. Defendants issued receipts for actual weight of the grain received at their elevators, with a statement thereon as to estimated deductions which would be made from the weights in redelivering to complainants the grain. These deductions approximately represented such losses. Defendants at New York, however, did not make such deductions and actually went into the market and purchased grain to supply the shrinkage. These practices had existed for many years at both cities and the discrimination in favor of New York was apparently taken care of in the difference of rates to New York and Baltimore. HELD, said scaleage deductions at Baltimore did not constitute a matter affecting rates, and defendants were not required to place such deductions in their public tariffs; but that the actual purchasing by defendants at New York of grain to make up the shrinkage was a matter affecting rates, and complainants were entitled to a remedy of that situation on the ground of unjust discrimination, upon further proof that such practice at New York actually resulted in unjust discrimination. Baltimore Chamber of Commerce v. Penn. R. R. Co., 15 I. C. C. 341, 346, 347.

(b) Complainants attacked the rules in the tariffs of southwestern lines, providing for deductions, in the adjustment of claims for loss of grain in transit, of certain percentages of the loading weights as representing a natural shrinkage, as unreasonable and in violation of sections 1, 3 and 20 of the Act. A representative rule provided for deductions of 1-8 of 1 per cent on wheat, flaxseed, rye, oats, and barley; and ¼ of 1 per cent on corn. The average shrinkage on all grain was probably 0.208 per cent. HELD, that the deductions in question were fairly conservative, and the rule assailed not unreasonable. Complaint dismissed. Crouch Grain Co. v. A. T. & S. F. Ry., 36 I. C. C. 265.

ALL OTHER CITATIONS

Hull Co. v. S. Ry. Co., 24 I. C. C. 302; Kalmbach-Ford Co. v. K. C. S. Ry. Co., Ltd., 26 I. C. C. 289, 290.

§12½. Spotting and Special Services.

See Allowances §8 (5); Demurrage §12 (1); Special Rates and Services; Spotting; Storage.

IMPORTANT CASES SINCE 1908

(a) Transit service is a special service. Spiegle v. S. Ry. Co., 25 I. C. C. 71, 75.

(b) The service of loading, furnishing material and placing dunnage in cars is a special service. Western Classification Case, 25 I. C. C. 442, 496.

(c) The Commission investigated the changes in tariff rules governing the movement of potatoes in carloads from producing points in the states of Minnesota and Wisconsin to Chicago and other points and consuming markets west of the Mississippi River. It appeared that for over 20 years it had been the practice in this territory for shippers to bear the expense of protecting their potatoes by lining box cars with

boards and paper. They also furnished stoves and fuel for warming the cars and care-takers to accompany the shipments. The rates were fixed with the theory that this would be done by the shipper. The carriers under the rates did not undertake to furnish protection against the inclemency of the weather. They included, however, the free carriage in both directions of the care-takers, also the stoves and car linings. The tariffs have been lacking in definiteness in respect to these matters and new tariffs were published. These rules in general provide as follows: 1. That carriers will not accept shipments of potatoes during the period from November 1 to April 15, unless the shipper at his own expense lines the car, puts in a false floor, and furnishes a stove and fuel for heating, with an attendant to accompany the shipment. The right is reserved to the carrier, however, of accepting such shipments "when in its judgment the weather conditions permit." 2. That the attendant in the employ of the shipper will have full supervision of the heating and ventilation of the shipment, and shall be responsible for the care and protection of the potatoes from cold while in transit. 3. That the stoves and material for linings and false floors will be returned free of charge over the route of the original movement only when the material is delivered by the consignee or by a representative of the shipper at the depot of the delivering carrier at destination and a regular bill of lading is issued for the free return movement. Elsewhere in the country where the potato movement is large special heater cars are made available to shippers, and box cars also are lined and equipped by carrier at the beginning of winter and kept in the service until spring. Experience has demonstrated that potatoes may safely be carried, even in very harsh weather, in ordinary box cars so prepared and equipped with stoves and accompanied by attendants. HELD, that the traffic involved is large enough, not only to warrant the carriers in preparing for it in some such manner, but large enough and permanent enough to require them under the law to offer such service to the shippers; that it is unreasonable and arbitrary for the carriers to impose a rule permitting them to refuse a shipment altogether. On account of the fact that the previous rates have been imposed upon the theory of the shippers furnishing a certain service and facilities, the tariffs are not permanently suspended, but the shippers and carriers are requested to confer together and modify rules to be filed. If this is not done the Commission will take further action. A method should be devised stopping the waste involved in the loss to shippers in the lining and stoves when destined to points east and south of Chicago, and to points to which there is no joint through rate. Protection of Potato Shipments in Winter, 26 I. C. C. 681.

(d) Wherever a particular service-spotting at some place of unloading within a plant-property may be construed as the equivalent of either service, and the rendition of such service practical, the Commission may compel a carrier to perform such service with its own equipment as part of its legal obligation as to delivery of carload traffic. As the magnitude of the service becomes greater than the equivalent of team track delivery, or simple switching delivery, the demand on the carrier for its performance tends to exceed what may be regarded as a proper delivery service under transportation rates. To comply with this legal obligation, the carrier may employ the owner of the property transported and pay a compensation or allowance not more than is just and reasonable. Any service performed by a shipper in excess of a carrier's legal obligation as to delivery is a voluntary service for the shippers own convenience and for which it is entitled to receive no compensation. Hence, a proper switching or spotting allowance represents payment for the difference between the service in delivery which a carrier actually performs and the service which the carrier is legally obligated to render. U. S. Cast Iron Pipe & Foundry Co. v. Director General, 57 I. C. C. 677, 682.

(e) Just as there are criteria by which the reasonableness of a rate may be measured, so there are tests whereby it may be determined whether a particular service is within the scope of a carrier's legal obligation. That a service such as spotting has been rendered for a long time under a transportation rate is important evidence that the service was considered in arriving at the rate and also of the carrier's obligation as to delivery. However, duration of time is not conclusive. United States Cast Iron

Pipe & Foundry Co. v. Director General, 57 I. C. C. 677, 682, 683.

(f) It is not satisfactorily established that the legal obligation of a carrier goes to the extent of requiring it to spot cars at places of loading or to take cars from places of unloading within a plant. Obligation as to delivery may have been complied with when the cars are placed on interchange track or on the spur within the plant connecting with the interchange track. United States Cast Iron Pipe & Foundry Co. v. Director General, 57 I. C. C. 677, 683.

(g) Wherever a delivery service properly may be construed as the equivalent of team-track or simple switching delivery, and the rendition of such service is practical, the Commission may compel a carrier to perform such service with its own equipment as part of its legal obligation as to delivery. As the magniture of the service becomes greater than the equivalent of team-track or simple switching delivery, the demand on the carrier for its performance tends to exceed what may be regarded as a proper delivery service under transportation rates. United States Cast Iron Pipe & Foundry Co. v. Director General, 57 I. C. C. 677, 683.

(h) Where an industry is accorded the equivalent of the delivery service rendered to the majority of shippers in the same district which receive either team-track or simple switching delivery, there is no basis for a finding that the line-haul rates contemplate an additional spotting service at such an industry, or that the line-haul rates have been rendered unreasonable or otherwise unlawful by the withdrawal of the spotting service by the line-haul carrier or its failure to reimburse the industry for the entire cost of the spotting service which the latter performs. United States Cast Iron Pipe & Foundry Co. v. Director General, 57 I. C. C. 677, 684.

(i) It has not been satisfactorily established that the legal obligation of a carrier goes to the extent of requiring it to spot cars at places of unloading or to take cars from places of loading within a plant. Obligation as to delivery may have been complied with when the cars are placed on interchange track or on the spur within the plant connecting with the interchange track. United States Cast Iron Pipe & Foundry Co. v. Director General, 57 I. C. C. 677, 683, 684.

(j) A shipper can not be heard to complain of unjust discrimination or undue prejudice because of free spotting at competitor's plants unless there is a substantial similarity of conditions at the respective plants. Sharon Steel Hoop Co. v. P. Co., 59 I. C. C. 378, 381.

(k) Circumstances entitled to primary consideration as to whether spotting is a duty required of carriers under their line-haul rates are the extent of the service involved in a typical team-track delivery, and the extent of the service rendered in the typical switching of a car upon a siding of a shipper clear of the main track—the substitute for team-track delivery. Carey Mfg. Co. v. Director General, 59 I. C. C. 640, 643.

(l) The legal obligation of defendant under the line haul rates does not go to the extent of requiring it to spot complainants' cars at the various places of loading and unloading within the plant. Its obligation would not appear to extend beyond delivering or receiving the cars upon the scale track or other tracks near the entrance of its plant. Philip Carey Mfg. Co. v. Director General, 59 I. C. C. 640, 645.

ALL OTHER CITATIONS

In Re Advances on Potatoes, 25 I. C. C. 159, 163, 166; Bergin v. M. K. & T. Ry. Co. (Tex., 1912), 150 S. W. 1184, 1187; File No. 1700.44; New York Shippers' Protective Association v. N. Y. C. & H. R. R. Co., 30 I. C. C. 437, 442; R. R. Comm'rs. of Fla. v. F. E. C. Ry. Co., 42 I. C. C. 616, 626; N. Y. C. & H. R. R. v. General Electric Co., 114 N. E. 115; 219 N. Y. 227; Virginia Portland Ry., 49 I. C. C. 335; Galigher Machinery Co. v. B. & O. S. W. R. R., 50 I. C. C. 448; Natl. Tube. Co. v B. & O. R. R., 50 I .C. C. 489, 497; National Tube Co. v. B. & O. R. R., 50 I. C. C. 489, 497, 498; Northport Smelting & Refining Co. v. G. N. Ry. Co., 53 I. C. C. 641, 642; Empire Steel & Iron Co. v. Director General, 56 I. C. C. 158, 189; American International Shipbuilding Corp. v. P. R. R. Co., 57 I. C. C. 90; U. S. Cast Iron Pipe & Foundry Co. v. Director General, 57 I. C. C. 442, 677; 681, 682, 683, 684; Donner Steel Company Inc. v. D. L. & W., 57 I. C. C. 745, 750; Pittsburgh Forge & Iron Company v. Director General, 59 I. C. C. 29, 31, 33; Sharon

Steel Hoop Co. v. P. Co., 59 I. C. C. 378, 381; Central Iron & Steel Co. v. P. R. R. Co., 59 I. C. C. 385; Carey Mfg. Co. v. Director General, 59 I. C. C. 640, 645; Illinois Steel Co. v. Director General, 62 I. C. C. 349; Downey Shipbuilding Corp. v. S. I. R. F. Ry. Co., 60 I. C. C. 543, 548; Allegheny Steel Co. v. Director General, as Agent, 60 I. C. C. 575; U. S. Gypsum Co. v. C. & P. C. R. R. Co., 61 I. C. C. 117; Merchant Ship Building Corp. v. P. R. R. Co., 61 I. C. C. 214, 217, 218; Diversion and Reconsignment Rules, 61 I. C. C. 385, 391; Edge Moor Iron Co. v. Director General, as Agent, 61 I. C. C. 537, 540; Diamond Alkali Co. v. F., P. & E. R. R. Co., 62 I. C. C. 161, 164; Lehigh Portland Cement Co. v. Director General, as Agent, 62 I. C. C. 231, 235; Gulf States Steel Co. v. Director General, as Agent, 66 I. C. C. 255, 257; What Cheer Beef Co. v. N. Y. N. H. & H. R. R. Co., 83 I. C. C. 569.

§13. Staking and Binding.

IMPORTANT CASES SINCE 1908

(a) Taking into consideration the fact that the cost of staking and binding lumber on open cars varies with different parts of the same region, making it impossible to arrive at the average cost of such service; that no practical equipment of permanent stakes has been devised; that it has been a long established custom for the shipper to load and unload; that rates have been arrived at on this basis; that the shipper is best adapted to perform this service; that the lumber business has been conducted for many years with reference to this custom of loading and staking, and that rates for lumber shipments are the same for box and open cars, it is HELD, that regulations of carriers requiring shippers of lumber and forest products on open cars to furnish at their own expense stakes, racks, binders and other appliances, are not unreasonable or unjust. National Wholesale Lumber Dealers' Ass'n. v. A. C. L. R. R. Co., 14 I. C. C. 154, 160, 162.

(b) If a carrier furnishes nothing but loose boards at one point and at another furnishes sectional doors, lath, paper, or burlap, unlawful discrimination results. Farmers' Cooperative Asso.v. C. B. & Q. R. R. Co., 34 I. C. C. 60, 65.

(c) Regulations of defendants which required shippers of lumber on open cars to stake and secure the loads for safe carriage were not unjust or unreasonable. Norton Lumber Co. v. C. M. & St. P. R. Co., 81 I. C. C. 749, 757.

(d) The carriers are entitled to charge for weight of lumber used for blocking and holding automobiles immovable during transit. Lusby v. S. P. Co., Unrep. Op. 1922.

ALL OTHER CITATIONS

Keystone Wood Co. v. P. R. R. Co., 37 I. C. C. 622, 624; Frankfeld & Co. v. N. Y. C. R. R. Co., 40 I. C. C. 555; Fruit Dispatch Co. v. P. & R. Ry., 48 I. C. C. 634; Diamond Lumber Co. v. C. M. & St. P. Ry., 51 I. C. C. 78, 88.

§14. Storing, Grading and Resacking.

See Storage.

CASES 1887-1908

(a) Upon investigation of alleged unlawful practices of carriers in granting free storage of freights and other specified privileges to shippers. HELD, that charges made by carriers for transportation and terminal services, and all rules and regulations which in any wise change, affect or determine the aggregate compensation paid therefor are required by statute to be shown upon their published rate schedules; and under such requirement it is the duty of all carriers subject to the Act to so publish and thereupon enforce each and every of their charges, rules and regulations concerning the storage of freights, diversion of cars to shippers' use, distribution of freight in part-lots, reconsignment of freight, and all kindred concessions or privileges to shippers, and to refrain from affording a
privilege without due publication thereof in such schedules. That in view of the very general allowance in various forms of some or all of the privileges involved a general order directed to all carriers subject to the Act to regulate commerce should be issued. American Warehousemen's Asso. v. Illinois Ant. R. Co., 7 I. C. C. 556.

(b) The storage of freight, diversion of cars to shippers use, part lot distribution and reconsigning privileges involved are of considerable importance and value to shippers, and especially so to the class of manufacturers or dealers largely engaged in supplying those staple commodities which are in common demand throughout the country. To the extent of its value, each privilege les-

sens the aggregate compensation paid by shippers to carriers for transportation and terminal services. The charges made for such services, and all rules and regulations which in any wise change, affect or determine such aggregate compensation, are plainly required by the statute to be shown by the carriers upon their published rate schedules. American Warehousemen's Asso. v. I. C. R. Co. 7 I. C. C. 556, 589.

IMPORTANT CASES SINCE 1908

(c) Storage in transit and other transit arrangements rest upon the fiction that the incoming and outgoing transportation services, while distinct, are applied to a continuous shipment from point of origin to point of destination. Kansas City Board of Trade v. A. T. & S. F. R. R., 69 I. C. C. 185, 189.

ALL OTHER CITATIONS

Schmidt & Sons v. M. C. R. R. Co., 19 I. C. C. 535; Commercial Club of Duluth v. B. & O. R. R. Co., 27 I. C. C. 639, 658; Winkler & Bro. v. I. C. R. R. 42 I. C. C. 431; Ansted & Burk Co. v. C. C. C. & St. L. Ry. Co., 50 I. C. C. 371; DeLaval Separator Co. v. A. & R. R. R. Co., 57 I. C. C. 668, 676; Northern Potato Traffic Asso. v. G. N. Ry. Co., 58 I. C. C. 360, 364; Transit Privileges on Lumber at Nashville, 58 I. C. C. 444; Interstate Packing Co. v. C. & N. W. Ry., 58 I. C. C. 510; Storage Charges on Apples and Pears, 64 I. C. C. 627; Storage in Transit Rules at Minnesota Transfer, 68 I. C. C. 572.

§14½. Store-Door Delivery.

See Store Door Delivery.

IMPORTANT CASES SINCE 1908

(a) To the extent of the reasonable cost of store door delivery, the burden is upon the carriers to justify withdrawal of the service and the consequent increase of cost to the shipper. Merchants & Manufacturers' Assn. v. B. & O. R. R. Co., 30 I. C. C. 388, 389.

(b) Store-door delivery was first inaugurated to relieve congested condition of a station. Chamber of Commerce of Washington v. B. & O. R. R. Co., 30 I. C. C. 446, 448; Judd & Deweiler, Inc., v. B. & O. R. R. Co. 30 I. C. C. 455, 456.

ALL OTHER CITATIONS

Acosta v. Merchants & M. Transp. Co., 41 I. C. C. 376; Tulsa Traffic Asso. v. St. L. S. F. Ry., 49 I. C. C. 644, 646, 648.

§14¾. Tailboard delivery.

IMPORTANT CASES SINCE 1908

(a) Because a carrier at one point, because of peculiar conditions, performs a form of tailboard delivery (whereby less than carload shipments for certain consignees are placed at certain locations on station platforms, etc.), it does not follow that the Commission may impose this duty upon carriers at other points. Phila. Team Owners' Pro. Asso. v. Ry. Co., 32 I. C. C. 387, 392.

ALL OTHER CITATIONS

Acosta v. M. & M. Transp. Co., 41 I. C. C. 376, 377.

§15. Transit.

See Infra §18, §19, §20; Bills of Lading §4; Cars and Car Supply §11; Compress Companies and Charges; Concentrating Rates and Privileges; Creosoting-in-Transit; Dressing-in-Transit; Panama Canal Act; Penalty Rates; Refining in Transit; Routing and Misrouting §8½; Stoppage in Transit; Storage in Transit; Substitution of Tonnage; Through Routes and Joint Rates §18, §19, §20; Transfer; Transit; Yardage.

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(a) The Chicago, Milwaukee & St. Paul Railroad, by charging milling in transit rates on grain originating on its Southern Minnesota division and forwarded as product from La Crosse, Wis., to Milwaukee, Wis., or Chicago, Ill., does not discriminate in favor of Minneapolis millers, where such rates bear the same relation to its through rates via La Crosse as the in and out rates at Minneapolis, Minn., on grain milled there, bear to the through rates via that city. Listman Mill Co. v. Chicago, M. & St. P. R. Co., 8 I. C. C. 47.

(aa) Shippers are not entitled as matter of right to mill grain in transit and forward the milled product under the through rate in force on the grain from the point of origin to the place of ultimate destination; on the contrary, milling in transit is a special privilege for which extra compensation is usually exacted by carriers and which is only permitted by them under prescribed terms and conditions. Diamond Mills v. B. & M. R. R., 9 I. C. C. 311, 315.

(b) Considering the defendants as a single line, the granting of transit mill-

ing west of Pittsburg and denying it to millers at Harrisburg is not necessarily unlawful, because conditions on that line in Ohio and Indiana may be very different from conditions in eastern Pennsylvania; but such differences have not been shown, nor their bearing explained, and upon the meager and incomplete facts now appearing, the Commission is not warranted in making a decision which in principle, if complainant's contention is well founded, would involve a general extension of transit privileges into a large territory where heretofore such privileges have not been allowed. Koch v. Pennsylvania R. Co., 10 I. C. C. 675.

(c) Considering the defendants as a single line, the granting of transit milling west of Pittsburg and denying it to millers at Harrisburg is not necessarily unlawful, because conditions on that line in Ohio and Indiana may be very different from conditions in eastern Pennsylvania, and it does not follow that the allowance of transit privileges in the former territory requires as a matter of law the like allowance in the latter territory; but such differences have not been shown, nor their bearing explained, by the testimony in this proceeding, and upon the meager and incomplete facts now appearing, the Commission is not warranted in making a decision which in pinciple, if complainants' contention is well founded, would involve a general extension of transit privileges into a large territory where heretofore such privileges have not been allowed. Case continued for further hearing. Koch v. Pennsylvania R. Co., et al, 10 I. C. C. 675.

(d) Shippers are not entitled as a matter of right to mill grain in transit and forward the milled product under the through rate in force on the grain from the point of origin to the place of ultimate destination; but allowances of the privilege by a carrier to shippers in one section must be without wrongful prejudice to the rights of shippers in another section served by its line. Koch v. Pennsylvania R. R., 10 I. C. C. 675, 681.

(e) Complainants alleged discrimination in that the defendant refused to allow complainants to bring grain from points west of Pittsburgh to their mill at Harrisburg, Pa., under terms and conditions similar to the milling in transit arrangements in force on the defendant at points west of Pittsburgh. Considering the defendants as a single line, the granting of transit milling west of Pittsburgh and denying it to millers at Harrisburg is not necessarily unlawful, because conditions on that line in Ohio and Indiana may be very different from conditions in eastern Pennsylvania, and it does not follow that the allowance of transit privileges in the former territory requires as a matter of law the like allowance in the latter territory; but such differences have not been shown, nor their bearing explained, by the testimony in this proceeding and upon the meager and incomplete facts now appearing, the Commission is not warranted in making a decision which in principle, if complainants contention is well founded, would involve a general extension of transit privileges into a large territory where heretofore such privileges have not been allowed. Case continued for further hearing. Koch v. Pennsylvania R. R., 10 I. C. C. 675.

(ea) Stopping a commodity in transit for treatment or reconsignment is in the nature of a special privilege which the carrier may concede, but which the shipper, under the present state of the law, can not demand as a matter of lawful right; but carriers may not unjustly discriminate between markets or individuals in the granting of such privileges. St. Louis Hay & Grain Co. v. M. & O. R. R., 11 I. C. C. 90, 101.

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(fg) Elevators are essential to the proper handling of grain. Traffic Bureau of St. Louis v. M. P. Ry. Co., 14 I. C. C. 317, 318.

(h) A transit privilege in many cases is beneficial in its application. When it can be applied without discrimination it results in the diffusion of business, in giving to rival communities the relative advantages to which they are entitled, and which can be accorded them in no other way, and, generally speaking, in the application of lower transportation charges. The commercial operations of this country have in many instances grown up upon the exercise of transit privileges and could have been developed in no other way. The Commission has never held that transit was to be condemned in so far as it was beneficial and could properly be applied. In so far as transit lends itself to the defeating of the published rate or to the preference of one individual or locality over

another, this Commission has condemned it. In Re Transportation of Wool, Hides, and Pelts, 23 I. C. C. 151, 171.

(i) For the granting of a transit privilege carriers should charge reasonable compensation. In Re Transportation of Wool, Hides and Pelts, 23 I. C. C. 151, 174.

(j) Once let it be conceded that the inbound and outbound movements of a commodity which is milled in transit are separate and distinct the impropriety of applying any rates other than the regularly established local rates is obvious. Red River Oil Co. v. T. & P. Ry. Co., 23 I. C. C. 438, 446.

(k) Section 1 imposes upon carriers the duty to furnish elevation at reasonable charges. Transit Case, 24 I. C. C. 340, 343.

(l) The Act, as amended, gives to the Commission adequate power to regulate transit privileges, and it may, upon full hearing, prescribe such rules and regulations therefor as will, in its opinion, free the operation of transit privileges from illegal practices. Transit Case, 24 I. C. C. 340, 343.

(m) That money has been invested in an industry in reliance upon the continuance of transit privileges argues for a maintenance of such privilege. Fabrication-in-Transit Charges, 29 I. C. C. 70, 77.

(n) Transit is less desirable than the breaking of rates. At rate-breaking points the dealer or miller may ship by any line to any market regardless of the route of the inbound movement, while at transit points the commodity must go to the markets reached by the extension of the route of the inbound movement. In the endeavor to prevent substitution of local grain for transit grain, the carriers also require accounts of stock in hand and points from which procured, all of which is costly and annoying to shippers. At rate-breaking points this burden of policing is avoided, because no substitution at such points can operate to defeat tariff rates. Wichita Board of Trade v. A. & S. Ry. Co., 29 I. C. C. 376, 278.

(o) The Supreme Court has held that elevation is a part of transportation which the railroad is required to furnish under the first section of the act. Elevation Allowances at St. Louis and East St. Louis, 30 I. C. C. 696, 697.

(p) The theory of transit is service at some point between points of origin and destination of traffic, and in the direction of the movement to the point of final destination. A back haul is contrary to the purpose of transit, and should generally be permitted only to meet unusual situations, and when to do so does not result in unjust discrimination or other violations of law. Stock & Sons v. L. S. & M. S. Ry. Co., 31 I. C. C. 150, 153.

(q) The cost of service is of controlling importance in considering the reasonableness of a transit charge. Nat. Casket Co. v. S. Ry. Co., 31 I. C. C. 678, 690.

(r) Per diem charges are an item of expense which may properly be taken into consideration in computing cost of transit service to carrier. National Casket Co. v. S. Ry. Co., 31 I. C. C. 678, 693.

(s) The Commission has required the establishment of transit in few instances. When practicable, rates through important grain markets should break into definitely known inbound and outbound components. Such an adjustment is preferable to transit under a through rate, where the opportunities for complications in the application of rates, and for undue preferences resulting from the selected use of inbound expense bills in securing a desired out bound transit rate, are multiplied in proportion to the greater volume of tonnage handled through important markets, and the greater number of carriers that ordinarily serve such markets. Rates on grain and grain products, 56 I. C. C. 133, 137.

(t) The matter of according transit at a certain point should not be regarded from the standpoint alone of one carrier in the through route, but from the standpoint of all the carriers comprising the through route. Southern Hardwood Traffic Asso. v. Director General, 61 I. C. C. 132, 142.

(u) Transit is sometimes beneficial in its results, but it is open to grave abuses. To police it adequately is difficult and expensive. Unless adequately policed, it is an avenue to illegal rebates, and seriously depletes the carriers revenues. Kansas City Board of Trade v. A. T. & S. F. R. R., 69 I. C. C. 185, 189.

(v) The principle that transit or other

privileges to be given at any point are to be determined by the line-haul carriers serving that point goes to the reasonableness of the schedules establishing the arrangement rather than to their legality under section 6 of the act. Elimination of Transit Privileges on Export Cotton, 73 I. C. C. 299, 303.

(w) The mere fact that a carrier participates as an originating carrier in joint rates in connection with a transit arrangement is allowed at points off its line does not make it guilty of undue prejudice by failing to accord transit to a point on its line. C. R. R. Co. of N. J. v. United States, 257 U. S., 247. Compression of Cotton, 77 I. C. C. 148, 188.

(x) It is the sense of the Commission that no transit privilege should extend beyond one year. Storage in transit rules at Minnesota Transfer, 78 I. C. C. 265, 269.

(y) A rate may include transit and other privileges and still be water compelled. United States Nickel Company v. Director General, 81 I. C. C. 162, 165.

(z) Privileges like concentration of cotton are purely local to railroad on which concentration or transit point is located, and their continuance is not dependent upon concurrence or consent of connecting lines in such transit arrangements. Concentration of Cotton at New Orleans, 83 I. C. C. 18, 20.

(aa) A transit arrangement must be determined by tariff in force on date of origin of shipment. Carolina Portland Cement Co. v. Director General, as Agent, 83 I. C. C. 388, 391.

(bb) It has long been the announced policy of the Commission not to require the establishment of transit arrangements unless to remove unjust discrimination or undue prejudice. It follows, of course, that where such discrimination is found to exist that carriers should be required to go no further than may be necessary in order to remove that discrimination. Anderson Lumber Co. v. N. P. R. Co., 87 I. C. C. 425, 435.

(cc) Transit is sometimes beneficial in its results; but it is open to grave abuses. To police it adequately is difficult and expensive. Unless adequately policed, it is an avenue to illegal rebates and seriously depletes the carriers revenues. The Commisison clearly has power under paragraph 1 of the act as amended to determine whether in a particular case a transit privilege should be granted or should be withdrawn. Rules for Storing and Sacking Cement, 88 I. C. C. 662, 668.

§15a. Fabrication in transit.

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(a) That a transit privilege tends to equalize rates of the interior fabicator with those of plants located at rate-breaking points argues for a continuation of such privileges. Fabrication-in-transit Charges, 29 I. C. C. 70, 77.

(b) Structural iron and steel used for bridges and buildings are of necessity fabricated at mills far removed from the location of the bridge or building, and it is essentially inexpedient to set up the necessary machinery for such fabrication at the location of the bridge or building. It is this circumstance and condition of things which have warranted the extension of the fabrication-in-transit privilege to this industry. Middletown Car Co. v. P. R. R. Co., 32 I. C. C. 185, 186.

(c) The fact, standing alone, that the fabricated parts of iron used in a certain industry are similar to certain parts used in an industry of a different nature, to which the fabrication-in-transit privilege is granted, does not warrant the extension of the privilege to the industry first referred to, where it appears that the similar articles are in no wise competitive. It is rather the particular necessity arising from the peculiar situation with reference to an industry that gives rise to the application of this privilege. Middletown Car Co. v. P. R. R. Co., 32 I. C. C. 185, 187.

ALL OTHER CITATIONS

Fabrication in Transit at Greenville, Pa., 37 I. C. C. 370; Maloney Tank Mfg. Co. v. St. L. & S. F. R. R., 42 I. C. C. 605; Chicago Br. & Iron Co. v. E. R. R., 46 I. C. C. 641, 642, 644; Iron and Steel Fabrication, 49 I. C. C. 248; Morava Construction Co. v. A. T. & S. F. Ry., 49 I. C. C. 534, 537.

§15b. Milling and mixing in transit.

IMPORTANT CASES SINCE 1908

(a) Milling-in-transit is a practice that is almost universal throughout the country. Its substantial effect is to permit grain to be shipped to, and the products from, the milling point under a total charge which equals the through

charge on grain from the origin of the grain to the destination of the product. In some instances a slight additional charge is made for the transit privilege. Commercial Club of Superior v. G. N. Ry. Co., 24 I. C. C. 96, 119.

(b) Ordinarily where milling in transit is permitted, the full local rate is collected when the shipment moves into the milling point. When product moves to final destination, to which through rate is in effect, charges are so adjusted plus milling in transit penalty. Clinton Sugar Refining Co. v. C. & N. W. Ry. Co., 28 I. C. C. 364, 368.

(c) Under "transit" grain may be stopped and pass into the possession of the owner for cleaning, grading, mixing, milling or other commercial process, and then go forward to a new destination at the balance of the through rate from the point from which it was first shipped, with, at some points, a small charge for the services incidental to the delivery at the transit point. Wichita Board of Trade v. A. S. Ry. Co., 29 I. C. C. 376, 378.

(d) By a milling-in-transit arrangement a miller at an intermediate point is enabled to ship out the manufactured product of the grain practically on basis of the through rate from point of origin to final destination. It is a thing of value to the shipper, involving additional service on the part of the carrier for which a reasonable charge may properly be made. Stock & Sons v. L. S. & M. S. Ry. Co., 31 I. C. C. 150, 151.

(e) Milling in transit is a privilege which may be granted or withheld by carrier in its discretion so long as unlawful discrimination does not result therefrom. Empire Coke Co. v. B. & S. R. R. Co., 31 I. C. C. 573, 577.

(f) The fact that a miller at a rate breaking point may ship out by any carrier from such point does not constitute undue discrimination within the meaning of the Act as against the miller at an intermediate point who does not enjoy this privilege. Mixed Car Dealers' Ass'n. v. D. L. & W. R. R. Co., 33 I. C. C. 133, 142.

(g) The essential object of the usual milling-in-transit privilege is to enable shippers to employ a method of transit which, but for the privilege, would subject the material to local rates instead of entitling it to an ultimate through rate. The through rate is applied later upon the theory and the condition that stoppage at the transit point was for some legitimate treatment of the material, and that the continuation of the transit desired is of the same material, its product or equivalent at a through rate to destination. Thus the object at last is to escape local rates and secure a through rate; indeed, apart from this object a milling-in-transit privilege would have no reason to exist. The privilege, of course, enters into the cost of transportation, and so in effect is part of the contract for through shipment; this is ordinarily covered by the rate; and such is the theory upon which the privilege is required to be specified in the published tariff. Lewis, Leonhardt & Co. v. Southern Ry. Co., 217 Fed. 321, 324.

§15c. Stoppage in transit.

IMPORTANT CASES SINCE 1908

(a) Stoppage-in-transit and milling-in-transit practices are outgrowth of entirely dissimilar circumstances and conditions, and practice in respect to one is not controlling in respect to the other. Stock & Sons v. L. S. & M. S. Ry. Co., 31 I. C. C. 150, 151.

(b) A stoppage-in-transit privilege which permits of lean cattle shipped from one point being replaced by fatted cattle at another may result in manipulation of rates and consequent discriminations. Hoyt & Bergen v. C. & N. W. Ry. Co., 32 I. C. C. 319, 324.

§15d. Storage in transit.

IMPORTANT CASES SINCE 1908

(a) In a typical case the privilege of storage in transit for grain was denied where it appeared that like privileges were not granted by the defendants elsewhere in that territory and the necessity for storage at the point in question primarily grew out of domestic disturbances in the neighboring country of origin. Newark Grain Co. v. S. P. Co., 30 I. C. C. 431, 433.

(b) Where timber is of many kinds, and several kinds of lumber take the same rates, there is no impropriety in a tariff which permits the shipping of those several kinds of lumber at carload rates in straight or mixed carloads to and from the transit point. Under such a tariff the shipper would, of course, be obligated to confine his outbound shipments under

transit to lumber coming from points from which, and of the kinds to which, the transit rates apply. Nat. Casket Co. v. S. Ry. Co., 31 I. C. C. 678, 686.

§15e. Transfer in Transit.

IMPORTANT CASES SINCE 1908

(a) Elevation and transfer in transit have frequently been found by the commission and the courts to constitute necessary steps in the transportation of various kinds of property. Guaranty Claim of Central Elevator & Warehouse Co., 72 I. C. C. 169, 175, 176.

All Other Citations on Transit

Quimby v. Maine Central R. R. Co., 13 I. C. C. 246, 249; Corn Belt Meat Producers' Ass'n. v. C. B. & Q. Ry. Co., 14 I. C. C. 376, 378; Traffic Bureau of St. Louis v. M. P. Ry. Co., 14 I. C. C. 317, 318; In the Matter of Allowances to Elevators by the U. P. R. R. Co., 14 I. C. C. 315, 316; Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 15 I. C. C. 370, 375; Gough & Co. v. I. C. R. R. Co., 15 I. C. C. 280, 282; Washer Grain Co. v. M. P. Ry. Co., 15 I. C. C. 147, 151; Order of Commission temporarily enjoined by Commerce Court, Nashville Grain, etc., v. I. C. C., 191 Fed. 37, 40; Duncan & Co. v. N. C. & St. L. Ry. Co., 16 I. C. C. 590, 592; Brook-Rauch Mill & Elevator Co. v. M. P. Ry. Co., 17 I. C. C. 158, 161, 163; Speigle & Co. v. S. Ry. Co., 19 I. C. C. 522; In Re Reduced Rates on Returned Shipments, 19 I. C. C. 409, 417; American Hay Co. v. L. V. R. R. Co., 21 I. C. C. 166; Douglas & Co. v. C. R. I. & P. Ry. Co., 21 I. C. C. 97, 102; Paducah Cooperage Co. v. N. C. & St. L. Ry., 22 I. C. C. 226, 231; In Re Advance on Live Stock and Packing House Products, 22 I. C. C. 160, 174; Spiegle & Co. v. Southern Ry. Co., 22 I. C. C. 82, 83; Red River Oil Co. v. T. & P. Ry. Co., 23 I. C. C. 438, 446; Southern Illinois Millers' Ass'n. v. L. & N. R. R. Co., 23 I. C. C. 672, 678; In Re Transportation of Cotton and Cotton Linters, 23 I. C. C. 404, 411; In Re Transportation of Wool, Hides and Pelts, 23 I. C. C. 151, 171, 174, 176; Young & Cutsinger v. I. C. R. R. Co., Unrep. Op. A-75; Gudenrath Lumber Co. v. L. Ry. & N. Co., Unrep. Op. A-57; Pate Lumber Co. v. S. Ry. Co., Unrep. Op. A-19; In Re Advances on Logs, 24 I. C. C. 683; In re Advances on Barley, 24 I. C. C. 664, 667; Memphis Grain & Hay Assn. v. St. L. & S. F. E. E. Co., 24 I. C. C. 609, 611, 612, 617; Southwestern Millers' League v. A. T. & S. F. Ry. Co., 24 I. C. C. 552, 556; Transit Case, 24 I. C. C. 340, 347, 349, 350, 352, 353, 355, 356, 348, 351; Iowa v. A. C. L. R. R. Co., 24 I. C. C. 134, 139; Commercial Club of Superior v. G. N. Ry. Co., 24 I. C. C. 96, 119; Hutchinson Mill Co. v. A. T. & S. F. Ry. Co., 25 I. C. C. 180; The Transit Case, 25 I. C. C. 130, 131, 134; In Re Milling and Transit Regulations on the C. & N. W. & C. St. P. M. & O. Rys., 25 I. C. C. 90; Bristol Door & Lumber Co. v. N. & W. Ry. Co., 25 I. C. C. 87; Spiegle v. S. Ry. Co., 25 I. C. C. 71, 73, 74, 76; Southwestern Millers' League v. A. T. & S. F. R. R. Co., 26 I. C. C. 599; Michigan Cereal Co. v. Pere Marquette R. R., 26 I. C. C. 320, 322; Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co., 26 I. C. C. 53, 58; 26 I. C. C. Id. 204, 210; Commercial Club of Duluth v. B. & O. R. R. Co., 27 I. C. C. 639, 658; Toledo Produce Exchange v. A. A. R. R. Co., 27 I. C. C. 536, 544; Board of Trade of the City of Chicago v. C. & A. R. R. Co., 27 I. C. C. 530, 533; Lumber Rates from Memphis and other points to New Orleans, 27 I. C. C. 471, 481; Rates on Corn Milled at Oneonta, N. Y., 27 I. C. C. 367; Suffern Grain Co. v. I. C. R. R., 27 I. C. C. 192; Memphis Freight Bureau v. I. C. R. R. Co., 27 I. C. C. 1, 3; U. S. v. L. & N. R. R. Co., 35 Sup. Ct. Rep. 113, 114; 235 U. S. 314; 236 U. S. 318; 59 L. Ed.; Lewis, Leonhardt & Co. v. Southern Ry. Co., 217 Fed. 321, 324, 325; G. R. & I. Ry. Co. v. United States, 212 Fed. 577, 585; Nichols & Cox Lumber Co. v. United States, 212 Fed. 588, 593; Fabrication-in-Transit Charges, 29 I. C. C. 70, 76, 77, 78, 80, 82, 89; J. A. Adams & Sons Co. v. V. S. & P. Ry. Co., 29 I. C. C. 52; Wichita Board of Trade v. A. & S. Ry. Co., 29 I. C. C. 376, 378, 379; Gadow v. C. St. P. M. & O. Ry. Co., 29 I. C. C. 457, 458; Clinton Sugar Refining Co. v. C. & N. W. Ry. Co., 28 I. C. C. 364; Clinton Corn Refining Co. v. C. & N. W. Ry. Co., 28 I. C. C. 364, 365, 368, 370; Boney & Harper Milling Co. v. A. C. L. R. R. Co., 28 I. C. C. 383, 385; American Warehouse Co. v. St. L. & S. F. R. R. Co., Unrep. Op. A-103; Missouri Transit Cimmittee v. A. T. & S. F. Ry. Co., Unrep. Op. A-104; Security Warehouse & Elevator Co. v. C. & A. R. R. Co., Unrep. Op. A-221; Hettler Lumber Co. v. M. C. R. R. Co., Unrep. Op. A-302; Huron Milling Co. v. P. M. R. R. Co., Unrep. Op. A-396; Newmark Grain Co. v. Southern Pacific Co., 30 I. C. C. 431; American Hay Co.

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§15½. Transshipment and Transfer.

See Transfer; Transshipment.

CASES 1887-1908

(a) A railroad company is not liable for discrimination in refusing to a transfer company engaged in carrying freight between the city in which the railroad terminates and a city across a river in another state, facilities equal to those given another transfer company with which the railroad company has made an arrangement for through billing and rating, whether such transfer company and the railroad be regarded as a connecting line between independent interstate carriers, or the transfer company be regarded as an agency for the delivery of the freight of the railroad company. St. Louis Drayage Co. v. Louisville & Nashville Railroad, 5 I. C. R. 137.

(b) Grain, Council Bluffs to Omaha. A rate of 1 cent per 100 pounds, minimum charge $5 per car, for transferring grain in carloads from Council Bluffs, Iowa, to Omaha and South Omaha, Neb., defendant's rate for service in reverse direction for delivery upon its own tracks, being $2 per car; made to induce construction and maintenance of a modern and capacious elevator on its line in Council Bluffs; a higher rate being

charged on grain transferred to Council Bluffs for delivery to elevators or industries on other lines; the delivery of grain by defendant in Omaha or South Omaha being for industries or elevators on other lines for which, under car-service rules, it must allow such other lines $2 per diem rental; the grain rates from the west to Omaha, South Omaha and Council Bluffs being the same, and the rates from the east to Council Bluffs being less,—under all the circumstances and conditions is not unjust and unreasonable. Omaha Grain Exchange v. Union P. R. R. Co., 12 I. C. C. 65.

(c) Defendant has in force a rate of 1 cent per 100 pounds, minimum charge $5 per car, for transferring grain in carloads from Council Bluffs, Iowa, to Omaha and South Omaha, Nebr. Its rate for transferring grain from Omaha and South Omaha to Council Bluffs for delivery upon its own tracks is $2 per car, which was put in to induce construction and maintenaince of a modern and capacious elevator on its line in Council Bluffs, and a higher rate is charged by it on grain transferred to Council Bluffs for delivery to elevators or industries on other lines. The delivery of grain by defendant in Omaha or South Omaha is for industries or elevators on other lines, for which, under car-service rules, it must allow such other lines $2 per car per diem rental. The grain rates from the west to Omaha, South Omaha, and Council Bluffs are the same, while from the east the rates to Council Bluffs are less than to Omaha or South Omaha. The charge from Council Bluffs to Omaha and South Omaha is complained of as unjust and unreasonable. Upon all the circumstances and conditions, HELD, that the complaint should be dismissed. Omaha Grain Exchange v. Union P. R. Co., 12 I. C. C. 65.

(d) The act does not bar a carrier from providing for costs of transfer in making delivery to a certain carrier, but if it so provides, it must publish and file a tariff showing where the transfer will be made, the kind of transfer service required and the charges to be exacted therefor. Schwager & Nettleton v. Great Northern Ry. Co., 12 I. C. C. 521.

(e) A shipper is entitled to notice of a transfer charge other than one coming to him through the collection of the charge from his consignee, and as he is not obliged to follow his shipment and make the transfer himself, he is entitled to the protection afforded by a published definite rate. Schwager & Nettleton v. Great Northern Ry. Co., 12 I. C. C. 521.

(f) The act does not bar a carrier from providing for costs of transfer in making delivery to a certain carrier, but if it so provides, it must publish and file a tariff showing where transfer will be made, the kind of transfer service required and the charges to be exacted therefor. Schwager & Nettleton, Inc., v. Great Northen Ry. Co., 12 I. C. C. 521.

IMPORTANT CASES SINCE 1908

(g) There must be a transshipment at seaboard, and if that may be made the point of ultimate destination by the device of separate bills of lading the commerce will be given local character, though it be essentially foreign. T. & N. O. R. R. Co. v. Sabine Tram. Co., 227 U. S. 111; Arkansas Pass Channel & Dock Co. v. G. H. & S. A. Ry. Co., 27 I. C. C. 403, 410.

(h) The practice of terminal carriers requiring shippers, at their own expense, to transfer to other equipment, shipments delivered to team tracks in bad-order cars, as a precedent to permitting rebilling to points beyond, found an unjust practice. Merchants Exchange of St. Louis v. T. R. R. Asso. of St. Louis, 50 I. C. C. 474.

ALL OTHER CITATIONS

T. & N. O. R. R. Co. v. Sabine Tram. Co., 227 U. S. 111; Berthold & Jennings Lumber Co. v. M. & O. R. R. Co., Unrep. Op. A-140; Plymouth Coal Co. v. Penn. R. R., 37 I. C. C 457; Lake Cargo Coal Rates, 46 I. C. C. 159, 185; Columbia Transfer Co. v. C. B. & Q. R. R., 46 I. C. C. 371, 372; Merchants Exchange of St. Louis v. T. R. R. Asso. of St. Louis, 50 I. C. C. 474; Hixon Lumber Co. v. C. B. & Q. R. R., 80 I. C. C. 295.

§16. Wharfage.

See Dockage; Panama Canal Act; Wharfage.

IMPORTANT CASES SINCE 1908

(a) One Young obtained the lease of a warf at Galveston from S. P. Terminal Co., which company was controlled through stock ownership by the Southern Pacific Railroad and Steamship Systems. The cake and meal purchased by Young were bought by him in various states,

but chiefly in Texas and shipped to him on bills of lading and waybills, showing the point of origin in those states and the destination at Galveston. The purchases were made for export. His sales to foreign countries were sometimes for immediate and sometimes for future delivery, irrespective of whether he had the product on hand at Galveston. At times therefore orders must be filled on cake to be purchased in the interior or shipped in transit to him. When the cake reached Galveston it was ground into meal and sacked by Young, and new shippers' bills of lading were made out to his order for foreign parts. HELD, the manufacture or concentration on the wharves of the terminal company were but incidents in the shipment of the product in export trade, and the regulations of the terminal company in the handling of its wharves was within the power of the Interstate Commerce Commission, S. P. Terminal Co. v. I. C. C. 219, U. S. 498, 526, 31 Sup. Ct. Rep. 279, 55 L. ed. 310, sustaining 14 I. C. C. 250.

(b) Where carriers publish ship-side rates on export traffic to certain wharves owned by them, they make such wharves public terminals, and the necessary implication arising from the publication of such rates is that access must be given to such wharves by whatever ship the shipper chooses to have his freight carried from the wharf by, so long as such access may be safely and properly given. A railroad may not have a preferred line of steamships to the exclusion of other ships. It may prefer one line and have more intimate relationship with such line than with others, but its duty as a common carrier by rail cannot be neglected because of such arrangement. It may set aside one or more docks for the use of such allied lines so long as such practice does not conflict with its duty to give delivery at its docks to whomsoever may apply for the freight properly deliverable at that point. It it chooses to give up its entire dock facilities to some particular line it may do so, but it must make delivery upon equal terms to other ships at that port, for it has undertaken to deliver the freight it transports at the ship's side. Mobile Chamber of Commerce v. M. & O. R. R. Co., 23 I. C. C. 417, 423.

(c) A wharf company is not a common carrier subject to the Act. Humboldt S. S. Co. v. White Pass & Yukon Route, 25 I. C. C. 136, 140.

(d) Where a railroad has a wharf to which certain of its tariffs offer ship-side delivery at which part of the shipping public is served, such terminal facilities become affected with a public interest and are subject to all the requirements of the Act. In Re Wharfage Facilities at Pensacola, Fla., 27 I. C. C. 252, 256.

(e) Where no wharfage charge is imposed at a port a carrier may not rightfully name a rate to that port to include such a charge. Cottonseed Products to Port Arthur, Tex., 38 I. C. C. 378, 388.

(f) Docks and depot carriers are not to be used except as incident to the business of transportation. Baltimore & Carolina S. S. v. A. C. L. R. R., 49 I. C. C. 176, 182.

ALL OTHER CITATIONS

Wyman, Partridge & Co. v. B. & M. R. R. Co., 15 I. C. C. 577, 579; Keckevoet v. City of Dubuque (Ia., 1912), 138 N. W. 540, 545; Flour City S. S. Co. v. L. V. R. R. Co., 24 I. C. C. 179, 190 Port Arthur Board of Trade v. A. & S. R. Co., 27 I. C. C. 388, 392; In Re Wharfage at Pensacola, Fla., 27 I. C. C. 252, 258; Eichenberg v. S. P. Ry. Co., 28 I. C. C. 584; Magnolia Petroleum Co. v. Channel & Dock Co., 34 I. C. C. 330; Samuel v. D. L. & W. R. R., 36 I. C. C. 255; Natl. Dock & Storage Warehouse Co. v. B. & M. R. R., 38 I. C. C. 643, 650; Cottonseed Products to Port Arthur, Tex., 38 I. C. C. 378, 387; Gunderson v. G. & S. J. R. R., 39 I. C. C. 747; Tampa Fuel Co. v. A. C. L. R. R. Co., 43 I. C. C. 231, 235; The Alaska Investigation, 44 I. C. C. 680, 710, 711; New York Harbor Storage, 47 I. C. C. 141, 151; State v. Atlantic Coast Line R. Co., (Fla., 1919), 81 So. 498; Warfage, Handling and Storage Charges at Norfolk, Va., 59 I. C. C. 488; Absorption of Terminal Charges at Galveston, 59 I. C. C. 490; Sugarland Industries v. Galveston Wharf Co., 80 I. C. C. 655; The Rathlin Head, The Burgondier, The Frankinner, The Lord Downshire, 292 Fed. 867.

§16½. Warehousing, Storage and Station Facilities.

See Storage; Warehouseman; Warehousing.

CASES 1887-1908

(a) That a railway company for some time paid cost of hauling coal from com-

plainant's wharf to station is not ground for compelling such payment by the company. Providence Coal Co. v. Providence & W. R. Co., 1 I. C. R. 363.

(b) The duty of the railroad company operating its own road or a road that it controls, to serve the local stations on its line, does not apply to a company that has only a running privilege for through trains to reach points on its own line over a part of the road of another company which it does not control. Alford v. Chicago, R. I. & P. R. R. Co. (Com.), 2 I. C. R. 771.

(c) Where the existing disadvantage to Cincinnati, arising from the early closing hour of the freight depot situated there, is not under present circumstances unreasonable or undue, but may become so if continued indefinitely. Cincinnati Chamber of Commerce and Merchants' Exchange v. Baltimore & O. S. W. R. Co., 10 I. C. C. 378.

(d) The regulation providing for an earlier closing hour of the freight depot at Cincinnati than that which has previously been in force, and which is earlier than that in force at other points, does not, under the existing conditions and circumstances, impose upon the shippers disadvantage in competing with shippers at other points, but it may do so if continued indefinitely; and the dismisasl of the complaint is, therefore, without prejudice to further proceedings. Cincinnati Chamber of Commerce and Merchants Exchange v. Baltimore & O. S. W. R. R. Co., 10 I. C. C. 378.

(e) The defendants more largely engaged in carrying outbound package freight from Cincinnati are unable, with their present depot facilities and times for the departure of evening trains, to clear their platforms daily of that class of traffic without closing the receiving depots for such freight at 4:30 p. m. A closing rule which prevents congestion of freight in depots is as much to the advantage of the shipper as a later hour would be in enabling the shipper to place his freight in the depot, and the carriers are doing the best they can in their present circumstances. The large and growing volume of outbound package freight from Cincinnati indicates the necessity of strenuous efforts by the carriers to remove any existing hardship to shippers through inability to compete under the early closing rule on even terms with shippers in other distributing cities. HELD, that the existing disadvantage to Cincinnati, under present circumstances, is not unreasonable or undue, but it may become so if continued indefinitely, and that dismissal of the complaint is without prejudice to any further necessary proceeding. Cincinnati Chamber of Commerce v. B. & O. S. W. R. Co., et al, 10 I. C. C. 378.

(f) Complainant attacked as unduly prejudicial and disadvantageous to shippers at Cincinnati, O., a regulation of defendants which changed the hour of closing their freight depots in that city on each week day for the reception of outgoing package freight from 5 to 4:30 o'clock daily, except Saturday, and also changed the closing hour on Saturday from 1 to 12:30 p. m. The Commission is authorized by the Act, after investigation, to order carriers to cease and desist from subjecting any particular person, locality or description of traffic to undue or unreasonable prejudice or disadvantage in any respect whatsoever, and its jurisdiction extends to a case of alleged unlawful prejudice and disadvantage to shippers of outbound freight through enforcement by carriers of a regulation providing for the earlier closing of depots used for the reception of such freight. The defendants more largely engaged in carrying outbound package freight from Cincinnati are unable, with their present depot facilities and times for the departure of evening trains, to clear their platforms daily of that class of freight without closing the receiving depots for such freight at 4:30 p. m. A closing rule which prevents congestion of freight in depots is as much to the advantage of the shipper as a later hour would be in enabling the shipper to place his freight in the depot, and the carriers are doing the best they can under their present circumstances. The large and growing volume of outbound package freight from Cincinnati indicates the necessity of strenuous efforts by carriers to remove an existing hardship to shippers through inability to compete under the early closing rule on even terms with shippers in other distributing cities. HELD, that the existing disadvantage to Cincinnati, under present circumstances, is not unreasonable or undue, but it may become so if continued indefinitely, complaint dismissed. Cincinnati Chamber of Commerce v. B. & O. S. W. R. R., 10 I. C. C. 378.

IMPORTANT CASES SINCE 1908

(g) It is incumbent upon carriers to

provide adequate station and warehouse facilities for the expeditious handling and delivery of freight transported by them. Merchants' and Manufacturers' Asso. v. B. & O. R. R. Co., 30 I. C. C. 388, 393.

(h) A warehouse owner is not entitled to recover damages for depreciation in the rental value of his property as a result of leases by a railroad company of similar properties at nominal rentals to shippers. Pittwood & N.P. Ry., 51 I. C. C. 535.

(i) A warehouse owner, a landlord seeking to rent his property, as such, has no relation with a common carrier which could result in a discrimination against him in violation of the Act to regulate commerce. Pittwood v. N. P. Ry., 51 I. C. C. 535.

ALL OTHER CITATIONS

Markle Co. v. L. V. R. R., 37 I. C. C. 441; St. Louis, Mo., (Cupples Sta.), Terminal Regulations, 40 I. C. C. 425, 430; Philadelphia Hay & Straw Deliveries, 51 I. C. C. 324; Grasselli Chemical Co. v. Director General, as Agent, 81 I. C. C. 562; Dockage, Handling, and Storage Charges, 88 I. C. C. 24.

III. TARIFFS AND PUBLICATION.

See Tariffs.

§16¾. In General.

IMPORTANT CASES SINCE 1908

(a) Tariff provisions relating to the determination of applicable rates on transit shipments and the rules permitting transit, as well as their interpretation, should be uniform. Kansas City Board of Trade v. A. T. & S. F. R. R., 69 I. C. C. 185, 192

ALL OTHER CITATIONS

Interstate Packing Co. v. C. & N. W. Ry. Co., 58 I. C. C. 510, 513; Trexler Lumber Co. v. Director General, 58 I. C. C. 754.

§17. Obligation to Publish.

See Terminal Facilities.

CASES 1887-1908

(a) A carrier may, as part of a contract for through shipment, allow cotton to be stopped off for the purpose of grading and compression; but the privilege enters into and becomes part of the service covered by the rate, and should be specified in the established tariffs. Re Alleged Unlawful Rates, etc., 8 I. C. C. 121.

(b) If stop-over privileges are granted for any purpose, all the facts and circumstances connected therewith should be clearly stated in the published tariffs, so that the public generally may enjoy their benefits. Mobile & O. R. Co., In Re Rates and Practices of, 9 I. C. C. 373.

(c) Treating the transportation first of the log and then of the lumber as a through shipment involves the right to mill in transit, and when that privilege is granted the tariff should show upon its face that the transportation covers carriage of the log to and the lumber from the mill, and the division allowed to the tap line, or carrier of the log should be named in all cases. Central Yellow Pine Asso. v. V. S. & P. R. R., 10 I. C. C. 194, 216.

(d) All privileges accorded on shipments in transit and which affect the value of the service performed must be published in the tariffs, and reparation based on breach of contract for a privilege not mentioned in the tariffs must be denied because its allowance witout publication was in violation of law. Shiel & Co. v. Ill. Cent. R. R. Co., 12 I. C. C. 210.

IMPORTANT CASES SINCE 1908

(e) The privilege embodied in a separate storage and reconsignment tariff of one carrier cannot be availed of under a joint tariff to which that carrier is a party, unless the tariff by express reference to the former so provides. Washington Broom & Woodenware Co. v. C. R. I. & P. Ry. Co., 15 I. C. C. 218, 219.

(f) Under section 6 of the Act requiring the filing of tariffs with the Commission showing all charges and facilities granted, it is not enough to state the amount of the charge unless the services and privileges covered by it are also stated. Whenever any service is rendered beyond the ordinary receiving, transporting and delivering of freight, the precise character of that service should appear in the printed schedule, and this applies to charges made for loading and unloading carload freight. Schultz-Hansen Company v. S. P. R. R. Co., 18 I. C. C. 234, 237.

(g) Facilities or privileges granted or allowed in connection with a rate should be stated in tariffs. In Re Mileage, Excursion and Commutation Tickets, 23 I. C. C. 95.

(h) Transit is a privilege that may be accorded by carriers to shippers only when properly provided for in their tariffs. Liberty Mills v. L. & N. R. R. Co., 23 I. C. C. 182, 185.

(i) A rate when published by a carrier in the form provided by law is as binding upon it as if that rate had been established by legislative enactment, and it can not be departed from either by the carrier or the shipper except and until in due course and in the manner prescribed by law, it has been found by the Commission to be unreasonable or discriminatory or otherwise unlawful under the act to regulate commerce. The same principle would seem to govern transit and other special services provided in the tariffs of carriers; they must be enforced in accordance with their terms, and when the provisions are clear and free from ambiguity no agreement between the shipper and the carrier assigning another meaning to them may lawfully be submitted. Nor, may the Commission sanction a departure from their plain meaning until, in a proper proceeding and upon a proper record, such rules have been found to be unlawful under the Act. Peters Mill Co. v. C. B. & Q. R. R., 38 I. C. C. 245, 248.

(j) Under the provisions of section 6 all terminal privileges and facilities extended to shippers must be specifically authorized by tariff and can not be inferred. Moore Stave Co. v. M. L. & T. R. R. & S. S. Co., 41 I. C. C. 472, 473.

(k) In order that these specifications and rules may be available to all and uniformly applied without discrimination they should be properly published in the carriers' tariffs. Claims for loss and damage of grain, 56 I. C. C. 347, 353.

(l) Reparation will not be awarded on the basis of a reconsignment privilege customarily extended by the carrier, but not duly published in its tariff. Sunderland Bros. Co. v. B. & O. S. W. R. R. Co., Unrep. Op. 267.

ALL OTHER CITATIONS

Rennert-Millette Co. v. G. H. & S. A. Ry. Co., Unrep. Op. 525; Neosho Milling Co. v. K. C. S. Ry. Co., Unrep. Op. 433; Kile & Morgan Co. v. Deepwater Ry. Co., 15 I. C. C. 235, 238; Folmer & Co. v. G. N. Ry. Co., 15 I. C. C. 33, 36; St. Paul Board of Trade v. M. St. P. & S. S. M. Ry. Co., 19 I. C. C. 285, 288; Red River Oil Co. v. T. & P. Ry. Co., 23 I. C. C 438, 447, 448; Transit Case, 24 I. C. C. 340, 343; B. & G. N. R. R. v. A. T. & S. F. Ry. Co., 24 I. C. C. 161, 163; The Transit Case, 26 I. C. C. 204, 210; Mixed Car Dealers' Asso. v. D. L. & W. R. R., 33 I. C C 133, 140; Farmers' Cooperative Asso. v. C. B. & Q. R. R. Co., 34 I. C. C. 60, 66; Southern R. Co. v. Prescott, 36 Sup. Ct. 469, 472; 240 U. S. 632, 60 L. ed. 836; Donovan v. Wells Fargo & Co. (Mo. 1915) 177 S. W. 839, 846; American Paper & Pulp Asso. v. B. & O. R. R. Co., 41 I . C. C. 506, 512; R. R. Com'rs. of Fla. v. F. E. C. Ry. Co., 42 I. C. C. 616, 620; Iron Ore Rate Cases, 44 I. C. C. 368, 371; St. L. & S. F. R. Co. v. Bondies & Co. (Okla. 1917), 166 Pac. 179; May v. Seaboard Air Line Ry. (S. C. 1918), 96 S. E. 482; Swift & Co. v. C. B. & Q. R. R., 50 I. C. C. 233, 234; Joyce-Watkins Co. v. Director General, 56 I. C. C. 433; Illinois Central R. R. Co. v. N. O. G. N. R. R. Co., 68 I. C. C. 505; Hardaway Contracting Co. v. G. S. W. & G. R. R. Co., 68 I. C. C. 331; Detroit Board of Trade v. W. Ry. Co., 80 I. C. C. 717, 723.

§17½. Construction of Tariffs.

IMPORTANT CASES SINCE 1908

(a) The collection on the outbound shipments of grain stopped in transit at Cincinnati, Ohio, and Louisville, Ky., of amounts equal to the division of the through charges accruing to the outbound carriers with subsequent refund when the total charges so collected is greater than the through charge from point of origin to destination, found not unreasonable or unduly prejudicial. Cincinnati Grain & Hay Exchange Co. v. B. & O. R. R. Co., 73 I. C. C. 104, 108.

(b) Under the provisions of section 6 of the Act requiring the observance of rates and charges lawfully published and filed, the rate in effect at the beginning of the transit movement must be applied on the shipment to final destination. Nonsurrender of inbound billing, 73 I. C. C 455, 457.

ALL OTHER CITATIONS

Brenner Lumber Co. v. Drector General, as Agent 66 I. C. C. 595; Nonsurrender of Inbound Billing 73 I. C. C. 455, 457.

§18. Reshipping Under Through Rate.

See Proportional Rates; Reshipping Rates; Through Routes and Joint Rates §18, §19, §20.

CASES 1887-1908

(a) Cotton which starts and proceeds upon a contract for through shipment may be considered as a through shipment, and be given the benefit of a through rate, although it is stopped off for the purpose of grading and compression. Re Alleged Unlawful Rates, etc., 8 I. C. C. 121.

(b) That part of defendants' tariff regulation, which provides that grain may be shipped to East St. Louis on a local, and forwarded as a new shipment from that point on a 12-cent proportional rate to Vicksburg and common points, seems somewhat in conflict with the doctrine announced by the Commission. In Re Alleged Unlawful Rates and Practices in Transportation of Grain, etc., by the Atchison, T. & S. F. R. R. C., 7 I. C. C. Rep., 9 I. C. C. 240.

(c) Shippers are not entitled as matter of right to mill grain in transit and forward the milled product under the through rate in force on the grain from the point of origin to the place of ultimate destination; on the contrary, milling in transit is a special privilege for which extra compensation is usually exacted by carriers and which is only permitted by them under prescribed terms and conditions. Diamond Mills v. Boston & Maine R. Co., 9 I. C. C. 311.

(d) At common law, and under the act, joint through routes and through rates are matters of contract between the connecting carriers, and the defendant, as party to a joint tariff which does not give shippers the privilege of milling in transit, acted within its legal right in notifying its immediate connections and the complainant that it would not permit that practice. Diamond Mills v. B. & M. R. R., 9 I. C. C. 311, 315.

(e) Complainant brings grain from western points to Buffalo, N. Y., where it is milled, and ships the product to points on defendant's line in New England. The through tariff rates on grain and grain products from the points of origin to the New England points of destination are the same, but no right of milling in transit is granted in the joint tariff. Under a regulation of the Lake Shore Company, one of the parties to the tariff, and on whose line complainant's mill is located, milling in transit is permitted under a penalty of 1½ cents per 100 pounds above the rate on grain, but defendant does not join in granting that privilege to shippers from western points to points on its line in New England, and when grain so milled in transit is received by defendant it imposes an arbitrary charge of 6 cents per 100 pounds. The sum of the rate on separate shipments of grain from the west to Buffalo and the established joint rate of 12 cents per 100 pounds on grain products from Buffalo to points on defendant's line is less than the through grain rate added to the defendant's 6 cent arbitrary: HELD, (1) that defendant has acted unlawfully in imposing the arbitrary charge of 6 cents per 100 pounds in addition to the through grain rate on complainant's milled products forwarded to Buffalo, and that it was and is bound to apply on such transportation from Buffalo its established joint rate on grain products from that point to New England destinations. (2) That complainant is entitled to reparation in the sum of $358.81, the difference between charges exacted from it on the basis of the 6-cent arbitrary added to the through grain rate and the sum of established rates on grain to and on milled products from Buffalo. Diamond Mills v. Boston & Maine R. Co., 9 I. C. C. 311.

(f) It may be the right of a party to a joint tariff to refuse to shipper milling in transit privileges under joint through rates. Diamond Mills v. Boston & Maine R. Co., 9 I. C. C. 311.

(g) The published tariff regulation, permitting grain to be shipped through from point of origin to final destination, with a stop-over privilege in East St. Louis for cleaning, sacking, or other legitimate purposes, the shipment being given a proportional or balance of a through rate from East St. Louis, is not objectional. In Re Rates and Practices of, M. & O. R. Co., 9 I. C. C. 373.

(h) The Commission instituted an investigation of the rates and practices of the Mobile & Ohio R. R., in the transportation of grain to Vicksburg, Miss., shipped from or through St. Louis, Mo., and East St. Louis, Ill. The established rate on grain from East St. Louis to Vicksburg was 15c. There was no through rate from points of origin from which the grain was shipped but there was a method of shipment on a reconsignment or stoppage in transit rate, by which grain shipped from Kansas, Mis-

souri and Illinois might be consigned to Vicksburg on a through rate. On arrival at St. Louis this grain might be sold, or it might be stored in elevators and at a future date shipped on to Vicksburg on payment of the balance of the through rate. This balance was in most cases 11c, but the agents of the railroad company were not notified by any published schedule, nor was any such schedule filed with the Commission. HELD, the practices disclosed by this record are discriminating and should be condemned. If stop-over privileges are granted for any purpose, all the facts and circumstances connected therewith should be clearly stated in the published tariff, so that the public generally may enjoy their benefits. Re Rates and Practices of M. & O. R. Co., 9 I. C. C. 373.

(i) Shippers are not entitled, as a matter of fact, to mill grain in transit and forward the milled product under the through rate in force on the grain from the point of origin to the place of ultimate destination; but allowances of the privilege by a carrier to shippers in one section must be without wrongful prejudice to the rights of shippers in another section served by its line. Koch v. Pennsylvania R. Co., 10 I. C. C. 675.

(j) The rate on pine lumber from southern Georgia points to Chattanooga, Tenn., is 2 cents per 100 pounds higher than to Dalton, Ga., but on shipments to Cincinnati, Ohio, Chattanooga takes a 2-cent lower rate than Dalton. There is also a dressing-in-transit privilege at Dalton, for which 2 cents per 100 pounds additional are charged. The lumber shipped out of Chattanooga is mostly hard wood, the southern pine lumber brought to that point being practically consumed there. HELD, upon complaint against the rate from Dalton, that under all the circumstances the lumber rate from Dalton to Cincinnati is not so discriminative nor exorbitant as to justify disturbance at this time. HELD, further, that the reasons existing for lower lumber rates from the southern pineries do not apply to the reshipment of dressed lumber from Dalton. Farrar v. Southern R. Co., et al., 11 I. C. C. 632.

(k) Joint through rate becoming effective during transit cannot operate to reduce rate upon shipment under combination rate. Matter of Through Routes & Through Rates, 12 I. C. C. 163.

IMPORTANT CASES SINCE 1908

(l) Reshipment is the right of a shipper to reship goods received by him, without removal from the car, upon payment of the freight charges to that point, the goods going forward under a new transportation contract. It is an incident to the transportation facilities offered. Any consignee has the right to reship. Detroit Traffic Ass'n. v. L. S. & M. S. Ry. Co., 21 I. C. C. 257, 258.

(m) Where the carrier that moves the traffic into the transit point reaches also the point of destination the effect of requiring it to apply the through rate to destination, irrespective of whether the product moves from the transit point over its line or over the line of some other carrier, would be to require it to establish a through route and joint rate with such other carrier, although its own line may not be unreasonably long. Under the limitation in the fifteenth section of the act, the Commission has not the power to require such a route and rate. Mixed Car Dealers' Asso. v. D. L. & W. R. R., 33 I. C. C. 138, 142.

(n) Where there is an advance in rates which carry a transit privilege, that part of the tonnage which originated prior to the increase would take the lower rate, while that which originated after the increase would take the increased rate. Board of Trade of Chicago v. A. A. R. R. Co., 39 I. C. C. 643, 649.

(o) The proportional or reshipping rate applicable on a reshipment from the transit point is that in effect when the inbound shipment moved from the point of origin. Bell Lumber Co. v. Director General, as Agent, 63 I. C. C. 225, 228.

(p) Shipments which move from a point of origin to final destination with an arrangement for storage in transit are regarded as moving under a single continuous contract of carriage. Capital Warehouse Co. v. Director General, 66 I. C. C. 683, 685.

(q) The Commission has required the establishment of transit in few instances. When practicable, rates through important grain markets should break into definitely known inbound and outbound components. Such an adjustment is preferable to transit under a through rate where the opportunities for complications in the application of rates and for undue preference resulting from

the selected use of inbound expense bills in securing a desired outbound transit rate are multiplied in proportion to the greater volume of tonnage handled through important markets, and the greater number of carriers that ordinarily serve such markets. Grain Rates from Minnesota and Wisconsin, 68 I. C. C. 665, 672.

(r) Where practicable, rates through important grain markets should break into definitely known inbound and outbound components. Grain Rates from Minnesota and Wisconsin, 68 I. C. C. 665, 674, 675.

(s) Respondents proposed to publish the following rule governing the transiting of grain at Chicago, Ill., and stop over points in the Chicago district: "Deficiencies in weight of inbound and (or) outbound shipments on account of tariff minima are not entitled to transit privileges, and will be subject to local rates to and (or) from transit points." Joint rates are published on grain from Illinois to trunk line points, and are based on reshipping rates from Chicago to destinations, plus unpublished so-called specifics from points of origin to Chicago, which are accepted by the carriers operating to or beyond Chicago, as their divisions of the joint rates. The grain handled by operators of elevators at Chicago is stored and subsequently reshipped beyond, either by rail or by lake, its identity not being preserved. It is with respect to this grain only that any question arises herein. The reshipping rates are also lower than the local rates. In all instances where the local rates inbound exceed the unpublished specifics, refunds are made to the inbound shippers. The transit rules authorize the application of the joint rates on grain moved through to final destination, as distinguished from the minimum weights upon the basis of which the freight charges at the joint rates are to be collected. The deficiency in weight is not entitled to the unpublished specific on the inbound movement as the unpublished specific is not a rate. The question here presented can be and should be obviated by loading grain to the full capacity of the car and in no instance less than the minimum weight, and such is admitted to be the practice except at the beginning and closing of the shipping seasons. HELD, respondents have justified the schedules under suspension. Nonapplication of transit privileges on deficiencies in weight of grain, 69 I. C. C. 19.

(t) Why should there be a milling in transit point if there is not through transportation? And if there is through transportation, the through rate from point of origin must apply. Transit implies a through movement. Kansas City Board of Trade v. A. T. & S. F. R. R., 69 I. C. C. 185, 189.

(u) The practice of permitting the application of proportional rates and stop over privileges without the surrender of inbound freight bills is condemned. Nonsurrender of inbound freight bills, 73 I. C. C. 455, 458.

(v) Transshipment rates may lawfully be made lower than local rates between same points. Lumber from San Francisco Bay Points, 78 I. C. C. 760, 767.

ALL OTHER CITATIONS

Interstate Remedy Co. v. American Express Co., 16 I. C. C. 436, 439; Roper Lumber-Cedar Co. v. C. & N. W. Ry. Co., 16 I. C. C. 382; Acme Cement Plaster Co. v. C. & A. R. R. Co., 17 I. C. C. 220, 222; In Re Milling-in-Transit Rates, 17 I. C. C. 113; Sondheimer Co. v. I. C. R. R. Co., 17 I. C. C. 60, 67, 68; Anderson, Clayton & Co. v. St. L. & S. F. R. R. Co., 17 I. C. C 12; Southern Cotton Oil Co v. A. C. L. R. R. Co., 19 I. C. C. 434, 435, 436; Duncan & Co. v. N. C. & St. L. Ry., 21 I. C. C. 186; Red River Oil Co. v. T. & P. Ry. Co., 23 I. C. C. 438, 446; Liberty Mills v. L. & N. R. R. Co., 23 I. C. C. 182; Southwestern Millers' League v. A. T. & S. F. Ry. Co., 24 I. C. C. 552; The Transit Case, 25 I. C. C. 130, 133; Southwestern Millers' League v. A. T. & S. F. Ry. Co., 26 I. C. C. 599; May Bros. v. Y. & M. V. R. R, 26 I C. C. 323; Missouri River-Illnois Wheat and Flour Rates, 27 I. C. C. 386; Clinton Sugar Refining Co. v. C. & N. W. Ry. Co., 28 I. C. C. 364; Pine Belt Lum. Co. v. G. & S. I. R. R., 33 I. C. C. 117; Mixed Car Dealers' Asso. v. D. L. & W. R. R., 33 I. C. C. 133, 139, 140, 141, 144; Grain and Hay Exchange v P. Co., 32 I. C. C. 409, 410, 411; Rosenheimer Malt and Grain Co. v. C. St. P. M. & O. Ry. Co., Unrep. Op. R. R. Co., Unrep. Op. A-856; Peck v. A. T. & S. F. Ry. Co., Unrep. Op. A-808; Jerpe Commission Co. v. U. P. A-923; Mixed Car Dealers Asso. v. D. L. & W. R. R. Co., 33 I. C. C. 133, 139,

142; Moore-Seaver Grain Co. v. U. P. R. R., 38 I. C. C 682; Colorado Fuel Co. v. C. & S. Ry., 38 I. C. C. 690; Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co., 39 I. C. C. 303, 304; Pillsbury Flour Mills v. G. N. Ry. Co., 39 I. C. C. 353, 357· Illinois Grain to Chicago, 40 I. C. C. 124, 132; Nashville Grain Exchange v. United States, 234 Fed. 699; Melrose Milling Co. v. G. N. Ry., 43 I. C. C. 741, 742; Drewes Sugar Co. v. S. P. Co., 44 I. C. C. 533, 539; Haley-Neeley Co. v. C. B. & Q. R. R., 44 I. C. C. 763; Clinton Sugar Refining Co. v. C. B. & Q. R. R., 45 I. C. C. 211; Burritt Co. v. C. P. Ry., 45 I. C. C. 195, 196; Cairo Board of Trade v. C. C. C. & St. L. Ry., 46 I. C. C. 343, 351; Peirson-Lathrap Grain Co. v. C. B. & Q. R. R., 46 I. C. C. 359, 360; Fargo Iron & Metal Co. v. G. N. Ry., 46 I. C. C. 399, 400; Western Star Milling Co. v. M. P. R. R., 46 I. C. C. 467, 468; Buffalo Grain Cases, 46 I. C. C. 570, 582; Van Dusen Harrington Co. v. C. M. & St. P. Ry., 47 I. C. C. 59; Priebe v. Southern Ry. (Ala. 1917), 75 So. 409; Fremont Milling Co. v. C. & N. W. Ry., (Nebr. 1917), 163 N. W. 331, 332; Pittman & Harrison Co. v. F. W. & R. G. Ry., 48 I. C. C. 671; Grain Reshipped from Peoria, 50 I. C. C. 186; New Era Milling Co. v. St. L. & S. F. R. R., 50 I. C. C. 207; Alcus & Co. v. L. R. R. & Nav. Co., 49 I. C. C. 37; Van Benthuysen Lumber & Tie Co. v. G. & S. I. R. R., 49 I. C. C. 611; Wilson & Co. v. C. M. & St. Ry., 50 I. C. C. 126, 129; Grain Reshipped from Peoria, 50 I. C. C. 185, 190; Ansted & Burk Co. v. C. C. C & St. L. Ry., 50 I. C. C. 371, 372; Guyton & Harrington Mule Co. v. L. & N. R. R., 50 I. C. C. 546, 552; Brabston v. C. of G. Ry., 51 I. C. C. 459; Royal Milling Company v. G. N. Ry., 52 I. C. C. 151; Strasburg Steam Flouring Mills S. Railway Company, 53 I. C. C. 52, 57; Columbia Malting Co. v. N. Y. C. R. R. Co., 53 I. C. C. 137; Southern Rice Growers Asso. v. T. & N. O. R. R. Co., 53 I. C. C. 197, 207; Gulf & Valley Cotton Co. (Ltd.) v. T. & P. Ry. Co., 53 I. C. C. 561, 563; J. Allen & Co. v. Southern Ry., 53 I. C. C. 127; Harriss Irby & Vose v. G. H. & S. A., 53 I. C. C. 433, 435; Gulf & Valley Cottonseed Oil Co. v. T. & P., 53 I. C. C. 561; Rates on Grain and Grain Products from Northwestern Points, 56 I. C. C. 689, 691; Rates on Grain and Grain Products, 56 I. C. C. 133, 137, 138; Schaff v. J. C. Famechon Co., (Minn. 1920), 176 N. W. 197; Transit Privileges on Rough Forest Products, 59 I. C. C. 176; Grain from St. Louis to Cincinnati and Louisville, 59 I. C. C. 435; Chatterton & Son v. Director General, as Agent, 59 I. C. C. 484; Cairo Board of Trade v. A. T. & S. F., 61 I. C. C. 219, 222; Rumble & Wensel Co. v. Director General, 62 I. C. C. 110; Transit Privileges on Grain at Chicago Stop-over Points, 62 I. C. C. 466; Grain from St. Louis to Cincinnati and Louisville, 61 I. C. C. 256; Lake Charles Rice Milling Co. v. A. & N. Ry. Co., 64 I. C. C. 18, 40; Amendt Milling Co. v. N. Y. C. R. R. Co., 63 I. C. C. 230, 233; Lee Flour Mills Co. v. Director General, as Agent, 64 I. C. C. 226; Refining in Transit of Copper Articles at Laurel Hill, N. Y., 64 I. C. C. 257; Willow River Lumber Co. v. Director General, as Agent, 64 I. C. C. 575, 576; Chamber of Commerce of Johnson City, Tenn., v. S. Ry. Co., 64 I. C. C. 709, 723; Romann & Bush Pig Iron & Coke Co. v. Director General, as Agent, 66 I. C. C. 147; Brenner Lumber Co. v. Director General, as Agent, 66 I. C. C. 595; The Buhler Mill & Elevator Co. v. Director General, 66 I. C. C. 613; Standard Oil Co. v. Director General, as Agent, 68 I. C. C. 143; Lee Pendergrass Cotton Co. v. Director General, as Agent, 68 I. C. C. 637, 641, 642; Waggoner & Gates Milling Co. v. Director General, as Agent, 69 I. C. C. 83; Canby Milling Co. v. C., St. P. M. & O. Ry. Co., 69 I. C. C. 758; Adluh Milling Co. v. Director Gen., 69 I. C. C. 376; Cincinnati Grain & Hay Exchange v. B. & O. R. R., 73 I. C. C. 104; Cincinnati Grain & Hay Exchange Co. v. B. & O. R. R. Co., 73 I. C. C. 104, 108; Humble Oil & Refining Co. v. Director General, as Agent, 73 I. C. C. 275; Cohen & Son v. N. Y. C. R. R. Co., 73 I. C. C. 747, 748; Memphis Freight Bureau v. M. P. R. R. Co., 80 I. C. C. 88, 90, 91; Lake Charles Rice Milling Co. v. A. & N. Ry. Co., 77 I. C. C. 707, 709; Transit Rules on Grain Products, 81 I. C. C. 25; Acme Mills v. Director General, 81 I. C. C. 492; Atlas Cereal Co. v. A. T. & S. F. Ry., 89 I. C. C. 212.

§19. Retroactive Application.

See Reconsignment.

IMPORTANT CASES SINCE 1908

(a) The Commission has repeatedly refused to sanction the retroactive application of a transit arrangement. Burritt Co. v. C. P. Ry., 45 I. C. C. 195, 196.

(b) The Commission does not ordin-

arily give retroactive effect to a transit service in the absence of unjust discrimination or undue prejudice and damage thereunder. Armand L. Dejean v. Director General, 68 I. C. C. 611, 614.

(c) Retroactive effect to a transit arrangement except to remove unjust discrimination or undue prejudice has been repeatedly refused by the commission. Apperson Brothers Automobile Company v. I. E. & W. R. R. Co., 81 I. C. C. 392, 393, 394.

(d) Retroactive effect is not ordinarily given to a transit service in absence of unjust discrimination or undue prejudice and damage thereunder. Wolfe & Co. v. Director General as Agent, 83 I. C. C. 301, 303.

(e) A newly established transit arrangement should not be given retroactive application, except upon a showing of unreasonableness or of damage arising out of unjust discrimination or undue prejudice. Locke & Company v. Director General, 88 I. C. C. 487, 488.

ALL OTHER CITATIONS

Menefee Bros. v. R. & W. R. R. Co., Unrep. Op. 359; Miller & Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 60; National Lumber Co. v. S. P. L. A. & S. L. R. R. Co., 15 I. C. C. 434, 435; Cady Lumber Co. v. M. P. Ry. Co., 19 I. C. C. 12; Crescent Lumber Co. v. M. & O. R. R. Co., 20 I. C. C. 230; Henry v. E. Ry. Co., 20 I. C. C 171; Wood-Mosiac Flooring & Lumber Co. v. L. & N. R. R. Co., 22 I. C. C. 458; Young & Cutsinger v. L. & N. R. R. Co., 22 I. C. C. 1, 3; Rosenbaum Bros. v. B. & O. R. R. Co., 24 I. C. C. 287; Deeves Lumber Co. v. A. & V. Ry. Co., 25 I. C. C. 42; Atlanta Milling Co. v.L. & N. R. R. Co., 31 I. C. C. 485. 486, 489; Globe Milling Co. v. C. M. & St. P. Ry. Co.. Unrep. Op. A-683; Meeds Lumber Company v. A. C. Ry. Co., Unrep. Op. A-829; Topeka Packing Co. v. A. T. & S. F. Ry. Co., Unrep. Op. 1912; Swift & Co. v. M. & O. R. R., 39 I C. C. 701, 702; Meeds Lumber Co. v. A. C. Ry., 39 I. C. C. 337; Williams Stave Co. v. La. Ry. & N. Co., 39 I. C. C. 553, 555; National Lumber & Creosoting Co. v. T. & Ft. S. Ry. Co., 42 I. C. C. 35; Swift & Co. v. A .C. R. R. Co., 42 I. C. C. 294, 297; Freeman v. S. Ry. Co., 42 I. C. C. 736; Montgomery Cotton Exchange v. L. & N. R. R. Co., 43 I. C. C. 197; Bulley & Son v. St. L. & S. F. R. R., 45 I. C. C. 171, 172; Clinton Sugar Refining Co. v. C. B. & Q. R. R., 45 I. C. C. 211, 212; Inman, Akers & Inman v. S. Ry., 45 I. C. C. 564, 565; Eagle Pass Lumber Co. v. G. H. & S. A. Ry., 48 I. C. C. 693, 694; J. G. Taylor v. Director General, 61 I. C. C. 109, 110; Washington Mfg. Co. v. O. W. R. R. & N. Co., 69 I. C C 639, 642; Central Iron & Coal Co. v. Director General, 77 I. C. C. 300, 301; Restriction on Number of Tonnage Slips Surrendered at Transit Points on the Frisco Ry.. 77 I. C. C. 239; Central Iron & Coal Co. v. Director General, as Agent, 74 I. C. C. 300, 301.

§20. Substitution of Tonnage.

See Substitution of Tonnage.

IMPORTANT CASES SINCE 1908

(a) In the case, In the Matter of the Substitution of Tonnage, 18 I. C. C. 280, the Commission condemned unlawful products of wheat for barley, or shingles. As regards the handling of grain, little improvement has been shown since that decision. Carriers and shippers in different parts of the country gave different interpretations to this decision and to Conference Rule number 76-A of June 29th, 1909, with the result that the decision and this rule were strictly enforced in some territories and laxly in others, unjust discrimination thereby resulting. The present investigation indicates violation of the law in the following practices: The illegal transfer of billing to a shipper who is not entitled to a transit privilege thereon; illegal transfer of grain not accompanied by the proper billing and the application to such grain of illegal transit; the according of transit to a shipment which, under the tariffs, should be "representative" of the inbound movement, but was not so "representative," according transit to shippers far in excess, of their transit credits; the permitting of retention of billing after grain had been disposed of; the movement of transit and non-transit articles in the same carload without tariff authority therefor; the use of transit after expiration of time limit in the tariffs; the using of expense bills covering grain destroyed by fire or on other grain; the substitution of the products of one kind of grain for the products of another kind of grain; the according of transit privileges on non-transit ingredients of mixed feeds; the illegal use of surplus billing accumulated by reason of the difference between the actual weights and the minimum weights of

the inbound movement; also accumulated by less than carload non-transit movements out, by movements to non-transit points, by local consumption, by a movement out by water, by loss of grain in transit and by shrinkage; the plain substitution of one grain for an entirely different grain; the movement out, pound for pound, of products which could not have been derived from the inbound grain, and with no allowance for offal; and the palpable manipulation of billing and defeating the rates in cents per 100 lbs. HELD, that to obviate these evils, the carriers should be required to establish rules for the policing of transit privileges on grain and grain products which should require: 1. Certificates as to the transportation character of all grain contained in a transit house. 2. That a daily report should be furnished by the receiver of a transit privilege which should state the required information as to the contents of a transit house, if any of said contents is accorded a transit privilege. 3. That there should be recorded with the policing authority of the carriers within a reasonable time after the shipments have been received at transit point all paid expense bills. 4. That all surplus billing should be cancelled absolutely at the close of each business day. 5. That the railroad billing of the inbound and outbound movement should describe with sufficient particularity the commodity upon which the transit privilege is accorded. 6. That the outbound billing should show full reference to the inbound billing. 7. That the transit privileges should be limited absolutely to one year, at the expiration of which time all privileges should cease and full local rate, commodity or class, both into and out of the transit point, should apply. 8. That there should be deducted an arbitrary loss in process of milling wheat of not less than 1 per cent of the weight of the wheat; in the malting of barley of not less than 16 per cent of the weight of the barley; in the drying of corn of not less than 10 per cent of the weight of the corn, in the shelling of the corn of not less than 20 per cent of the weight of the corn, and in the cleaning and clipping of grain of not less than 1½ per cent of the weight of the grain. 9. That in according the transit privilege upon the products of grain milled or treated in transit, the policing authority should be required to balance the outbound movement of the product against the inbound movement of the grain upon the basis of well known average ratios of the products of the grain, the same principle to be applied to mixed feed. (Prouty, Chairman, dissenting.) The Transit Case, 24 I. C. C. 340.

(b) All substitutions of tonnage at transit points, whether they defeat the rates or not, are a violation of the law and must be eradicated or minimized to the last degree. The Transit Case, 24 I. C. C. 340, 349.

(c) The outbound movement of the product from the transit point should be balanced against the inbound movement of the grain upon the basis of well-known average ratios of the products of the grain. This principle should be applied to mixed feed. Transit Case, 24 I. C. C. 340, 354.

(d) Upon hearings and conferences at which the whole transit privilege situation was discussed and a substitute for Rule 76, Tariff Circular 18-A, was proposed by both the carriers and the shippers which contained the same general thought that while shipments could be stopped in transit and the same shipments, or a proper equivalent, (less invisible loss in weight) could be forwarded at the through rate plus the charge of the transit privilege if no substitution of one commodity for a commodity of a different kind was to be permitted, was considered by the Commission, the Commission being satisfied that under the previous practices the tariff published by the carriers often named the privileges in such manner as to conceal the real application, that the transit privileges were operated in a loose and irresponsible manner and that in many instances the rates and practices were not being enforced in accordance with the published tariffs. HELD, that rule 76 should be withdrawn but that the Commission in accordance with the settled policy would not make any order or express any views as to what would be unlawful under certain conditions. The carriers are bound to initiate their rates, rules and practices and these would be subject to the appropriate action of the Commission or the Courts. The following rule recommended by the carriers' conference is therefore not condemned: "When rules and regulations have been established in tariff form clearly defining the purpose or pur-

poses for and the terms under which transit privileges are granted, and providing also for the effective policing of the operations under the arrangement, a shipment may be stopped in transit and the same shipment or a proper equivalent (less invisible loss in weight), as set forth in said rules and regulations, may be forwarded at the through rate provided for by tariff from the original point of shipment to final destination plus the charge for transit privilege, if any. (This rule shall not be construed to authorize the publication of tariffs providing for the substitution of one commodity for a commodity of a different kind. That is to say, oats or the products of oats for corn, corn or the products of corn for wheat, wheat or the products of wheat for barley, or shingles for lumber.) The Transit Case, 26 I. C. C. 204.

(e) There is no provision of the Act, and no rule of the Commission which prescribes what rate shall apply on a combination of commodities made in course of transportation. Mixed Car Dealers' Asso. v. D. L. & W. R. R., 33 I. C. C. 133, 138.

(f) The service rendered by a carrier in transporting the product from a transit point is different from that rendered in transporting the raw material to the transit point. In many cases the product is of greater value, and the minimum loading is usually lower. The service to the transit user is oftentimes of greater value. Where the outbound shipment consists of a mixture of a number of kinds of grain, done up in small packages, the transit shipper is, in effect, given a carload rating on less than carload shipments. The carrier is fairly entitled to a higher charge on the outbound movement. Mixed Car Dealers' Asso. v. D. L. & W. R. R., 33 I. C. C. 133, 139.

(g) The substitution at the transit point of one article for another, when not specifically covered in the tariff, is unlawful and will subject the parties guilty thereof to criminal prosecution. American Creosoting Co. v. Director General, 61 I. C. C. 145, 149.

(h) Paid freight bills are the primary memoranda of inbound tonnage. Surrendered Tonnage Slips at Transit Points, 77 I. C. C. 239.

ALL OTHER CITATIONS

Quimby v. Maine Central R. R. Co., 13 I. C. C. 246, 249; Duncan & Co. v. N. C & St. L. Ry. Co., 16 I. C. C. 590, 598, 599; Bash Fertilizer Co. v. Wabash R. R. Co., 18 I. C. C. 522, 523; Henderson & Barkdull v. St. L. I. M. & S. Ry. Co., 18 I. C. C. 514; A. S. Block & Co. v. L. & N. R. R. Co., 18 I. C. C. 372, 373; In Re Substitution of Tonnage at Transit Points, 13 I. C. C. 280, 287; Klyce Co. v. I. C. R. R. Co., 19 I. C. C. 567, 570, 571; Paducah Box & Basket Co. v. I. C. R. R. Co., Unrep. Op. A-74; Memphis Hay & Grain Assn. v. St. L. & S. F. R. R. Co., 24 I. C. C. 609; The Transit Case, 24 I. C. C. 340, 350, 355; The Transit Case, 25 I. C. C. 130, 133; Saginaw Milling Co. v. M. C. R. R. Co., 33 I. C. C. 25, 29; Mixed Car Dealers' Asso. v. D. L. & W. R. R., 33 I. C. C. 133, 141; Saginaw Milling Co. v. C. R. R. Co., 33 I. C. C. 25, 29; Mixed Car Dealers' Asso. v. D. L. & W. R. R. Co., 33 I. C. C. 133, 141; Procter & Gamble Mfg. Co. v. A. T. & S. F. Ry., 45 I. C. C. 577, 578; Swift & Co. v. C. B. & Q. R. R., 50 I. C. C. 233; Memphis Freight Bureau v. St. L. & S. F. R. R., 50 I. C. C. 345; Transit Privileges on Rough Forest Products, 59 I. C. C. 176; Atlas Cereal Co. v. C. B. & Q. R. R. Co., 59 I. C. C. 702; Rumble & Wensel Co. v. Director General, as Agent, 62 I. C. C. 110; Nonapplication of Transit Privileges 69 I. C. C. 19; Kansas City Board of Trade v. A. T. & S. F. Ry. Co., 69 I. C. C. 185, 192; Washington Mfg. Co. v. O. W. R. R. & N. Co., 69 I. C. C. 639; Twin Cities and Lake Superior Ports, 73 I. C. C. 455; Nonsurrender of Inbound Billing, 73 I. C. C. 455; Brenner Lumber Co. v. Director General, as Agent, 81 I. C. C. 241.

IV. DISCRIMINATION.

§21. In General.

See Supra §15; Discrimination; Passenger Fares and Facilities III §9.

CASES 1887-1908

(a) A party to an interstate shipment cannot be excluded by the carrier from privileges afforded to other patrons in the same locality because of his refusal to pay excessive freight charges, even though an agreement to subsequently refund the excess should accompany the demand. Phelps v. Texas & P. R. Co., (Com.), 4 I. C. R. 363.

(b) Defendants charges on grain originating at points on its Southern Minnesota division, milled in transit at La Crosse, Wis., and forwarded as product

to Milwaukee or Chicago are not more than 2½c per hundred pounds in excess of its wheat rates from the same points of origin to Milwaukee or Chicago, and such milling rates at La Crosse, as related to defendants' wheat rates, or as affecting the competitive relations of complainant with millers at Milwaukee, are not unjust or otherwise unlawful. LaCrosse is on a direct route from points on defendants' Southern Minnesota division to Milwaukee or Chicago, and Minneapolis is not, but the short line distances from points on that division are considerably less to Minneapolis than La Crosse. Defendants' charges on wheat from Southern Minnesota division points to La Crosse and Minneapolis are the same, and its rates on flour from those cities to Milwaukee and Chicago are also the same; but La Crosse has milling or transit rates which are less than the sum of such locals, while at Minneapolis shipments to and from the mills are made under established in and out charges. Transit rates at La Crosse on wheat from points on said division to Milwaukee or Chicago bear the same relation to wheat rates from such points that the rates on wheat in and on flour out of Minneapolis bear to grain rates from points on defendants' more northerly Hastings & Dakota division. Alterations in any of defendants' flour rates from Minneapolis are followed by corresponding changes in transit rates at La Crosse. The legality of milling in transit rates is not involved, and what, if any, prejudice results to complainant under transit milling at La Crosse and regular in and out rates at Minneapolis is not shown. HELD, that no undue prejudice results to La Crosse or the complaining miller in that city from milling rates enforced by defendants at La Crosse or the relations of such rates to those established by defendant from Minneapolis. Complaint dismissed. Listman Mill Co. v. C. M. & St. P. R. Co., 8 I. C. C. 47.

(c) Complainant attacked rates on grain, with milling privileges from western points milled at Buffalo, N. Y., destined to points on B. & M., in New England as unreasonable and unduly prejudicial. The thru tariff rates on grain and grain products from the points of origin to the New England points of destination are the same, but no right of milling in transit is granted in the joint tariff. Under a regulation of the Lake Shore Company, one of the parties to the tariff, and on whose line complainants' mill is located, milling in transit is permitted under a penalty of 1½c per 100 pounds above the rate on grain, but defendant B. & M., does not join in granting that privilege to shippers from western points to points on its line in New England, and when grain so milled in transit is received by defendant it imposes an arbitrary charge of 6c per 100 pounds. The sum of the rate on separate shipments of grain from the west to Buffalo and the established point rate of 12c per 100 pounds on grain products from Buffalo to points on defendants' line is less than the through grain rate added to the defendants' 6c arbitrary. HELD, that defendant has acted unlawfully in imposing the arbitrary charge of 6c in addition to the through grain rate on complainants' milled products forwarded from Buffalo, and that it was and is bound to apply on such transportation from Buffalo its established joint rate on grain products from that point to New England destinations. Complainant entitled to reparation in the difference between charges exacted from it on the basis of the 6c arbitrary added to the through rate on grain and the sum of the established rates on grain to and on milled products from Buffalo. Diamond Mills v. B. & M. R. R., 9 I. C. C. 311.

(d) Complainant alleged unjust discrimination against it in favor of other shippers by reason of unreasonable delay in forwarding and delivering a carload of hay consigned from Condit, O., to Washington, D. C., and prayed for an award of damages. HELD, that no unjust discrimination or undue prejudice to complainant having been shown, the complaint should be dismissed. S. S. Daish & Sons v. C., A. & C. Ry. Co., et al., 9 I. C. C. 513.

(e) Making certain charges for the transportation of coal shipped in car loads when the coal is loaded by tipple, and exacting a higher charge when it is loaded in some other way, is not justified by difference in cost to the carrier between different methods of loading, and renders the higher rates thus made unduly discriminatory, first, as against complainants, and, second, as against all other shippers of coal except who load by tipple. Glade Coal Co. v. Baltimore & O. R. R. Co., 10 I. C. C. 226.

(f) The Commission is authorized by the Act to Regulate Commerce after investigation to order carriers to cease and desist from subjecting any particular person, locality or description of traffic to undue or unreasonable prejudice or disadvantage in any respect whatsoever, and its jurisdiction extends to a case of alleged unlawful prejudice and disadvantage to shippers of outbound package freight through enforcement by carriers of a regulation providing for the earlier closing of depots used for the reception of such freight. Cincinnati Chamber of Commerce v. B. & O S. W. R. Co., et al., 10 I. C. C. 378.

(g) Although shippers cannot compel carriers to stop a commodity in transit for treatment or reconsignment, the carriers in granting such a privilege must not discriminate. St. Louis Hay & Grain Co. v. Mobile & O. R. Co., 11 I. C. C. 90.

(h) Complainant attacked as unduly discriminatory method of defendant in delivering meat at Providence, R. I. Defendants' tracks in Providence, R. I., are so located that competitors of complainant occupying places of business abutting on its Canal Street yard are able to unload carloads of fresh meat directly into their warehouses, and the privilege of unloading meat in that yard was formerly accorded to complainant, whose storehouse is across the canal and about 300 feet from the railroad yard, but such privilege to complainant was recently withdrawn. Denial of such privilege entailed the hauling of complainant's meat from another yard about one half mile distant and damages his business from $20 to $100 per car. The capacity in and about the Canal Street yard of the track which may be used for unloading meat is limited, and defendants' refusal to continue the privilege is apparently upon the assumption that its allowance would involve extension of the privilege of the unloading of all perishable commodities at that point. HELD, there is no such competitive relation between fresh meat, and for example, fresh fruit that it is of necessity undue discrimination to accord a privilege to the one commodity which is refused to the other. Complainant is subjected to undue prejudice. Miner v. N. Y. N. H. & H. R. R., 11 I. C. C. 422.

(i) Defendant's tracks in Providence, R. I., are so located that competitors of complainant occupying places of business abutting on its Canal Street Yard are able to unload carloads of fresh meat directly into their warehouses; and the privileges of unloading meat in that yard was formerly accorded to complainant, whose storehouse is across the canal and about 300 feet from the railroad yard; but such privilege to complainant was recently withdrawn. Denial of such privilege entails the hauling of complainant's meat from another yard about a half mile distant, and damages his business from $20 to $100 per car. HELD, that complainant is thereby subjected to undue prejudice. Miner v. New York, N. H. & H. R. Co., 11 I. C. C. 422.

(j) Carriers must conduct and manage their business under the requirements and prohibitions of the regulating statute, and undue discriminations can not be justified by the fact of long-standing agreements with favored mine operators and other shippers, nor is it a defense to the charge of discrimination that the facilities provided the favored persons may be withdrawn at the will of the one who grants them. Red Rock Fuel Co. v. Baltimore & O. R. Co., 11 I. C. C. 438.

(k) The milling-in-transit rate of 42 cents between Little Rock and Hope on interstate shipments of flour was grossly unreasonable; the rate of 19 cents was, and the rate of 20 cents is, also unreasonable and unjust; a reasonable and just rate therefore would be 11 cents per hundred pounds. J. W. Moran & Son v. Missouri P. R. Co., 11 I. C. C. 598.

(l) Defendant employs a particular trucking firm to transport through shipments via its line from railroad depots in and about New York City to its pier No. 25, in New York, and gives preference at such pier to the through traffic transferred by such trucking firm over traffic originating in New York and vicinity brought to the pier by other trucking firms. The pier is inadequate for the business of defendant, and congestion and delay result. The pier is not closed at night until all waiting trucks are unloaded, and it is soon to be considerably enlarged. No instance of injury resulting to shippers or their traffic and no discrimination amounting to exclusion from the pier were shown. HELD, that such preference does not operate unduly or unreasonably against other truck owners members of the complaining as-

sociation. N. Y. Team Owners' Asso. v. Southern Pacific Co., 12 I. C. C. 204.

(m) Preference given to certain traffic pier, not unduly discriminatory. New York Team Owners' Asso. v. Southern P. Co., 12 I. C. C. 204.

IMPORTANT CASES SINCE 1908

(n) As between shippers, carriers should pursue a policy of uniformity concerning the extension of privileges, and thus avoid the charge of undue discrimination in connection therewith. Scudder v. T. & P. Ry. Co., 21 I. C. C. 60, 61, 62.

(o) The Commission has condemned the discrimination which results from the collection of a charge at one milling point while no charge is made at other milling points on the through route, including rate breaking points where the rates to or from the latter points are essentially parts of through rates. Strasburg Steam Flouring Mills v. S. Ry., 53 I. C. C. 53.

(p) If unjust discrimination or undue prejudice results from the failure or refusal of carriers to perform a service for one shipper or to make that shipper a proper allowance therefore, while rendering a like service for other and competing shippers, the Commission may require by order the removal of the unjust discrimination or undue prejudice. Carey Mfg. Co. v. Director General, 59 I. C. C. 640, 642, 643.

(q) It is not the function of the Commission under the Act to enforce specific compliance of contracts for allowances between shippers and carrier where the tariffs on file do not include allowances claimed. But where carriers under their tariffs hold themselves out as offering for a given rate to render a certain specified service, and after a certain date withhold a part of that service, the shipper not preventing the carrier from rendering the complete service offered under the tariffs, there has been an increase in the rate, no less than if after a certain date a higher charge had been made for the identical service previously performed for the original charge. United Chemical & Organic Co. v. Director General, 73 I. C. C. 100, 103.

(r) While movement of flat cotton should be restricted to a minimum and wasteful back hauls to transit points should not be encouraged, these considerations may not be ignored in some instances and enforced in others if undue prejudice would result. Memphis Freight Bureau v. M. P. R. R. Co., 80 I. C. C. 88, 97.

ALL OTHER CITATIONS

Traffic Bureau of St. Louis v. C. B. & Q. R. R. Co., 14 I. C. C. 317, 328, 331; Traffic Bureau Merchants Exchange v. C. B. & Q. R. R. Co., 14 I. C. C. 317, 328, 331; Carl Eichenberg v. Southern Pacific Co., 14 I. C. C. 250,269; Rail & River Coal Co. v. B. & O. R. R. Co. 14 I. C. C. 86, 89; Nat'l. Petroleum Ass'n v. L. & N. R. R. Co. 15 I. C. C. 473, 476; Washer Grain Co. v. M. P. Ry. Co., 15 I. C. C. 147, 158; Douglas & Co. v. C. R. I. & P. Ry. Co., 16 I. C. C. 232, 244, 236, 245; Wholesale Fruit & Produce Ass'n. v. A. T. & S. F. Ry. Co., 17 I. C. C. 596, 601; Sondheimer Co. v. I. C. R. R. Co., 17 I. C. C. 60, 70, 71; Ouerbacker Coffee Co. v. So. Ry. Co., 18 I. C. C. 566, 570, 571; Asso. Jobbers of Los Angeles v. A. T. & S. F. Ry. Co., 18 I. C. C. 310, 318; Sondheimer Co. v. I. C. R. R. Co., 20 I. C. C. 606; Anawarko Cotton Oil Co. v. A. T. & S. F. R. R. Co., 20 I. C. C. 43, 47; Johnson & Co. v. A. T. & S. F. Ry. Co., 21 I. C. C. 637; Traffic Bureau, Merchants' Exchange v. C. B. & Q. R. R. Co., 22 I. C. C. 496, 505, 506; Plano Milling Co. v. St. L. S. W Ry. Co., 22 I. C. C 360, 362; Paducah Cooperage Co. v. N. C. & St. L. Ry. Co., 22 I. C. C. 226, 231; Investigation of Alleged Unreasonable Rates on Meats, 22 I. C. C. 160, 174; Young & Cutsinger v. L. & N. R. R. Co., 22 I. C. C. 1, 3; Southern Illinois Millers' Asso. v. L. & N. R. R. Co., 23 I. C. C. 672, 677; Blodgett Milling Co. v. C. M. & St. P. Ry. Co., 23 I. C. C. 448; Red River Oil Co. v. T. & P. Ry. Co., 23 I. C. C. 438, 447; In Re Transportation on Wool, Hides and Pelts, 23 I. C. C. 151, 170, 171; Van Natta Bros. v. C. C. C. & St. L. Ry. Co., 23 I. C. C. 1; U. S. v. Oregon R. R. & Navigation Co., 159 Fed. 975, 984; Blackwell Milling & Elevator Co. v. A. T. & S. F. Ry. Co., Unrep. Op. 483; Strasburg Steam Flouring Mills v. S. Ry. Co., Unrep. Op. 531; Lumber from Louisiana to North Atlantic Points, 26 I. C. C. 186, 192; Phil. Team Owners' Pro. Assn. v. Ry. Co., 32 I. C. C. 387, 392; Douglass & Co. v. I. C. R. R. Co., 31 I. C. C. 587, 594; Duncan & Co. v. N. C. & St. L. Ry. Co., 35 I C. C. 477, 483; Mitchell Coal & Coke Co. v. P. R. R. Co., 38 I. C. C. 40, 44; National Dock & Storage

Warehouse Co. v. B. & M. R. R., 38 I. C. C. 643, 650; Transit at Kansas Points, 40 I. C. C. 358, 366; St. Louis (Cupples Station) Terminal Reulations, 40 I. C. C. 425, 433; National League of Commission Merchants of the U. S. v. G. T. Ry. Co. of Canada, 41 I. C. C. 745, 746; Interstate Packing Co. v. C. & N. W. Ry. Co., 42 I. C. C. 189, 195, 196; Eldred Milling Co. v. C. N. R. R. Co., 42 I. C. C. 215, 220; Darby & Brown v. B. & O. R. R. Co., 42 I. C. C. 547; New York Hay Exch. Assn. v. N. Y. C. R. R., 43 I. C. C. 281; Graustein v B. & M. R. R., 45 I. C. C 393, 404; Chamber of Commerce of City of Milwaukee v C., M. & St. P. Ry., 45 I. C. C. 432; Cumberland Transportation Co. v. C. N. O. & T. P. Ry., 45 I. C. C. 444, 446; New Orleans Cotton Exchange v. L. & N. R. R., 46 I. C. C. 712, 721; Royal Milling Co. v. G. N. Ry. Co., 47 I. C. C. 263, 265, 271; Dimmitt-Caudle-Smith L. S. C. v. C. B. & Q. R. R. 47 I. C. C. 287, 320: National Live Stock Exchange v. C. B. & Q. R. R., 47 I. C. C. 380, 397, 398, 401: International Paper Co. v. N. Y. C. R. R., 49 I. C. C. 201; Hood & Sons v. B. & M. R. R., 49 I. C. C. 694, 696; Merchants' Exchange of St. Louis v. T. R. R. Asso. of St. Louis, 50 I. C. C. 474, 475; Strasburg Steam Flouring Mills v. S. Ry., 53 I. C. C. 53; Schreiber Co. v. C. B. & Q. R. R. Co., 53 I. C. C. 227; Mercantile Lumber Co. v. I. C., 53 I. C. C. 663, 668; Gallatin Coal & Coke Co. v. L. & N. R. R., 55 I. C. C. 491, 493; Arkansas Jobbers & Mfrs. Asso. v. Director General, 57 I. C. C. 231, 236; U. S. Cast Iron Pipe & Foundry Co. v. Director General, 57 I. C. C. 442; Anaconda Copper Mining Co. v. Director General, 57 I. C. C. 723, 738; Donner Steel Co. v. D. L. & W., 57 I. C. C. 745, 751; Riter-Conley Mfg. Co. v. Director General, 58 I. C. C. 327; Strasburg Steam Flouring Mills v. S. Ry. Co., 58 I. C. C. 337, 340; Tennessee Copper Co. v. Director General, 59 I. C. C. 253, 256; Sharon Steel Hoop Co. v. Pa. Co., 59 I. C. C. 378, 381; Atlas Cereal Co. v. C. B. & Q., 59 I. C. C. 702; Wharton Steel Co. v. Director General, as Agent, 59 I. C. C. 11, 23; Mercantile Lumber Co. v. I. C. R. R. Co. 59 I. C. C. 128; Carey Mfg. Co. v. Director General, 59 I. C. C. 620, 640, 642, 643 648; Southern Hardwood Traffic Asso. v. Director General, 61 I. C. C. 132, 140; Lehigh Portland Cement Co. v. Director General, 62 I. C. C. 231, 235; American Creosoting Co. v. Director General, 61 I. C. C. 145; Cairo Board of Trade v. A., T. & S. F. Ry. Co., 61 I. C. C. 219; Boston Wool Trade Asso. v. A. & S. Ry. Co., 64 I. C. C. 365, 388; Indianapolis Board of Trade v. B. & O. R. R. Co., 64 I. C. C. 416; Waggoner & Gates Milling Co. v. Director General, 69 I. C. C. 83; Canby Milling Co. v. St. P. M. & O. Ry., 69 I. C. C. 758; Chicago Bridge & Iron Works v. Director General, as Agent, 69 I. C. C. 761, 763; Memphis Freight Bureau v. M. P. R. R. Co., 80 I. C. C. 88, 96.

V. REPARATION.

See Reparation.

§22. In general.

CASES 1887-1908

(a) All privileges accorded on shipments in transit and which affect the value of the service performed must be published in the tariffs, and reparation based on breach of contract for a privilege which was not mentioned in the tariffs must be denied the shipper because its allowance without publication was in violation of law. R. R. Shiel & Company v. I. C. R. R., 12 I. C. C. 211, 215.

IMPORTANT CASES SINCE 1908

(b) Damages will not be awarded where to do so would be to sanction a privilege conditioned upon the use to which a commodity is put. Memphis Freight Bureau v. St. L. & S. F. R. R. Co., 24 I. C. C. 602, 603.

(c) That a transit privilege was in effect both before and after a shipment moved in and of itself furnishes no basis for an award of reparation on such shipment. Deeves Lumber Co. v. A. & V. Ry. Co., 25 I. C. C. 42, 43.

(d) Reparation denied where transit charges were absorbed out of profits and it was not shown that competitors who were not required to pay such charges fixed the prices complainants had to meet in making their sales. Mercantile Lumber Co. v. I. C. R. R. Co., 59 I. C. C. 128.

(e) Reparation denied on transit shipments as to which complainant failed to comply with the tariff requirement of surrender of inbound freight bills. Rumble & Wensel Co. v. Director General, 62 I. C. C. 110, 111.

ALL OTHER CITATIONS

Seaboard Refining Co. v. A. G. S. R. R. Co., 25 I. C. C. 702; Brenner Lumber Co. v. M. L. & T. R. R. & S. S. Co., 34 I. C.

C. 630, 632, 633; Atlantic Lumber Co. v. T. & O. C. Ry., 46 I. C. C. 368, 370; United Chemical & Organic Co. v. Director General, 73 I. C. C. 100.

VI. REASONABLENESS OF CHARGES

See Reasonableness of Rates.

§23. In general.

IMPORTANT CASES SINCE 1908

(a) A transit charge of not exceeding 0.5c has been frequently held by the Commission to be reasonable for the additional service, but the Commission has condemned the undue prejudice that results from the collection of such a charge at one milling point while no charge is made at other milling points on the same through route, including rate breaking points where the rates to and from are essential parts of through rates. Strasburg Steam Flouring Mills v. Southern Ry., 58 I. C. C. 337, 340.

FERRY CHARGES

See Car Ferry; Floatage; Trap Cars.

CASES 1887-1908

(a) A ferry is a means, and a necessary means of commercial intercourse between States, bordering upon dividing waters, and it must be conducted without imposition by States of taxes upon the commerce between them. Gloucester Ferry Co. v. Pennsylvania (U. S. Sup. Ct.), 1 I. C. R. 382.

(aa) The capital stock of the Gloucester Ferry Company, a New Jersey corporation engaged in the transportation of persons and property between Gloucester in that State, and Philadelphia, in Pennsylvania, is not subject to taxation by the State of Pennsylvania. Gloucester Ferry Co. v. Commonwealth of Pa., 1 I. C. R. 382.

(b) To publish tariffs if interstate line. Enterprise Transportation Co. v. Pa. R. R. Co., 12 I. C. C. 326.

(c) A railroad company may without doubt provide by contract with an independent company for the construction of a bridge or a ferry to be used as a part of its line. It can perhaps extend its contract to the operation of the bridge or ferry by its owner when constructed; but in such case the bridge company or the ferry company is not a common carrier. The railroad is the carrier and answerable to the law as such. The bridge or the ferry is really a part of the railroad itself as much as though owned by it. Enterprise Transportation Company v. Pennsylvania R. R., 12 I. C. C. 327, 336.

IMPORTANT CASES SINCE 1908

(d) Section 1 of the Act includes ferries within the term "railroad." Grain Rates from Milwaukee, 33 I. C. C. 417, 424.

(e) Poorly equipped ferries and their charges render that method of getting grain to railroads unsatisfactory. O. W. R. R. & N. Co., Ownership of Steamboats, 33 I. C. C. C. 658, 663.

(f) The Commission has jurisdiction over vehicular ferries operating between points in two states, though engaged only in local ferry service; and their rates, fares, rules and regulations must be filed as required by section 6 of the act. New York-Jersey City Ferry Rates, 37 I. C. C. 103, 106.

(g) Car ferryboats are possibly within the Panama Canal act technically. Maine Central Boat Lines, 40 I. C. C. 272.

(h) A ferry car is one placed on a private siding at an industry and there loaded by a shipper with less-than-carload shipments, and hauled by a carrier to its local freight station for handling and forwarding of contents. In most sections of the country ferry cars are called trap cars. Merriam Hall & Co. v. B. & M. R. R., 42 I. C. C. 435.

(i) Complainant attacked ferry charges of D. L. & W., between Hoboken, and New York, which became effective Oct. 1, 1921, as unjust and unreasonable. Defendant operates a railroad extending from tidewater at New York Harbor through New Jersey, Pennsylvania and New York to Buffalo with a number of branch lines in each of those states. It has extended its operations to the city of New York by means of ferry boats, car floats, lighters, and barges. The ferries are an essential part of its railroad system in handling passenger and baggage to and from New York. On Oct. 1, 1921, the charges were increased 20 per cent on passenger fares and 40 per cent on all other traffic. On August 26, 1920, they were reduced 10 per cent. The percentage of increase made in the ferry charges was the same as that authorized under the general increases of 1920. Vehicular traffic and livestock are classified as freight traffic in accounts of carriers. For service rendered through passengers to or from New

York, using defendant's rail lines beyond Hoboken, an allocation of 2.5c per passenger was made prior to Oct. 1, 1921, and 3c thereafter. An allowance of 2.5c per passenger was made by defendant to the ferry company prior to taking over the operation of the ferries. 3c is the amount paid for each trip by local passengers who buy 10 trip tickets. The charges on horse drawn vehicles had been in effect since 1888, and motor vehicles without material changes since 1903, when they were increased on Oct. 1, 1921. The charges on vehicles include a driver and operator. HELD, the charges for passengers are reasonable but defendant has not shown the justness and reasonableness of its present ferry charges on vehicular and livestock traffic which are unreasonable to extent they exceed charges ineffect prior to Oct. 1, 1921. Board of Commissioners of the City of Hoboken v. D. L. & W. R. R., 78 I. C. C. 582.

(j) Respondent proposed increases in ferry charges at Boston, the only charge being an increase from $5 to $15 for shipments of less than 8,000 pounds. Only one car for a five months' period of inbound or outbound freight would be affected by the charge in question. The relationship of the ferry car charges in the Boston district to each other should be considered equally with their relationship as a whole to the charges for switching carload freight. The ferry car charge on the B. & M., in that district is 2.5c per 100 pounds, minimum $5.85 per car, and at all other stations it is 2c per 100 pounds, minimum $4.50 per car. Uniformity of ferry car charges is also desirable. The record does not indicate that that purpose would be promoted by the proposed rule. HELD, proposed schedule not justified. Switching Charges on Ferry Cars at Boston, Mass., 83 I. C. C. 68.

(ja) Relationship of ferry-car charges in Boston district to each other should be considered equally with their relationship as a whole to charges for switching c. l. freight. Switching charges on Ferry Cars, 83 I. C. C. 68, 70.

(k) Where a grant of a right of way was made by a railroad company to a public service company to afford access to certain ferries landing at a plaza, upon which numbers of people congregated to take passage, an implied or incidental grant to the public service company to erect a fence around its right of way could not be presumed, since such fence would add to the congestion and be a menace to life, and a public nuisance, since it must be presumed that the conditions were within the contemplation of the contracting parties at the time the grant was made, although not then forseen. Public Service Ry. Co. v. Weehawken Tp., (N. J. 1922), 199 Atl. 90.

(l) Where a public service railway company, having been granted a right of way across the property of a railroad company to ferry, attempted to fence off such right of way, thereby excluding jitney competition, the township could resist erection of a fence as a police measure, the plaza through which the right of way extended, though not dedicated, being nevertheless affected with a public interest. Public Service Ry. Co. v. Weehawken Tp., (N. J. 1922), 119 Atl. 90.

(m) The state has no power to fix ferriage rates over a navigable river from a landing place in a sister state back to its own shore. City of Bellaire v. Bellaire, Benwood & Wheeling Ferry Co. (Ohio 1922), 136 N. E. 899.

ALL OTHER CITATIONS

N. Y. C. & H. R. R. Co. v. Freeholders of Hudson, 76 N. J. L. 664, 681, 74 A-954; N. Y. C. & H. R. R. Co. v. Board of Freeholders, 33 Sup. Ct. 269, 272; 227 U. S. 248; Break-Bulk Rates on Grain, 30 I. C. C. 357, 363; Grain Rates from Milwaukee, 33 I. C. C. 417, 424; Absorption of Terminal Charges at Montrose, Iowa, Unrep. Op. A-913; O. W. R. R. & N. Co., Ownership of Steamboats, 33 I. C. C. 658, 663; Grain Rates from Milwaukee, 33 I. C. C. 417, 424; G. T. Ry. Co. of Canada Operation of Car Ferry Co., 34 I. C. C. 49, 50, 51; B. R. & P. Ry. Co. Operation of Car Ferry Co., 34 I. C. C. 52, 53; P. M. and B. & L. E. R. R. Cos' Operation of Car-Ferry Boats, 34 I. C. C. 86, 89; New York-Jersey City Ferry Rates, 37 I. C. C. 103, 106, 110, 113; Maine Central Boat Lines, 40 I. C. C. 272; Merriam, Hall & Co. v. B. & M. R. R., 42 I. C. C. 435, 436; Milk and Cream Rates to New York City, 45 I. C. C. 412, 421; Hood & Sons v. B. & M. R. R., 49 I. C. C. 694, 698; United Shoe Mach. Co. v. B. R. R., 51 I. C. C. 28; United Shoe Machinery Co. v. B. & M. R. R., 55 I. C. C. 206; Boston & M. R. R. v. Great Falls Mfg. Co., (N. H. 1920), 111 Atl. 691 Groton Iron Works v. N.

Y., N. H. & H. R. R. Co., 57 I. C. C. 704; Board of Comm.s of the City of Hoboken v. D. L. & W. R. R. 782.

FINANCE DOCKETS

I. CONTROL AND REGULATION.
§1. In general.
II. LOANS AND GUARANTIES.
§2. In general.
III. EXTENSION, ACQUISITION, OR CONSOLIDATION.
§3. In general.
IV. ABANDONMENT OF LINE.
§4. In general.
V. STOCK, CAPITAL ISSUES, AND FINANCE OPERATION.
§5. In general.
VI. GOVERNMENT GUARANTY.
§6. In general.
VII. FINANCIAL OPERATION.
§7. In general.

CROSS REFERENCES

See Common Carrier §5; Consolidation of Carrier; Evidence §7, §17; Express Companies §24; Monopoly; Panama Canal Act.

I. CONTROL AND REGULATION.

See Control and Regulations.

§1. In General.

IMPORTANT CASES SINCE 1908

(a) The exemption of short-term notes issues from the regulatory power of the Commission under section 20a, paragraph (9) of the act, was a recognition of the necessity of leaving to the carrier, to enable it to quickly and easily meet current financial exigencies, a certain leeway a freedom of action within prescribed limits, in the negotiation of short-term loans. The exemption, however, is confined to the issue of short-term notes and does not extend to securities which the carrier may desire to pledge as securities for such notes. Bonds of Baltimore & Ohio R. R., 67 I. C. C. 10, 11.

(b) Paragraph (2) of section 20a of the act provides that it shall be unlawful for a carrier by railroad to issue securities, even though permitted by the authority creating it, unless and until and then only to the extent that, the Commission authorizes such issue. Any security for the issue of which the Commission's authority is required is void if issued without said authority having been first obtained. Equipment-Trust Certificates of C. & N. W. Ry., 67 I. C. C. 198, 201.

(c) Authority to issue stock can not be claimed as a right. It is within the Commission's discretion, subject to the limitation that it shall grant authority only if it is able to make the necessary finding as provided in section 20a of the act. If a carrier is lawfully entitled to earn a return upon the fair value of property acquiring out of surplus, this right will persist whether or not a stock issue is permitted. Stock of D. L. & W. R. R., 67 I. C. C. 426, 431.

(d) An electric interurban railroad, not operated as a part of a general steam railroad system of transportation, held not within the provisions of paragraph (18), section 1, of the act and the Commission is without jurisdiction to issue a certificate of convenience and necessity permitting it to resume the operation in interstate commerce of its property, heretofore operated under a lease, the lessee having defaulted and surrendered the property to the applicant. Public Convenience of Michigan United Rys., 67 I. C. C. 452.

(e) Panhandle & Santa Fe Ry. Co. proposed operation of a line of railroad in Oklahoma and Texas belonging to the North Texas & Santa Fe Ry. Co., which was in operation in interstate commerce prior to the effective date of paragraph (18) of section 1 of the act, found not within the Commission's jurisdiction and certificate of public convenience and necessity is unnecessary. Public Convenience Application of P. & S. F. Ry., 70 I. C. C. 75.

(f) While it is within the Commission's province to authorize the extension by indorsement of the maturity of receivers' certificates, its not to be understood that by giving such authority the Commission passes upon or in any wise determines or affects the nature of the right of liens to be enjoyed under said certificates or the priority of said certificates in relation to any other liens. Receiver's Certificates of M. K. & T. Ry. 70 I. C. C. 77.

(g) Proposed acquisition of all outstanding stock by the Western Pacific R. R. Corp., held not to be within the scope of paragraph (2) of section 5 of the act, as the Western Pacific is not a carrier engaged in the transportation of passengers or property subject to the act; and such proposed acquisition does not constitute a consolidation of two or more carriers into one corporation, management, and operation of properties

theretofore in separate ownership, management, and operation within the meaning of paragraph (6) of that section. Stock of D. & R. G. W. R. R., 70 I. C. C. 102.

(h) Proposed acquisition and operation of the properties of the Denver & Rio Grande R. R. Co., held not within the scope of paragraph (18) of Section 1 of the act because such property was in existence and was operated in interstate commerce prior to the effective date of that paragraph. Stock of D. & R. G. W. R. R., 70 I. C. C. 102.

(i) The judgment of a court of competent jurisdiction can not be made the subject of collateral attack before the Commission in a proceeding involving a proposed issue of stock. Stocks of Denver & Rio Grande Western R. R., 70 I. C. C. 106.

(j) In the interpretation of statutes the administration of which is committed to such special tribunals as the executive departments, the Supreme Court of the United States has followed the interpretations of the administrative bodies in cases of doubtful meaning, and has deemed a reenactment of any such statute with knowledge of the administrative interpretation, without corrective change, as a congressional sanction or adoption of that interpretation. Maintenance Expenses under Section 209, 70 I. C. C. 125.

(k) Proposed contracts granting trackage rights only held not to be within the scope of paragraph (18) of section 1 of the act, and authority from the Commission to exercise the rights thereunder is unnecessary. Cleveland Passenger Terminal Case, 70 I. C. C. 346.

(l) Agreements whereby one carrier proposed to acquire trackage rights from other carriers found not to fall within the jurisdiction conferred by paragraph (18) of section 1 of the act, and authority from the Commission for such grants are unnecessary. Cleveland Passenger Terminal Case, 70 I. C. C. 346.

(m) The suitable location of a passenger terminal within a great city is a matter which can best be determined locally rather than by a commission sitting in Washington, and a referendum vote is entitled to great weight in this connection. Cleveland Passenger Terminal Case, 70 I. C. C. 350.

(n) The Commission is not persuaded that the reservation of "air rights" of terminals in the hands of private interest is in accordance with sound public policy. Cleveland Passenger Terminal Case, 70 I. C. C. 351.

(o) Authority to procure authentication and delivery to its treasurer of first and refunding mortgage gold bonds and to pledge and repledge from time to time all or any part thereof as collateral security for any note or notes which may be issued under paragraph (9) of section 20a of the act without the Commission's authorization therefor having first been obtained, granted. Bonds of B., C. R. & N. Ry. and C. R. I. & P. Ry., 70 I. C. C. 499.

(p) New York, New Haven & Hartford R. R. Co., application for authority to execute a certain indemnity bond to the present stockholders of the Fruit Growers Express Co., dismissed for want of jurisdiction. Indemnity Bond of N. Y., N. H. & H. R. R., 70 I. C. C. 517.

(q) Proposed execution of a contract for purchase of the Lansing Connecting R. R., by the Grand Trunk Western Ry. Co., held not to be within the provisions of section 20a of the act. Applicant does not propose to issue any notes covering deferred payments and is not to assume obligation or liability as lessor, lessee, guarantor, indorser, or otherwise in respect of securities of the Lansing. The only "security" for the issue of which authority is sought is the final agreement into which the applicant contemplates entering with the Lansing and the Commission has no jurisdiction over such contract or agreement. Control of G. T. W. Ry. with L. C. R. R., 70 I. C. C. 554.

(r) A transfer of stock from one party to another does not fall within the purview of the act, and authorization therefore by the Commission is not required. Stock of the Valley & Siletz R. R., 70 I. C. C. 556.

(s) Principle that consideration must be given to the business of the carrier as a whole is not to be extended so as to include operating losses of a carrier in the operation of its affiliated companies, since that view would disregard rights of the minority. Nor is the question of profit and loss a matter to be passed upon by the courts alone. Such a construction of paragraph (18) of section 1 would condemn the provision on constitutional grounds, since any refusal on the Commissioner's part to consider

operating losses might very well result in a denial of the application, so that the effect of the paragraph would then be to require the carrier to continue to operate at a loss, and amount to confiscation. Abandonment of Hawkinsville & Florida Southern Ry., 70 I. C. C. 566, 568.

(t) Chicago, New York & Boston Refrigerator Co., found not to be subject to the guaranty provisions of section 209 of the transportation act, 1920. It is an equipment-owning company which does not own or operate motive power, roadbed, or tracks; does not collect from shippers charges for its services; and does not control its cars while in trains. It leases its cars to railroads, depending for its revenue upon car hire and commissions. Guaranty Claim of C., N. Y. & B. Refrigerator Co., 70 I. C. C. 575.

(u) It is definitely and unmistakably provided under paragraph (1) of section 5 of the act that an agreement for the pooling of freights or the division of earnings shall be unlawful unless and until the specific approval of the Commission. Securities Application of P. & W. V. Ry., 70 I. C. C. 682, 685.

(v) In the development of the transportation act, 1920, as a constructive measure for the solution of the railroad problem, great importance was attached by Congress to the ultimate consolidation of the carriers into a limited number of great systems. It was the intent of Congress that complete control over the situation should be in the Commission's hands, so that the working out of a constructive policy might be safeguarded in every possible way, and so that consolidations or other union of interest might not be effected without the consent of the Commission. Securities Application of P. & W. V. Ry., 70 I. C. C. 682, 687, 688.

(w) In the case of ambiguity, it is permissable, in interpreting a statute, to refer to the reports of Congress. Securities Application of P. & W. V. Ry., 70 I. C. C. 685.

(x) Susquehanna River & Western R. R. Co., proposed acquisition and operation of a narrow-guage line of railroad extending from Bloomfield Junction to Blain, Perry County, Pa., held not to be within the scope of paragraph (18) of section 1 of the act, as the line was in operation by the applicant prior to the effective date of that paragraph has at no time been abandoned. Public Convenience Application of S. R. & W. R. R., 70 I. C. C. 825.

(y) Delivery of a note by a subsidiary to a proprietary company, without complying with the provisions of section 20a of the act which provides that it shall be unlawful for any carrier to issue any securities, even though permitted by the authority creating it, unless authorized by the Commission, is, by the plain terms of the statute, void, and no means are provided for validating it. It is not an obligation of the carrier, and may not be carried on its books as such. Notes of St. L. S. F. & T. Ry., 70 I. C. C. 828.

(z) Chicago, New York & Boston Refrigerator Co., following Guaranty Claim of C. N. Y. & B. Refrigerator Co., 70 I. C. C. 575, such carrier found not to have been, during any part of the guaranty period, a carrier by railroad within the meaning of section 209 of the tansportation act, 1920. Application for a certificate entitling claimant to a guaranty payment, dismissed. Guaranty of C., N. Y. & B. R. Co., 71 I. C. C. 7.

(aa) Application of The Pullman Co., which is in part a common carrier and in part a manufacturing corporation, for authority to issue capital stock for the purpose of acquiring all the assets of the Haskell & Barker Car Co. (Inc.), another manufacturing corporation, HELD: It was not necessary to apply to the Commission for permission to issue such securities, but since there is room for doubt concerning the matter, the Commission has decided to assume jurisdiction in the premises. Stock of The Pullman Co., 71 I. C. C. 11, 14.

(bb) Allegheny & South Side Ry. Co., held not to be subject to the provisions of section 204 of the transportation act, 1920, relating to reimbursement of deficits. Applicant is not a common carrier subject to the Interstate Commerce Act and was not during any part of the Federal control period a common carrier engaged in general transportation. Deficit Claims of A. & S. S. Ry., 71 I. C. C. 90.

(cc) The Commission is without authority to certify any amount for payment under section 204 of the transportation act, unless the claimant during that part of the period of Federal control in which it operated independently was, in fact and in law, a carrier by railroad engaged as a common carrier in general transportation, and the burden rests upon a claimant to establish its

status under that section. Deficit Claims of Allegheny & S. S. Ry., 71 I. C. C. 90, 91.

(dd) Common carrier held not to be subject to the guaranty provisions of section 209 of the transportation act, 1920. Applicant is not a common carrier subject to the interstate commerce act, and was not during any part of the Federal control period a common carrier engaged in general transportation. Payment of A. & S. S. Ry., 71 I. C. C. 93.

(ee) Short Lines held not to be subject to the guaranty provisions of section 209 of the transportation act, 1920. Applicant is not a common carrier subject to the act, and was not during any part of the Federal control period a common carrier engaged in general transportation. Payment of A. & S. S. Ry., 71 I. C. C. 93.

(ff) The Commission is without authority to certify any amount for payment under section 209 of the transportation act, 1920, unless the claimant during that part of the period of Federal control in which it operated independently was, in fact and in law, a carrier by railroad engaged as a common carrier in general transportation. Payment of A. & S. S. Ry., 71 I. C. C. 93.

(gg) Allocating revenues and expenses of a branch line on a mileage prorate basis is open to objection, if made use of as the sole test, where is appears that the mileage of the branch constitutes a very small proportion of the total system mileage. Abandonment of Part of Branch Line by N. P. Ry., 71 I. C. C. 169.

(hh) While it is within the commission's province under section 20a of the act to authorize the issuance of receivers' certificate it is not to be understood that by giving such authority the commission passes upon or in any wise determines or affects the nature of the rights or liens to be enjoyed under said certificates or the priority of said certificates in their relation to any other liens. Certificate of Receivers of C. P. & St. L. R. R., 71 I. C. C. 283, 284.

(ii) Where the public interest requires the operation of railroad property, the commission can not for the purposes of fixing a loan criterion assign to that property only the salvage value attaching to an abandoned road. Loan to M. & N. A. R. R., 71 I. C. C. 395, 399.

(jj) The commission can not construe the act as imposing the stupendous and seemingly impractical task of analysis of every means of financing equipment for all carriers, or as precluding it from determining the most appropriate method for financing the equipment needs of a single carrier. This seems particularly true if the commission is to consider the purposes of loans under section 210 as limited by the necessities of the period immediately following the termination of Federal control. Loan to Seaboard-Bay Line, 71 I. C. C. 464, 468.

(kk) Chesapeake Steamship Co. found not to be a carrier within the meaning of paragraph (a) of section 209 of the transportation act, 1920, and the guaranty provisions of that section are not applicable. It is a carrier by water and does not operate any railroad line. Its capital stock is owned by the Atlantic Coast Line and Southern railroads, which do not exercise any actual control or direction of applicant's operations. Guaranty Status of Chesapeake S. S. Co., 71 I. C. C. 484.

(ll) The commission has no jurisdiction over a proposed assumption of obligations and liabilities by a carrier which is a common carrier by water and not a "common carrier by railroad," or otherwise a "carrier" within the meaning of section 20a of the act. Securities of Seaboard-Bay Line Co., 71 I. C. C. 501, 502.

(mm) Baltimore Steam Packet Co., found to be a common carrier by water and not a "common carrier by railroad," or otherwise a "carrier" within the meaning of section 20a of the act, and the commission is without jurisdiction over a proposed assumption of obligations and labilities by it. Securities of Seaboard-Bay Line Co., 71 I. C. C. 501, 502, 503.

(nn) Corporate policy, in a case of bond retirements, must be determined by the carrier's directors, and, since the responsibility for that determination rests with them, the commission does not feel that the substitution of its judgment for theirs would be warranted. Bonds of N. P. Ry., 71 I. C. C. 583, 584.

(oo) Great Northern Equipment Co., found not subject to the guaranty provisions of section 209 of the transportation act, 1920. It owns equipment leased to and operated by the Great Northern Ry. Co., its entire capital stock owned

by that company, it is not an operating company, and all expenses in connection with the maintenance of its equipment and all rental collected from carriers other than the Great Northern for the use of such equipment is reflected in the accounts of the railway company. Guaranty Status Great Falls & Teton County Ry., et al, 71 I. C. C. 607, 608.

(pp) A carrier must make application to the commission under section 20a of the act for authority to issue stock and to assume obligations and until such application is made the commission is unable to pass upon a proposed acquisition of control by purchase of capital stock and bonds. The stock proposed to be acquired would have no validity without the commission's authorization. Proposed Control of S. N. by W. P. R. R., 71 I. C. C. 653.

(qq) Sacramento Northern R. R. Co., the commission is by no means convinced that this carrier is an interurban electric railway as that term is used in the statute, although much of the transportation service rendered by it is similar to that rendered by electric interurban railways. Proposed Control of S. N. by W. P. R. R., 71 I. C. C. 653, 656.

(rr) Congress obviously did not intend to exclude all electric railways from the operation of section 20a of the act. If a carrier were to completely electrify its system it would not thereby become a "street, suburban, or interurban electric railway." Some of the operations might partake of the nature of street, suburban, or interurban railway service, but its business as a whole would be of a far broader character. Proposed Control of S. N. by W. P. R. R., 71 I. C. C. 653, 657.

(ss) The fact that a road is operated electrically does not remove it from the commission's jurisdiction under section 20a of the act. Proposed Control of S. N. by W. P. R. R., 71 I. C. C. 653, 657.

(tt) Gulf Ports Terminal Ry. Co., on further hearing, construction of an extension in Baldwin and Mobile Counties, Ala., held not to be within the provisions of paragraph (18) of section 1 of the act, and no certificate of public convenience and necessity is required. Proposed extension was begun prior to enactment of the transportation act, 1920, and there is nothing to indicate that the construction of the extension was ever definitely abandoned. Original report, 70 I. C. C., 358. Construction Application of G. P. T. Ry., 71 I. C. C. 759.

(uu) The term "public convenience and necessity" implies both convenience and necessity, since the words are not synomymous but must be given a separate and distinct meaning. Necessity does not exist unless the inconvenience would be so great as to amount to an unreasonable burden to the community. The words imply an urgent, immediate public need. Public-Convenience Application of A. & S. A. B. Ry., 71 I. C. C. 784, 792.

(vv) Contention that if paragraph (18) to (22) of section 1 of the act apply to a road located wholly within a State, they are unconstitutional and void, because beyond the power of Congress to enact, HELD: The interpretation by the Supreme Court in Texas v. Eastern Texas R. R. Co., 258 U. S., 204, establishes that Congress could and did authorize the commission to sanction the discontinuance of interstate and foreign commerce on a line of railroad located wholly within one state and operated by a corporation of that State which does not operate any line of railroad extending through more than one State. Public-Convenience Application of D. & N. M. Ry., 71 I. C. C. 795, 799.

(ww) Contention that the commission should construe paragraphs (18) to (22) of section 1 of the act as requiring it to consider only the question of whether there is a public need for the service and to hold that question of loss in operation is a matter which it can not take into account at all, and that the question of gain or loss is a matter entirely unrelated to public convenience and necessity, HELD: Such a construction loses sight of the familiar doctrine of the courts that the very fact that a line of railroad does not pay the expense of running its trains is cognent evidence that public convenience and necessity does not require it to be kept in operation. Public-Convenience Application of D. N. M. Ry., 71 I. C. C. 795, 799.

(xx) While the commission may not with propriety decide that an act of Congress is unconstitutional, it must as clearly avoid any suggested construction of a statute which would render it ineffectual, and adopt a construction, when called upon to construe it, which will sustain it, if such a construction is reasonable and consonant with the lang-

uage employed. Public-Convenience Application of D. N. M. Ry., 71 I. C. C. 795, 799.

(yy) "Public convenience and necessity" has been defined as "a strong or urgent public need." A public need can hardly be predicated upon the demand of shippers who may desire to introduce the element of competition in order to improve their position in their own competitive field. Public-Convenience Application of Utah Terminal Ry., 72 I. C. C. 89, 93.

(zz) So long as the available supply of a commodity can promptly reach the consuming public over existing lines, it is difficult to perceive how public convenience and necessity can be served by the establishment of competing facilities. Public-Convenience Application of Utah Terminal Ry., 72 I. C. C. 89, 93.

(3a) While one of the purposes of the transportation act, 1920, was to preserve competition between carriers, the provisions of paragraphs (18) to (20) of section 1 of the interestate commerce act negative any presumption that it was the purpose of Congress to permit the construction of new and competitive lines of railroad where existing facilities are adequate or can be made so by the exercise of available administrative remedies. Public-Convenience Application of Utah Terminal Ry., 72 I. C. C. 89, 93, 94.

(3b) Fact that a line of raliroad has been built and is in operation in intrastate commerce can not enter into the solution of the problem with respect to its operation in interstate commerce, since it was constructed with full knowledge that it could not operate in interstate commerce until it had applied for and received the certificate required by law. Any other treatment of the case would render the administration of paragraphs (18) to (20) of section 1 of the act farcial in the extreme. Public Convenience Application of Utah Terminal Ry., 72 I. C. C. 89, 94.

(3c) Whether or not a corporation organized to engage in interstate commerce may lawfully construct a line of railroad wholly within the limits of one State and undertake its operation in intrastate commerce before obtaining the commission's certificate, it can not properly urge the circumstances that its capital commitment has been made and that therefore the commission's certificate should issue as a matter of course to permit it to engage in interstate commerce. Public-Convenience Application of Utah Terminal Co., 72 I. C. C. 89, 94.

(3d) While one of the purposes of the transportation act, 1920, was to preserve competition between carriers, the provisions of pragraphs (18) to (20) of section 1 of the interstate commerce act negative any presumption that it was the purpose of Congress to permit the construction of new and competitive lines of railroad where existing facilities are adequate or ean be made so by the exercise of available administrative remedies. Public-Convenience Application of Utah Termnal Ry., 72 I. C. C. 89, 94.

(3e) Contention by State commission that State law governing the construction of railways should be complied with before action is taken by the commission HELD, Commission unable to conclude that compliance with a State law on the part of the carrier is prerequisite to the commission's consideration of a construction application, however necessary such compliance may be prior to actual construction. Construction by Los Angeles & Salt Lake R. R., 72 I. C. C. 147.

(3f) Proposed contract with the Lake Erie & Western R. R. Co., for the joint purchase, exchange, and use of materials and supplies, held not to constitute a means of acquiring control within the meaning of paragraph (2) of section 5 of the act. Nickel Plate-Lake Erie & Western Contract, 72 I. C. C. 151.

(3g) The definition of "transportation" in section 1 of the interstate commerce act is of doubtful value as an aid in determining the meaning of "system of transportation" as used in section 209 of the transportaton act, 1920. Guaranty Claim of Central Elevator & Warehouse Co., 72 I. C. C. 169, 175.

(3h) No definition of the term "system of transportation" appears in either the transportation act or interstate commerce act, and the definition "transportation" in section 1 of the interstate commerce act is of doubtful value as an aid in determining the meaning of "system of transportation" as used in section 209 of the transportation act, 1920. Guaranty Claim of Central Elevator and Warehouse Co., 72 I. C. C. 169, 175.

(3i) Following Lease of Panhandle by Pennsylvania R. R., 72 I. C. C. 128, a lessee should not have the power to dispose of securities representing its proprietary interest in lessor companies with-

out the commission's consent. New York Central Leases, 72 I. C. C. 243, 245.

(3j) While it is within the commission's province to give authorizaton and consent under secton 20a of the act for the issuance of receiver's certificates, it is not to be understood that by giving such authority, it passes upon or in any wise determines or affects the nature of the rights or liens to be enjoyed under such certificates or the priority of the certificates in their relation to other liens. St. Louis, El Reno & Western Receiver's Certificates, 72 I. C. C. 257, 258.

(3k) Chicago & Alton R. R. Co., application of the Chicago, Rock Island & Pacific Ry. Co. for an order approving the ownership and holding of preferred and common capital stock, equal to 25.8 per cent of the total outstanding capital stock of the Alton Company, found not to involve an acquisition of control by the Rock Island Company, and not within the jurisdiction conferred by paragraph (2) of section 5 of the act. Purchase of Stock of C. & A. by Rock Island 72 I. C. C. 273.

(3l) Where branch line is located wholly within a state, and constitutes a part of an interstate system of transportation and is being used for the purpose of transporting interstate as well as intrastate traffic, the commission has jurisdiction to pass upon application for its abandonment. Abandonment of Branch Line by Great Northern, 25; Abandonment of Line by C. & S. Ry., 72 I. C. C. 315, 316.

(3l) Where branch line is located wholly within a state, and constitutes a part of an interstate system of transportation and is being used for the purpose of transporting interstate as well as intrastate traffic, the commission has jurisdiction to pass upon application for its abandonment. Abandonment of Branch Line by Great Northern, 25; Abandonment of Line by C. & S. Ry., 72 I. C. C. 315 316.

(3m) When a part of a railway system fails to earn operating expenses, the taxing authorities, in the public interest, may well give consideration to the possibilty of affordng relief to the extent of their authority. Abandonment of Line by Colorado & Southern Ry., 72 I. C. C. 315, 319.

(3n) There is no suggestion in the Federal control act that it was the purpose of Congress or the President to make a relinquishment of carriers taken under Federal control effective retroactively. Deficit Status of Abilene & Southern Ry., 72 I. C. C. 333, 334.

(3o) Aside from the question whether a carrier, in the public interest, should be permitted, in order to secure traffic from a competitor, to buy control of another at a price greatly in excess of the value of the physical property involved, the commission must be convinced that the price to be paid is a reasonable one. Control of Dayton-Goose Creek Ry. by N. O., T. & M. Ry., 72 I. C. C. 377.

(3p) Paragraph (18) of section 15a of the act was designed primarily to encourage enterprises in a territory which is deficient in transportation facilites, and its application should not be extended to lines to be built primarily to benefit the carrier, and indirectly the public, in the handlng of through traffic. Kansas, Oklahoma & Gulf Extension, 72 I. C. C. 392, 395.

(3q) The commission has jurisdiction to pass upon an application for abandonment of a branch line located wholly within a state and which constitutes a part of an interstate system of transportation. Its operating results are reflected in the accounts of the operating company, and the latter would be required to bear or make good any deficits from its operation. Abandonment of Branch Line by Southern Pacific Co., 72 I. C. C. 404, 405.

(3r) An increase in the dividend rate on preferred stock is a matter within the commission's jurisdiction under paragraph (2) of section 20a of the act. Increase in Dividend Rate on Preferred Stock by Virginian Ry., 72 I. C. C. 473.

ALL OTHER CITATIONS

Proposed bond issue by N. Y. C. & H. R. R. R. Co., 31 I. C. C. 147, 152; Lease of Valley Terminal Ry., 65 I. C. C. 105, 109; Final Settlement with Little Cottonwood Co., 65 I. C. C. 189; Gulf Ports Terminal Ry. Loan, 65 I. C. C. 421, 423; St. Joseph Belt Ry. Certificate, 65 I. C. C. 443, 447; Final Settlement with Atlanta & St. Andrews Bay Ry., 65 I. C. C. 626; Final Settlement with Fourche River Valley & Indian Territory Ry., 65 I. C. C. 708; Bonds of Union Pacific R. R., 65 I. C. C. 735, 736; Bonds of Oregon-Washington R. R. & Nav. Co., 65 I. C. C. 739, 740; Settlement with Monson R. R., 65 I. C. C. 781; Bonds of New York Central, 65

I. C. C. 534, 539; Bonds of Michigan Central R. R., 65 I. C. C. 544, 546; Bonds of Cleveland, Cincinnati, Chicago & St. Louis Ry., 65 I. C. C. 549, 552; Note of Toledo & Ohio Central Ry., 65 I. C. C. 556, 557; Note of Zanesville & Western Ry., 65 I. C. C. 559, 560; Note of Kanawha & Michigan Ry., 65 I. C. C. 562, 563; Note of Lake Erie & Western R. R., 65 I. C. C. 565, 566; Note of Cincinnati Northern R. R., 65 I. C. C. 568, 569; Notes of Cleveland, Cincinnati, Chicago & St. Louis Ry., 65 I.C. C. 764, 765; Notes of New York Central R. R., 65 I. C. C. 787, 788; Notes of Michigan Central R. R., 65 I. C. C. 790, 791; Construction of the word "Deficit," 65 I. C. C. 765, 770, 771; Construction of the word "Deficit," 66 I. C. C. 765, 770, 771; Bonds of Baltimore & Ohio R. R., 67 I. C. C. 10, 11; Bonds of Chicago & Eastern Illinois Ry., 67 I. C. C. 61, 64; Notes of Pittsburgh & Lake Erie R. R., 67 I. C. C. 94, 95; Public Convenience Application of Western Pacific R. R., 67 I. C. C. 135; Public Convenience Certificate to A., T. & S. F. Ry., 67 I. C. C. 145; Equipment-Trust Certificates of C. & N. W. Ry., 67 I. C. C. 198, 201; Public Convenience and Necessity to P. N. & N. Y. R. R., 67 I. C. C. 252; Application of W. & C. C. 293; Stock of D. L. & W. R. R., L. E. Ry. to Pledge Securities, 67 I. 67 I. C. C. 426, 431, 432; Public Convenience of Michigan United Rys., 67 I. C. C. 452; Public Convenience of D. & I. R. R. R., 67 I. C. C. 454; Public Convenience of Missouri Pacific R. R., 67 I. C. C. 479; Public Convenience Application of T., O. & E. R. R., 67 I. C. C. 484; Certificate of Copper Range R. R., 67 I. C. C. 502; Public Convenience Application of E., I. & T. H. Ry., 67 I. C. C. 509; Public Convenience Application of U. & N. Ry., 67 I. C. C. 554; Certificates of Wichta Falls & Northwestern Ry., 67 I. C. C. 389, 390; Certficates of Toledo, St. Louis & Western R. R., 67 I. C. C. 559, 560; Bonds of Chicago & Western Indiana R. R., 67 I. C. C. 609; Public Convenience Application M. & E. T. Ry., 67 I. C. C. 744; Public Convenience Application of P. R. V. R. R., 67 I. C. C. 748; Public Convenience Application of T. & N. C. Ry., 67 I. C. C. 779; Public Convenience Application of G. T. W. Ry., 67 I. C. C. 780; Certificate to Arkansas & Louisiana, Missouri Ry., 67 I. C. C. 781, 785; Pittsburgh & W. Virginia Ry. Co., 67 I. C. C. 786; Certificate to Texas City Terminal Ry., 67 I. C. C. 787; Public Convenience Application of G. T. W Ry., 67 I. C. C. 780; Application of Louisiana Ry. & Nav. Co., 67 I. C. C. 808. Kansas City Southern, 75 I. C. C. 223, 226; Rules for Storing and Sacking Cement, 78 I. C. C. 693, 698; Minneapolis, St. P. & S. S. M. Ry. Co. v. Railroad Commission (Wisc. 1924) 197 N. W. 352; United States v. L. & N. R. R. Co., 212 Fed 486, 492; affirmed 236 U. S. 318; Intertsate Commerce Act. U. S. v. N. C. & St. L. Ry., 271 Fed. 254, 260.

§1a. Constitutionality or Construction of
IMPORTANT CASES SINCE 1908

(a) Strict interpretation of the word in estimating cost of reproduction new would require substitution of new materials for materials which are known to have been secondhand when road was "new" or first built. The commission does not think that the act requires or contemplates this, but that property to be reproduced is existing property as it was when put into present service. Texas Midland 75 I. C. C. 1, 35.

(b) Valuation act makes clear intent of Congress to provide for investigation and marshaling of every fact bearing upon value of carrier property, basis of which is inventory or list of physical property; valuation to be revised and corrected by commission from time to time. Such inventory prepared so as to put beyond cavil physical property possessed by carrier at date of inventory and kept current to like degree as long as may be necessary, will be of underlying and permanent value; inspection of property by some representative of the commission or his ascertainment of such facts as demonstrate existence of property to a reasonable certainty, for preparation of inventory, being necessary. Texas Midland 75 I. C. C. 109, 110.

(c) Congress was aware of decisions of Supreme Court in 169 U. S., 466, and 174 U. S., 739, when it enacted section 19a of the act, and it is proper to assume that doctrine of these cases led it to provide that property owned or used by common carrier for its purposes as such should be treated separately from property held for purposes other than those of common carrier in respect to ascertaining and reporting value which commission is required to make by the act. San Pedro, Los Angeles & Salt Lake 75 I. C. C. 508.

(d) The so-called "recapture" para-

graph of Transportation Act 1920, §442, adding. §15a pars. 5-17. to the Interstate Commerce Act, although the act makes no special provision for the judicial consideration of its reasonableness on the issue of confiscation, HELD not unconstitutional, as giving no opportunity for a judicial hearing as to whether the return fixed is a fair return, since resort to the courts for such an inquiry exists under Judicial Code, §§208, 221. and it is only where such opportunity is withheld that a provision for legislative fixing of rates violates the federal Constitution. Dayton-Goose Creek Ry. Co. v. United States, 44 Sup. Ct. 169.

ALL OTHER CITATIONS

Texas Midland, 75 I. C. C. 1, 14, 19, 32, 34, 44,, 53, 54, 62, 69, 70, 109, 110, 114, 121, 123, 125, 126, 127, 130, 141, 159, 160, 162, 163, 175, 176; Kansas City Southern, 75 I. C. C. 223, 229, 257, 258, 259; San Pedro, Los Angeles & Salt Lake, 75 I. C. C. 463, 466, 467, 473, 486, 501, 507, 508; Atlanta, Birmingham & Atlantic, 75 I. C. C. 645, 665, 670; Adriatic Mining Co. v. C. & N. W. Ry. Co., 78 I. C. C. 611, 632; Dayton-Goose Creek Ry. Co. v. United States, 44 Sup Ct. 169; Pittsburg & W. V. Ry. Co. v. Interstate Commerce Commission, 293 Fed. 1001.

II. LOANS AND GUARANTEES.

§2. In General.

IMPORTANT CASES SINCE 1908

(a) The Commission cannot undertake the formation of an equipment corporation or corporations, but upon presentation of a definite, well matured, and workable plan capable of application in the immediate future, it will give preferred consideration to applications for loans to or for the purpose of such corporation. It is both desirable and practicable to devise such a plan in the case of refrigerator equipment, and the Commission particularly commends this matter to the attention of the railroad executives. Principles to be Observed in Recommending Loans, 65 I. C. C. 12.

(b) It will be the policy of the Commission not to recommend loans in cases where applicants have not clearly exhausted every effort to take care of maturities by extension, by refunding, and by every other means; and all applications should set forth as definitely as possible by whom and in what amounts the maturing obligations are held and what steps have been taken to extend, refund, or otherwise provide for them. The Commission will emphasize the necessity for self-help in all cases and will expect applicants to assume their fair share of the burden. Principles to be Observed in Recommending Loans, 65 I. C. C. 12, 14.

(c) No loans for the purpose of making additions and betterments will be recommended without satisfactory assurance that the government funds will be met by such contributions from the carriers as it is within their power to furnish. Principles to be Observed in Recommending Loans, 65 I. C. C. 12, 14.

(d) One of the prerequisites to the making of loans to carriers under section 210 of the transportation act, 1920, is the finding by the Commission that the applicants are unable to provide themselves with the necessary funds from other sources. Southern Pacific Co. Loan, 65 I. C. C. 365, 366.

(e) Under a literal interpretation of the concluding clause of paragraph (b) of section 210 of the transportation act, 1920, the majority of railroads would be unable to qualify for loans. The remainder of the roads, while able to make the showing that they are unable to obtain funds from other sources, generally can not make the further showing required by the statute governing prospective earning power and security to be offered. Under these conditions it would be practically impossible to make any loans, and the section would be reduced to a nullity. Applications for Loans, 65 I. C. C. 407, 408.

(f) It was undoubtedly the legislative intent that the railroads should be enabled, through loans made under section 210 of the transportation act, 1920, expeditiously to move the commerce of the country, to meet maturing capital obligations and otherwise properly to serve the public during the transition period of two years immediately following the termination of federal control. Applications for Loans, 65 I. C. C. 407, 408.

(g) It is obvious that freedom of action in the negotiation of short-time loans would be substantially curtailed if, before each issue of notes, it were necessary to obtain an order authorizing the pledge of bonds to be offered as security therefor. The necessity for such loans can not always be foreseen, and the opportunity to make them upon favorable terms might be lost during the delay incident to securing such author-

ization. Advance authorization of the pledge of bonds as security for short term notes is therefore in harmony with parargaph (9) of section 20a of the act. Bonds of Baltimore & Ohio R. R., 67 I. C. C. 10, 11.

(h) The Commission is required to make investigation of securities before authorizing their issue, and can not with propriety issue general authority to pledge as collateral security bonds, stocks, or other securities of any and every character and description which are or may hereafter be held in the treasury of an applicant. Application of W. & L. E. Ry. to Pledge Securities, 67 I. C. C. 293.

(i) Authority to assume obligation or liability in respect of the payment of unpaid principle and interest of three promissory notes issued in connection with the purchase of certain equipment granted. Securities, etc., of C. & M. R. R., 70 I. C. C. 9.

(j) Cumberland & Manchester R. R. Co., authority to assume obligation or liability in respect of equipment-trust certificates by entering into an equipment-trust agreement under which the certificates will be issued by the Union Trust Co. of Pittsburgh; by indorsing upon each certificate its guaranty of the payment of the principal and dividends thereof; and by entering into a lease of the trust equipment, thereby agreeing to pay rent sufficient to pay the principal and dividends of such certificates, granted. Securities, etc., of C. & M. R. R., 70 I. C. C. 9.

(k) Cumberland & Manchester R. R. Co., authority to issue and sell general mortgage gold bonds, the proceeds thereof to be used for additions and betterments to road and equipment, granted. Securities, etc., or C. & M. R. R., 70 I. C. C. 9.

(l) Cumberland & Manchester R. R. Co., authority to pledge first-mortgage gold bonds with the Secretary of the Treasury as collateral security for a loan from the United States, granted. Securities of C. & M. R. R., 70 I. C. C. 9.

(m) Ann Arbor R. R. Co., authority to issue 6 per cent bonds under its improvement and extension mortgage as amended; part thereof to be pledged in substitution for a like amount of 5 per cent bonds issued under its original improvement and extension mortgage, and part in exchange for a like amount of 5 per cent bonds now held in its treasury, granted. Bonds of A. A. R. R., 70 I. C. C. 36.

(n) Authority to issue rent notes under a contract to be entered into pursuant to National Ry. Service Corp.'s equipment-trust agreement; to assume obligation or liability as indorser and guarantor in respect of obligations of the Service Corporation to the United States; to pledge with the Secretary of the Treasury refunding mortgage bonds, and interests and equities in other bonds to secure the repayment of a loan to the Service Corporation, and any obligation evidencing the same, and the performance of said obligation of indorsement and guaranty; and to transfer, assign, and set over unto the Bankers Trust Co., trustee under the Service Corp.'s equipment-trust agreement, interests and equities in certain securities subject to prior pledges, liens, interests, and equities therein, granted. Notes, etc., of W. & L. E. Ry., 70 I. C. C. 44.

(o) Upon supplemental report, former report 67 I. C. C., 362 authority granted to issue refunding and extension mortgage gold bonds for the purpose of reimbursing its treasury for expenditures made for retirement of equipment obligations and for additions and betterments to roadway structures. Bonds of M. & St. L. R. R., 70 I. C. C. 56.

(p) Authority granted to issue rent notes under the terms of a contract to be entered into pursuant to the National Ry. Service Corp.'s equipment-trust agreement; to assume obligation or liability as indorser and guarantor in respect of obligations of the Service Corporaton to the United States for a loan; to pledge with the Secretary of the Treasury interests and equities in certain bonds to secure the repayment of the loan, and any obligation evidencing the same, and the performance of said obligation of indorsement and guaranty; and to pledge with and for transfer and assign to the Bankers Trust Co., trustee under the Service Corp.'s equipment trust, interests and equities in certain securities subject to prior pledges, liens, interests, and equities therein. Equipment Notes of C., R. I. & P. Ry., 70 I. C. C. 61.

(q) Minneapolis & St. Louis R. R. Co., authority granted to issue rent notes under the terms of a contract to be en-

tered into pursuant to the National Ry. Service Corp.'s equipment-trust agreement; to assume obligation or liability as indorser and guarantor in respect of obligations of the Service Corporation to the United States for a loan; to pledge with the Secretary of the Treasury refunding and extension mortgage gold bonds, and interests and equities in certain other bonds to secure the repayment of the loan, and any obligation evidencing the same, and the performance of said obligation of indorsement and guaranty; and to pledge with and for transfer and assign to the Bankers Trust Co., trustees under the Service Corp.'s equipment-trust agreement, interests and equities in certain securities subject to prior pledges, liens, interests, and equities therein granted. Equipment Notes of M. & St. L. R. R., 70 I. C. C. 67.

(r) Missouri, Kansas & Texas Ry. Co. of Texas, authority to extend by indorsement the maturity of receiver's certificates issued for the purpose of obtaining funds to meet necessary expenses of operation, granted. Receiver's Certificates of M., K. & T. Ry., 70 I. C. C. 76.

(s) While it is within the Commission's province to authorize the extension by indorsement of the maturity of receiver's certificates, it is not to be understood that by giving such authority the Commission passes upon or in anywise determines or affects the nature of the rights of liens to be enjoyed under said certificates or the priority of said certificates in relation to any other liens. Receiver's Certificates of M., K. & T. Ry., 70 I. C. C. 77.

(t) Kansas, Oklahoma & Gulf Ry. Co., upon supplemental report, former report 65 I. C. C. 672, authority granted to issue cumulative income bonds for the purpose of taking up, acquiring or otherwise satisfying or liquidating certain claims against the Missouri, Oklahoma & Gulf Ry. Co. and the Missouri, Oklahoma & Gulf R. R. Co., which claims existed prior to receivership and which have been recommended for allowance by the special master in accordance with the provisions of the plan of adjustment adopted by the court having jurisdiction of the receivership proceedings. Securities of K., O. & G. Ry., 70 I. C. C. 78.

(u) Authority to issue a promissory note to secure funds with which to pay outstanding maturing notes the proceeds of which were used to pay indebtedness incurred for interchange of freight with other carriers; and to issue first mortgage gold bonds, and pledge same as collateral security for said note, granted. Securities of A. & A. R. R. Corp., 70 I. C. C. 82.

(v) Authority to issue refunding and general mortgage bonds, for pledge and repledge from time to time, until otherwise ordered, as collateral security for any note or notes which may be issued under paragraph (9) of section 20a of the act without the commission's authorization having first been obtained, granted. Bonds of B. & O. R. R. and Subsidiaries, 70 I. C. C. 90.

(w) Authority to assume additional liability, for a consideration, by the modification of the tax covenant of its outstanding first and refunding mortgage bonds, granted. Bonds of O.-W. R. R. & Nav. Co., 70 I. C. C. 99.

(x) Authority to assume obligation and liability in respect of equipment-trust certificates to be issued under the Huntingdon & Broad Top rolling-equipment trust in connection with the procurement of locomotives and all-steel passenger train cars, granted. H. & B. T. Rolling-Equipment Trust, 70 I. C. C. 173.

(y) Upon supplemental report, authority to divert a portion of the proceeds of the loan authorized in 65 I. C. C. 486, for additions and betterments to way and structures to additions and betterments to equipments, granted. Loan to C. G. W. R. R., 70 I. C. C. 180. 70 I. C. C. 182.

(z) Authority to issue a one-year promissory note at an increased rate of interest, in renewal for the unpaid amount of a maturing promissory note, granted. Note of N. & P. B. L. R. R.,

(aa) Chicago, Burlington & Quincy R. R. Co., together with other proprietary companies authorized to assume the liability of jointly and severally guaranteeing the payment of the principal and interest of first-mortgage bonds of the Chicago Union Station Co., the proceeds of which are to be used solely in the construction of the union passenger station and facilities at Chicago, Ill. Bonds of Chicago Union Station Co., 70 I. C. C. 191.

(bb) Authority to enter into agreements with the holders of unsecured

notes for the extension of the maturity date thereof for a period of one year, granted. Applicant's financial condition is such as to preclude payment of the notes at maturity, and it must either extend the notes or borrow money to discharge the debt. Notes of U. T. Co., 70 I. C. C. 195.

(cc) Upon supplemental application original finding modified and loan to aid in providing certain additions and betterments to way and structures included in a program of reconstruction of applicant's main line, destroyed by a West Indian hurricane, reduced. Certificate in former report, 65 I. C. C. 20, canceled. Loan to A. H. T. Ry., 70 I. C. C. 203.

(dd) Authority to nominally issue first-lien and improvement bonds in respect of expenditures made for refunding and construction, and as the right thereto shall accrue, for additions and betterments; and to pledge part of said bonds as collateral security for loans from the United States under section 210 of the transportation act, 1920, granted. Bonds of C. & O. Ry., 70 I. C. C. 228.

(ee) Application for a loan to aid in meeting, denied as prospective earning power and security offered are not such as to afford reasonable assurance of ability to repay within the time fixed therefor and reasonable protection to the United States. Loan to J. & E. Ry., 70 I. C. C. 236.

(ff) Delivery of a note by a subsidiary to a proprietary company, without complying with the provisions of section 20a of the act which provides that it shall be unlawful for any carrier to issue any securities even though permitted by the authority creating it, unless authorized by the Commission, is, by the plain terms of the statute, void, and no means are provided for validating it. It is not an obligation of the carrier, and may not be carried on its books as such. Notes of St. L., S. F. & T. Ry., 70 I. C. C. 828.

(gg) As a basis for the issuance of equipment-trust certificates, equipment should not be taken at appraised value, but at depreciated book value. Equipment-trust Certificates of S. D. & Ariz. Ry., etc., 71 I. C. C. 29, 32.

(hh) Authority to assume obligation or liability in respect of equipment-trust certificates by entering into an agreement, under which the certificates will be issued by the Commercial Trust Co., trustee, and thereby guaranteeing payment of the principal and dividends thereon, by indorsing upon each certificate is guaranty of such payment, and by entering into a lease of the trust-equipment, and thereby agreeing to pay rent sufficient to pay such principal and dividends, granted. I. C. Equipment Trust, Series H., 71 I. C. C. 152.

(ii) The advantages which a carrier may derive by the purchase of equipment during a period of low prices and by the repair of its bad-order cars under favorable conditions make it the part of good management to do so, and form a proper basis for a loan under section 210 of the transportation act, 1920. Loan to Seaboard-Bay Line, 71 I. C. C. 464, 468.

(jj) Contributions toward the purchase of equipment acquired, either from the carrier's own funds or from private sources, to meet the contributions of the Government, have customarily amounted to 50 per cent of the whole in respect of locomotives and to 75 per cent in respect of freight-train cars. In loans made through the National Railway Service Corporation a composite percentage of both cars and locomotives contemplating an investment of 60 per cent of private capital to 40 per cent of Government funds has usually been employed. Loan to Seaboard-Bay Line, 71 I. C. C. 464, 469.

(kk) Authority to assume obligation and liability, as guarantor and otherwise, in respect of equipment-trust certificates to be issued under an equipment-trust agreement, said certificates to be sold in connection with the procurement of gondola and refrigerator cars, granted. C. & S. Ry. Equipment-Trust of 1922, 71 I. C. C. 517.

ALL OTHER CITATIONS

Loan to B. & M. R. R., 65 I. C. C. 1, 4; Salt Lake & Utah R. R. Loan, 65 I. C. C. 8, 11; Principles to be Observed in Recommending Loans, 65 I. C. C. 12, 13, 15, 17; Arkansas Harbor Terminal Ry. Loans, 65 I. C. C. 20; Kansas City, Mexico & Orient R. R. Loan, 65 I. C. C. 36, 40, 42; Bonds of Central of Georgia Ry., 65 I. C. C. 65; Stock Issue of Atchison, Topeka & Santa Fe Ry., 65 I. C. C. 76; Loan to Ann Arbor R. R., 65 I. C. C. 90; Loan to Delaware & Hudson Co., 65 I. C. C. 96, 332, 350; Loan to Chicago, Great Western R. R., 65 I. C. C. 100,

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Texas & Mexico Ry. Co., 67 I. C. C. 73; Norfork Southern R. R., 67 I. C. C. 108; Salt Lake & Utah R. R. Co., 67 I. C. C. 791; Seaboard Air Line Ry. Co., 67 I. C. C. 295; Toledo, St. Louis & Western R. R. Co., 67 I. C. C. 549; Wichita Northwestern Ry. Co., 67 I. C. C. 522; Notes of Bangor & Aroostock R. R., 67 I. C. C. 533; Pledge of Bonds by N. I. C. & St. L. R. R., 67 I. C. C. 545; Loan to Toledo, St. Louis & Western R. R., 67 I. C. C. 549; Certificates of Toledo, St. Louis & Western R. R., 67 I. C. C. 556, 559; Bonds of Chicago & Western Indiana R. R., 67 I. C. C. 609; Bonds of Nashville, Chattanooga & St. Louis Ry., 67 I. C. C. 615; Bonds of Buffalo, Rochester & Pittsburgh Ry., 67 I. C. C. 636; Note of Lake Erie, Franklin & Clarion R. R., 67 I. C. C. 639; Bonds of Electric Short Line Ry., 67 I. C. C. 644; Bonds of Chicago, Rock Island & Pacific Ry., 67 I. C. C. 647; Bonds of Alaska Anthracite R. R., 67 I. C. C. 663; Pledge of Bonds by Southern Ry., 67 I. C. C. 673; Bonds of Central Vermont Ry., 67 I. C. C. 681; Partial Diversion of Loan to Seaboard Air Line Ry., 67 I. C. C. 686; Bonds of Detroit, Toledo & Ironton R. R., 67 I. C. C. 688; Pledge of Bonds by Pere Marquette Ry., 67 I. C. C. 690; Notes of Missouri, Kansas & Texas Ry., 67 I. C. C. 703; Notes of Chicago, Terre Haute & Southeastern Ry., 67 I. C. C. 710; Lease Warrants of Chicago Rock Island & Pacific Ry., 67 I. C. C. 716; Bond Guarantee by Central R. R. Co. of N. J., 67 I. C. C. 716, 721; Stock of Atlantic Port Ry., 67 I. C. C. 734; Pledge of Bonds by C., I. & L. Ry., 67 I. C. C. 750; Alabama, Tennessee & Northern R. R. Corp., 67 I. C. C. 4; Charles City Western R. R. Co., 67 I. C. C. 596 Chicago, Milwaukee & St. Paul Ry. Co., 67 I. C. C. 518; Cumberland & Manchester R. R. Co., 67 I. C. C. 603; Fernwood, Columbia & Gulf R. R. Co., 67 I. C. C. 402; Georgia & Florida Ry., 67 I. C. C. 301; Greene County R. R. Co., 67 I. C. C. 226; Interurban Ry. Co., 67 I. C. C. 333; Minneapolis & St. Louis R. R. Co., 67 I. C. C. 321; Pennsylvania R. R. Co., 67 I. C. C. 618; Salt Lake & Utah R. R. Co., 67 I. C. C. 791; Notes of New Orleans, Texas & Mexico Ry., 67 I. C. C. 797; Notes of Minneapolis, St. Paul & Sault Ste. Marie Ry., 67 I. C. C. 803; Application of Louisiana Ry. & Nav. Co., 67 I. C. C. 808; Bonds of Alabama, Florida & Gulf R. R., 70 I. C. C. 239; Securities of Texas City Terminal Ry., 70 I. C. C. 248; Securities of C. & N. E. Ry., 70 I. C. C. 260; Bonds of I. C. and C. St. L. & N. O. R. R., 70 I. C. C. 277; Bonds of L. & C. Ry., 70 I. C. C. 280; Bonds of L. & T. R. R., 70 I. C. C. 288; Stock of F. B. R. R., 70 I. C. C. 296; Bonds of C. R. I. & P. Ry., 70 I. C. C. 316, 317; Application of Monongahela Ry. for Loan, 70 I. C. C. 326; Loan to Receiver of I. & G. N. Ry., 70 I. C. C. 336; Diversion of Funds by Shearwood Ry., 70 I. C. C. 339; Notes of P. R. V. R. R., 70 I. C. C. 340; Bonds of B. G. R. R., 70 I. C. C. 354; Loan to E. R. R., 70 I. C. C. 361; Loan to M. C. R. R., 70 I. C. C. 366; Notes of N. & P. B. L., 70 I. C. C. 379; Certificates of Receiver of I. & G. N. Ry., 70 I. C. C. 384; Loan to W. M. Ry., 70 I. C. C. 384; Loan to W. M. Ry., 70 I. C. C. 387; Loan to H. & B. T. M. R. R., 70 I. C. C. 395; Bonds of B. & O. R. R., 70 I. C. C. 407; Bonds of T. R. R. Asso. of St. L., 70 I. C. C. 415; Securities of C. & I. R. R., 70 I. C. C. 422; Bonds of C., C. C. & St. L. Ry., 70 I. C. C. 473; Bonds of W. M. Ry., 70 I. C. C. 480; Bonds of St. P. & K. C. S. L. R. R., 70 I. C. C. 491; Assumption of Obligation by C., R. I. & P. Ry., 70 I. C. C. 493; Bonds of B., C. R. & N. Ry. and C., R. I. & P. Ry., 70 I. C. C. 499; Notes of Federal Valley R. R., 70 I. C. C. 524; Notes of F. V. R. R., 70 I. C. C. 524; Bonds of St. L.-S. F. Ry. 70 I. C. C. 537; Notes of N. Y., N. H. & H. R. R., 70 I. C. C. 540; Loan to N. Y., N. H. & H. R. R., 70 I. C. C. 543; Loan to C. & E. I. R. R., 70 I. C. C. 558; Loan to C. & E. I. R. R., 70 I. C. C. 558; Loan to C. R. I. & P. Ry., 70 I. C. C. 563; Loan to C., C. & C. Ry., 70 I. C. C. 580; Acquisition of C., T. H. & S. E. Ry. by C., M. & St. P. Ry., 70 I. C. C. 594; Bonds of N. Y. C. R. R., 70 I. C. C. 598; Bonds of Ft. W. & D. Ry., 70 I. C. C. 603; Loan to N. O., T. & M. Ry., 70 I. C. C. 620; Certificates of Receiver of K. C. M. & O. R. R., 70 I. C. C. 646; Securities of A., T. & N. R. R., 70 I. C. C. 675; Securities of A. T. & M. R. R., 70 I. C. C. 675; Loan to B. & M. R. R., 70 I. C. C. 679; Lease of C. & O. Ry. of Indiana by C. O. Ry. Co., 70 I. C. C. 694; Loan to Term. R. R. Asso. of St. Louis, 70 I. C. C. 701; Securities of A. & A. R. R., 70 I. C. C. 757; Bonds of C. & N. W. Ry., 70 I. C. C. 762; Bonds of S. V. R. R., 70 I. C. C. 765; Securities of Ft. S. & W. Ry., 70 I. C. C. 777; Loan to C. R. I. & P. Ry., 70 I. C. C.

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III. EXTENSION ACQUISITION, OR CONSOLIDATION.

See Consolidation of Carrier.

§3. In General.

See Lease.

CASES 1887-1908

(a) The absorption of a competing line of railway by another in alleged violation of the statutes of a State is a matter within the control of the State courts, and can be considered by the Commission only in its ultimate results of inducing unreasonable rates. Warren Manufacturing Co. v. Southern Ry. Co., 12 I. C. C. 381.

IMPORTANT CASES SINCE 1908

(aa) In section 5 of the interstate commerce act Congress provided a complete scheme of regulation of contracts or other arrangements whereby one common carrier subject to the act might secure control of another such carrier,

either by consolidation into one corporation, or in some manner not involving such consolidation, or by entering into any agreement for the pooling of freight or earnings with a competing railroad. Lease of Valley Terminal Ry., 65 I. C. C. 105.

(b) Congress intended to permit unified operation, even if involving the elimination of competition, where this would be in the public interest, and provided for a modification of the antitrust laws to the extent necessary to effect this purpose, stating certain prerequisites, and imposing upon the Commission the duty of determining whether or not the conditions of section 5 of the interstate commerce act have been or will be fulfilled and the proposed arrangement is in the public interest. Lease of Valley Terminal Ry., 65 I. C. C. 105, 109.

(c) While the law does not prohibit a conditional sale, subject to the Commission's authorization, in advance of approval of an issue of securities, carriers should realize that the Commission shall not be controlled in its action by representations that failure to accord approval of issues conditionally sold will result in disturbance or disarrangement of plans based upon anticipated approval. Bonds of New York Central R. R., 65 I. C. C. 172, 173.

(d) The construction of a proposed line could not be justified, either as an independent short line or purely as a branch line, solely on a record showing estimated earnings of 1.3 per cent for the first five years and 3.5 per cent thereafter on an unusually high estimated cost of nearly $4,000,000 for a proposed 43.5 mile construction, the apparent convenience and benefit to the surrounding territory nothwithstanding. Union Pacific R. R. Certificate, 65 I. C. C. 382, 383.

(e) An order requiring a carrier to extend its line in the interest of the public convenience and necessity, and involving as a necessary incident expenses which would impair the ability of the carrier to perform its duty to the public would be a contradiction. On the other hand, even though such proposed extension would not impair the ability of a carrier to perform its duty to the public, no order could be issued against a carrier requiring an extension of its line, unless such extension was reasonably required in the interest of public convenience and necessity. Ezra W. Cooke v. C. B. & Q. R. R. Co., 66 I. C. C. 452.

(f) A project involving purely a relocation of an existing line under which applicant's whole line will still be in service as before and will render exactly the same service in a new location, found not to constitute an abandonment of a line of railroad or the construction of a new line or extension of a line within the meaning of paragraph (18) of section 1 of the act. Public Convenience and Necessity to P., N. & N. Y. R. R., 67 I. C. C. 252.

(g) Application for a loan to aid in the extension of its line of railroad denied as the prospective earning power and security offered are not such as to afford reasonable assurance of ability to repay within the time fixed therefor and reasonable protection to the United States. Loan to J. & E. Ry., 70 I. C. C. 236.

(h) Through control of a carrier by stock ownership a company is in a position to control various matters specified in a proposed mortgage, but should such company part with control through such ownership of a majority of the stock, it would not be proper for them to retain control over such matters. The incorporation of such provisions in a mortgage are unnecessary and improper. Securities of Texas City Terminal Ry., 70 I. C. C. 244, 248.

(i) Cessation of operations under ordinary trackage rights is not prohibited by paragraph (18) of section 1 of the interstate commerce act. Public Convenience Application of G. B. & W. R. R., 70 I. C. C. 251.

(j) Improper to authorize the purchase of one carrier by another at any sum in excess of the actual cost of building the line or to permit the purchasing carrier to write into its investment accounts any sum in excess of such cost. Acquisition of Control of B. & C. M. Ry. by N. P. Ry., 70 I. C. C. 328, 329.

(k) When, as in paragraph (6) of section 5 of the act, it is provided that "it shall be lawful" to consolidate under certain conditions, this is but another way of saying that consolidations in disregard of those conditions shall be unlawful. And in like manner when it is provided, as in paragraph (2) of that section, that the Commission may authorize the acquisition of one carrier of control

of another in any manner falling short of consolidation whenever such acquisition "will be in the public interest," this is equivalent to saying that authority for the acquisitions shall not exist under other conditions. Securities Application of P. & W. V. Ry., 70 I. C. C. 682, 688.

(l) Technically, a consolidation is sometimes defined as a union of companies where a new corporation is created to take over the powers and property of the consolidating corporations. However, the word "consolidate" is not used in paragraph (6) of section 5 in a narrow sense, but the language of the paragraph is broad enough to cover any form of union under which "properties theretofore in separate ownership, management, and operation" pass into the possession of a single corporation for ownership, management, and operation. Securities Application of P. & W. V. Ry., 70 I. C. C. 684.

(m) It is definitely and unmistakably provided under paragraph (1) of section 5 of the act that an agreement for the pooling of freights of the division of the act that an agreement for the pooling of freights or the division of earnings shall be unlawful unless and until it receives the specific approval of the Commission. Securities Application of P. & W. V. Y., 70 I. C. C. 685.

(n) In the development of the transportation act, 1920, as a constructive measure for the solution of the railroad problem, great importance was attached by congress to the ultimate consolidation of the carriers into a limited number of great systems. It was the intent of Congress that complete control over the situation should be in the Commission's hands, so that the working out of a constructive policy might be safe-guarded in every possible way, and so that consolidation or other union of interest might not be effected without the consent of the Commission. Securities Application of P. & W. V. Ry., 70 I. C. C. 687, 688.

(o) If it had been intended that the provisions of section 5 of the act should merely afford a means of escaping from the restraints of the "anti-trust laws" and other State or Federal statutes, much simpler machinery would have been devised for accomplishing this purpose. The "plan of consolidation" is incompatible with such an interpretation of the section and embodies a policy of far greater breadth and vision. Securities Applications of P. W. V. Ry., 70 I. C. C. 688.

(p) Fact that a proposed new line would prove a convenience to a considerable number of people can not be relied upon alone to justify the addition to the transportation resources of the country of an enterprise which gives no promise of being self-sustaining. Public Convenience Application of G. B. R. R., 71 I. C. C. 233, 234.

(q) Where the acquisition of control, or the lease, of one carrier by another would clearly facilitate the movement of traffic through a highly congested district, the circumstances that other carriers would suffer a loss of revenue is not controlling. Chicago Case, 71 I. C. C. 631, 638.

(r) The possibility of future consolidation would be needlessly complicated by granting permission to retain excess earnings in cases where a small extension is proposed to be added to a strong existing system. Virginian & Western Extension, 72 I. C. C. 55, 57.

(s) So long as the available supply of a commodity can promptly reach the consuming public over existing lines, it is difficult to perceive how public convenience and necessity can be served by the establishment of competing facilities. Public-Convenience Application of Utah Terminal Ry., 72 I. C. C. 89, 93.

(t) While one of the purposes of the transportation act, 1920, was to preserve competition between carriers, the provisions of paragraphs (18) to (20) of section 1 of the interstate commerce act negative any presumption that it was the purpose of Congress to permit the construction of new and competitive lines of railroad where existing facilities are adequate or can be made so by the exercise of available administrative remedies. Public-Convenience Application of Utah Terminal Ry., 72 I. C. C. 89, 93, 94.

(u) In passing upon an application by a carrier for authority to acquire control of another carrier by the purchase of its stock, the commission may inquire whether the consideration to be paid by the applicant is fair and reasonable, to the end that the assets of the applicant be not wasted or its credit impaired so as to jeopardize its ability to perform its public functions. Control of Big Four by N. Y., 72 I. C. C. 96, 97.

(v) Paragraph (2) of section 5 of the act authorizes the commission to

approve the acquisition of control in any manner "not involving the consolidation of such carriers into a single system for ownership and operation." It was the undoubted purpose to permit transactions short of actual consolidation to be consummated without reference to the consolidation plan provided for in paragraphs (4), (5), and (6), of that section. So much is clearly indicated by the language above quoted. Control of Big Four by N. Y. C., 72 I. C. C. 96, 98.

(w) It is merely the commission's duty to inquire whether the securities offered by a carrier in acquiring control of another carrier are worth what the applicant proposes to pay, and an affirmative finding can not in any sense be taken as establishing or tending to establish the market value of the stock. Neither does such a finding impose upon a stockholder any obligation, or persuasion, to exchange an interest-bearing security for an equity in the applicant's property, since he is entirely free to do so or not, according to the dictates of his own judgment. If in his view the bargain is an improvident one, he is free to refuse the offer. Control of Big Four by N. Y. C., 72 I. C. C. 96, 98.

(x) While the acquisition by one carrier of the capital stock of another carrier may constitute a step toward consolidation, the commission is not convinced that such a step may not be taken in advance of the adoption of its consolidation plan pursuant to paragraphs (4) and (5) of section 5 of the act. Control of Big Four by N. Y. C., 72 I. C. C., 96, 98.

(y) The control provided for by paragraph (2), section 5, of the act, is control over one or more carriers by another carrier and not mutual control by two carriers over the same subject matter. The "control" that the framers of the act had in mind is the full and complete control which may be exercised by the ownership of the majority of the capital stock of a carrier, or by the lessee of the property, and not the control which might be exercised by one carrier in the purchase of materials and supplies from another carrier. Nickel Plate-Lake Erie & Western Contract, 72 I. C. C., 151, 152, 153.

(z) It is an open question whether the extension of a contract involving trackage rights is one that requires the commission's approval under paragraph (18) of section 1 of the act. However, where applicants have sought that approval and the jurisdictional requirements have been complied with, a certificate will be issued. It must be understood, however, that in thus disposing of the matter the commission does not hold that such certificate is a prerequisite to the lawful renewal of the agreement. Chesapeake & Ohio-Norfolk & Western Trackage Rights, 72 I. C. C. 471, 472.

ALL OTHER CITATIONS

Ridge Coal Mining Co. v. M. P. R. R. Co., 62 I. C. C. 259, 261; Kansas City, Mexico & Orient R. R. Loan, 65 I. C. C. 36, 42, 43; Pittsburgh & W. Va. Ry., Control of W. S. B. R. R., 65 I. C. C. 124; Maxton, Alma & Southbound R. R. Loan, 65 I. C. C. 302, 303; Electric Short Line Ry. Loan, 65 I. C. C. 342, 343; Ft. Smith & Western Certificate, 65 I. C. C. 456; Application of Wisconsin & Michigan R. R., 65 I. C. C 476; Construction Application of Michigan Northern, 65 I. C. C. 480; Certificate to Potato Creek R. R. Co., 65 I. C. C. 636; Certificate to Tennessee R. R., 65 I. C. C. 654; Certificate of Coon Bayou & Arkansas City Ry., 65 I. C. C. 701; Certificate to United Rys. Co., 65 I. C. C. 728; Certificate to Portland, Astoria & Pacific R. R., 65 I. C. C. 731; Certificate for Central Wisconsin Ry., 65 I. C. C. 747; Certificate for Norfolk & Western Ry., 65 I. C. C. 757; Cooke v. C., B. & Q. R. R. Co., 66 I. C. C. 452, 453; Public Convenience Application of Western Pacific R. R., 67 I. C. C. 135; Public Convenience Certificate to Interstate R. R., 67 I. C. C. 141; Public Convenience Certificate to Wichita Falls & Southern R. R., 67 I. C. C. 184; Application of Uvade & Northern Ry., 67 I. C. C. 204; Public Convenience Certificate to Central of Georgia Ry., 67 I. C. C. 273; Certificate of Missouri-Illinois R. R., 67 I. C. C. 283; Public Convenience of Golden Belt R. R., 67 I. C. C. 370; Public Convenience of A. T. & S. F. Ry., 67 I. C. C. 374; Certificate of Texas Midland R. R., 67 I. C. C. 445; Public Convenience to K. & T. Ry., 67 I. C. C. 450; Public Conveyance Application of T. O. & E. R. R., 67 I. C. C. 484; Stock Control of E. I. & T. H. Ry. Co. by C. C. C. & St. L. Ry., 67 I. C. C. 513; Public Convenience Certificate Convenience Certificate to Uintah Ry., to D. & I. R. R., 67 I. C. C. 600; Public 67 I. C. C. 612; Bonds of Electric Short Line Ry., 67 I. C. C. 644; Bond of Alaska Anthracite R. R., 67 I. C. C. 663; Stock

of Detroit & Ironton R. R., 67 I. C. C. 731; Public Convenience Certificate to P. & W. V. Ry., 67 I. C. C. 736; Control of P., Ft. W. & C. Ry., 67 I. C. C. 752; Certificate to Arkansas & La. Missouri Ry., 67 I. C. C. 781; Public Convenience Certificate to B. R. & P. Ry., 70 I. C. C. 1; Public Convenience Certificate to C. R. R. Co. of N. J., 70 I. C. C. 4; Acquisition of C. T. & S. E. Ry., by C. M. & St. P. Ry., 70 I. C. C. 20; Notes, etc., of Wheeling & Lake Erie Ry., 70 I. C. C. 44; Public Convenience Certificate to A., F. & G. R. R., 70 I. C. C. 53; Public Convenience Application of Golden Belt R. R., 70 I. C. C. 73; Public Convenience Application of P. & S. F. Ry., 70 I. C. C. 75; Assumption of Obligations by S. P. C., 70 I. C. C. 88; Bonds of O., W. R. R. & Nav. Co., 70 I. C. C. 99; Stock of D. & R. G. W. R. R., 70 I. C. C. 102; Public Convenience to J. & E. Ry., 70 I. C. C. 110; Bonds of Chicago Union Station Co., 70 I. C. C. 191; Public Convenience Certificate to A. T. & Ry. Co. (Ltd.), 70 I. C. C. 198; Loan to Arkansas Harbor Terminal Ry., 70 I. C. C. 203; Public Convenience Certificate to I. C. R. R., 70 I. C. C. 265; Bonds of I. C. and C., St. L. & N. O. R. R., 70 I. C. C. 277; Public Convenience to F. B. R. R., 70 I. C. C. 292; Acquisition of Control of N. Y., P. & N. R. R. by P. R. R., 70 I. C. C. 299; Cumberland Valley & Martinsburg R. R., 70 I. C. C. 301; Acquisition of Control of P. A. & W. R. R. by P. R. R., 70 I. C. C. 303; Acquisition of Control of N. Y. B. R. R. by P. R. R., 70 I. C. C. 306; Lease of R., H. & L. R. R. by Receiver of P. S. & N. R. R., 70 I. C. C. 396; Public Convenience Application of G. P. T. Ry., 70 I. C. C. 358; Lease of R., H. & L. R. R. by Receiver of P., S. & N. R. R., 70 I. C. C. 396; Acquisition of Control of the B. & M. L. R. R., by the M. C. R. R., 70 I. C. C. 405; Acquisition of Control of F. B. R. R. by P. M. Ry., 70 I. C. C. 413; Public Convenience Certificate to M. C. R. R., 70 I. C. C. 425; Public Convenience Certificate to O. & A. Ry., 70 I. C. C. 448; Consolidation of Ohio Bell and Ohio State Tel. Cos., 70 I. C. C. 463; Contract for Operation of P., W. & S. R. R., 70 I. C. C. 470; Bonds of W. M. Ry., 70 I. C. C. 480; Lease of T. S. R. R. by T. & N. O. R. R., 70 I. C. C. 485; Bonds of J. & E. Ry., 70 I. C. C. 485; Bonds of J. & E. Ry., 70 I. C. C. 495; Stock of A. T. & Ry. Co., 70 I. C. C. 509; Lease of C. S. R. by A. & S. F. Ry., 70 I. C. C. 514; Acquisition of C. & O. N. Ry. by C. & O. Ry., 70 I. C. C. 550; Control of G. T. W. Ry. with L. R. R., 70 I. C. C. 554; Assumption of Obligations by N. Y., N. H. & H. R. R., 70 I. C. C. 625; Acquisition of property of R. C. Tel. Co. by W. Tel. Co., 70 I. C. C. 636; Cleveland Passenger Terminal Case, 70 I. C. C. 659; Securities Application of P. & W. V. Ry., 70 I. C. C. 684; Certificate of Chaffee R. R., 70 I. C. C. 690; Lease of C. & O. Ry. of Indiana by C. & O. Ry. Co., 70 I. C. C. 694; Consolidation of Certain Tel. Cos. in Tenn. and Va., 70 I. C. C. 705; Securities of A. & A. R. R., 70 I. C. C. 757; Bonds of C. & N. W. Ry., 70 I. C. C. 758, 762; Acquisition of Property of C. & P. Tel. Co., 70 I. C. C. 768; Acquisition of Control, etc., by E. P. & S. W. Co., 70 I. C. C. 795; Public Convenience Certificate to I. T. R. R., 70 I. C. C. 820; Public Convenience Application of S. R. & W. R. R., 70 I. C. C. 825; Public Convenience Certificate to A. A. R. R., 70 I. C. C. 840; Public Convenience Certificate to C. M. & G. Ry., 70 I. C. C. 846; Stock of The Pullman Co., 71 I. C. C. 11; Public Convenience Application of W. N. W. Ry., 71 I. C. C. 42; Acquisition of Property of C. I. T. Co. by C. T. Co., 71 I. C. C. 46; Acquisition of Property of S. H. Tel. Co., 71 I. C. C. 48; Acquisition of Control of West Side Belt R. R., 71 I. C. C. 68; Public Convenience Certificate to N. H., H. & Mt. V. R. R., 71 I. C. C. 119; Control of C., M. & G. by C., M. & St. P. Ry., 71 I. C. C. 124; Public Convenience Certificate to K. & O. S. Ry.. 71 I. C. C. 130; Public Convenience Certificate to M. V. R. R., 71 I. C. C. 139; Public Convenience Certificate to Osage Ry., 71 I. C. C. 160; Control of S. & E. R. R. by U. P., 71 I. C. C. 190; Dodge City & Cimmaron Valley Ry. Co., 71 I. C. C. 195; Kansas & Oklahoma Southern Ry. Co., 71 I. C. C. 130; Mingo Valley R. R. Co., 71 I. C. C. 139; New Holland, Higginsport & Mt. Vernon R. R. Co., 71 I. C. C. 119; Oregon Short Line R. R. Co., 71 I. C. C. 571; Osage Ry. Co., 71 I. C. C. 160; Wichita Falls & Oklahomo R. R. Co., 71 I. C. C. 699; Public Convenience Certificate to D. C. & C. V. Ry., 71 I. C. C. 195; Loan to D. & S. L. R. R., 71 I. C. C. 219; Valley Home and Michigan State Tel. Cos. Consolidated, 71 I. C. C. 257; Securities Application of A. & G. Ry., 71 I. C. C. 281; Bonds of M., I. R. R., 71 I. C. C. 461; Northwestern Asquisition of N. W. Long Distance Tel. Co., 71 I. C. C. 530; Bonds of N. Y., L. E. & W. Coal & R. R. Co., 71 I. C. C. 541; Construction Application of N. L. R.

R., 71 I. C. C. 556; Public Convenience Certificate to O. S. L., 71 I. C. C. 571; Construction Application of S. & N. E. Ry., 71 I. C. C. 586; Public Convenience Certificate to G. A., S. & C. Ry., 71 I. C. C. 616; Chicago Junction Case, 71 I. C. C. 631, 637; Proposed Control of S. N. by W. P. R. R., 71 I. C. C. 653, 656; Public Convenience Certificate to W. F. & O. Ry., 71 I. C. C. 699; I. C. Capital Stock, 71 I. C. C. 707; Control of P. & E. by Big Four, 71 I. C. C. 747; Construction Application of Gulf Ports Terminal Ry., 71 I. C. C. 759; Public Convenience Application of D. N. M. Ry. Co., 71 I. C. C. 795, 800; Public Convenience Certificate to Big Four, 71 I. C. C. 803; Certificate to C. & P. T. Co., 71 I. C. C. 805; Public Convenience Certificate to T. & S. E. Ry., 71 I. C. C. 818; Construction Application of C. & A., 72 I. C. C. 1; Construction Application of M. N. R. R., 72 I. C. C. 21; Construction of Line by Eastern Maine, etc., 72 I. C. C. 39; Control of Rockingham R. R. by A. C. L. R. R., 72 I. C. C. 85; N. Y. C. Capital Stock, 72 I. C. C. 108; Operation of Line by I. C., 72 I. C. C. 111; Lease of Pan Handle by P. R. R., 72 I. C. C. 128, 133; Nashville & Atlantic R. R. Co., 72 I. C. C. 655; Construction by Los Angeles & Salt Lake R. R., 72 I. C. C. 147; Construction of E. & S. F., 72 I. C. C. 229; W., B. & P. L. Stock, 72 I. C. C. 247; Lease of G. R. & I. Ry., 7 I. C. C. 260; Purchase of Stock of C. & A. by Rock Island, 72 I. C. C. 273; Control of Dayton Goose Creek Ry. by N. O. T. & M. Ry., 72 I. C. C. 377; Kansas, Oklahoma & Gulf Extension, 72 I. C. C. 392, 395; Lease of Virginian & Western Ry., 72 I. C. C. 454; Control of L. E. & W. by Nickel Plate, 72 I. C. C. 459; Purchase of Property of Garrett County Telephone Co., 72 I. C. C. 489; Purchase of Coal Road by C., I. & W. R. R., 72 I. C. C. 491; Construction and Operation of Lines by Santa Fe Ry., 72 I. C. C. 544; B. & O. Purchase of Stock, 72 I. C. C. 552; B. & O. Purchase of Stock, 72 I. C. C. 552; Extension of H. & B. V. Ry., 72 I. C. C. 559; Operation of Line by C. R. & S. J. R. R., 72 I. C. C. 561; Purchase of Springfield-Xenia Tel. Co., Property, 72 I. C. C. 570; Acquisition of Line by S. & N. V. Ry., 72 I. C. C. 607; Public Convenience Application of O. N. R. R., 72 I. C. C. 625; Operation of Line by B. & T. R. R., 72 I. C. C. 644; Construction of Extension by E. R. R., 72 I. C. C. 653; Construction by N. & A. R. R., 72 I. C. C. 655; Lease of Properties of Subsidiary Cos. by P. R. R., 72 I. C. C. 674; Operation of Line by M. & A. R. R., 72 I. C. C. 685; Purchase of Property by Wisconsin Tel. Co., 72 I. C. C. 709; I., G. N. Reorganization, 72 I. C. C. 722; Construction of Branch Line by L. A. & S. L. R. R., 72 I. C. C. 746; Acquisition of Line by W. V. N., 72 I. C. C. 821; Purchase by Bell Co. of Property of P. & A. Tel. Co., 72 I. C. C. 829; Construction of Line by S. F. & L. A. H. Ry., 72 I. C. C. 832.

IV. ABANDONMENT OF LINE.

§4. In general.

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(a) As the law now stands, a railroad can not be abandoned without the approval of the Commission. Kansas City, Mexico & Orient R. R. Loan, 65 I. C. C. 36, 40.

(b) Paragraph (18) of section 1 of the act provides that no carrier by railroad shall abandon all or any portion of a line of railroad or the operation thereof "after 90 days after this paragraph takes effect." Where operation of a line was discontinued prior to the effective date of this paragraph, under such circumstances as clearly indicate an intention to effect a complete and permanent abandonment, no certificate of public convenience and necessity is required. Public Convenience Application of M. & E. T. Ry., 67 I. C. C. 365, 366.

(c) The Commission recognizes a distinction between abandonment of a line and a cessation of operations on such line. Where the cessation of operation of a particular road amounted to a complete abandonment, not only of the operation of the line, but of the line itself as an instrumentality of interstate commerce, evidenced by the commencement of proceedings in a federal court for the sale of the line as scrap, which proceeding was delayed through no fault of the carrier, and by such carrier's failure to file any annual report with the Commission, indicates that at that time it considered its status as a carrier subject to the act to be definitely at an end. Public Convenience Application of M. & E. T. Ry., 67 I. C. C. 744.

(d) The operation of the physical property of one carrier by another does not constitute an abandonment of operation of the carrier taken over within the meaning of paragraph (18), section 1 of

the act, and no certificate of public convenience and necessity is required. Acquisition of C., T. H. & S. E. Ry. by C., M. & St. P. Ry., 70 I. C. C. 24.

(e) Objection to Commission's jurisdiction to permit abandonment on grounds that petitioning railroad is an intrastate railroad not subject to paragraphs (18) to (22) of section 1 of the act; that if such paragraphs are construed as applying to intrastate railroads they are unconstitutional; that only reason assigned, i. e., that the railroad has not been and can not be operated except at a loss does not relate to present or future public convenience and necessity, which is the only ground upon which the Commission can permit the abandonment, and that an inquiry into the reason assigned is beyond the Commission's jurisdiction. HELD: Commission has jurisdiction to pass upon application as shipments originate on applicant's line destined to points outside the State. Public Convenience Certificate to D. & N. M. Ry., 70 I. C. C. 185.

(f) Principle that consideration must be given to the business of the carrier as a whole is not to be extended so as to include operating losses of a carrier in the operation of its affiliated companies, since that view would disregard rights of the minority. Nor is the question of profit and loss a matter to be passed upon by the courts alone. Such a construction of paragraph (18) of section would condemn the provision on constitutional grounds, since any refusal on the Commissioner's part to consider operating losses might very well result in a denial of the application, so that the effect of the paragraph would then be to require the carrier to continue to operate at a loss, and amount to confiscation. Abandonment of Hawkinsville & Florida Southern Ry., 70 I. C. C. 568.

(g) Past earnings and probable future earnings are evidentiary facts which enable the commission to make a finding under which an appropriate certificate for abandonment may be granted It is not the commission's duty to make a finding with respect to a bare need for the service unaffected by how far that need is evidenced by the payment forthcoming for the service rendered. Public Commend Application of D. & N. M. Ry., 71 I. C. C. 795, 800.

(h) In abandonment cases the method of procedure provided by the act was in addition to the constitutional right of the carrier existing prior thereto, and a cognate remedy was available to the public, before Congress asserted this species of control over the subject, for most of the abandonment cases that have been before the courts arose out of proceedings for a mandamus or mandatory injunction to prevent abandonment. Public Convenience Application of D. & N. M. Ry., 71 I. C. C. 795, 800.

(i) People interested in the continued operation of a line of railroad, especially those dependent upon it, must realize that they have a duty to perform and that the future of the line rests largely in their hands. The mere desire to have a railroad is not enough. There must exist the will to cooperate in its operation and the ability to support it adequately. Abandonment of Branch by Pere Marquette, 72 I. C. C. 267, 271.

(j) It is incumbent upon a carrier seeking to abandon a line of railroad to establish by clear and convincing proof every element of the case from which the commission is expected to determine that the present or future public convenience and necessity will permit of a proposed abandonment. Where losses are claimed the commission can not accept the carrier's conclusions as to such losses, but must have before it the items thereof in sufficient detail to leave no reasonable doubt as to the justification for the carrier's claim. Abandonment of Branch by Pere Marquette, 72 I. C. C. 303, 307.

(k) Where branch line is located wholly within a State, and constitutes a part of an interstate system of transportation and is being used for the purpose of transporting interstate as well as intrastate traffic, the commission has jurisdiction to pass upon an application for its abandonment. Abandonment of Branch Line by Great Northern, 72 I. C. C. 25; Abandonment of Line by C. & S. Ry., 72 I. C. C. 315, 316.

ALL OTHER CITATIONS

State of Texas v. Eastern Texas R. Co., 42 Sup. Ct. 281; Certificate of Public Convenience and Necessity, 65 I. C. C. 386, 388; Pere Marquette Ry. Certificate, 65 I. C. C. 410; Gulf, Mobile & Northern Certificate, 65 I. C. C. 426; Eastern Texas R. R. Certificate, 65 I. C. C. 436; Restoration Application of Wisconsin & Michigan R. R., 65 I. C. C. 476; Certificate to Potato Creek R. R., 65 I. C. C. 636; Certificate of United Rys. Co., 65 I.

C. C. 728; Certificate for Central Wisconsin Ry., 65 I. C. C. 747; Certificate for Northern Pacific Ry., 65 I. C. C. 750; Public Convenience Certificate to A., T. & S. F. Ry., 67 I. C. C. 145; Public Convenience and Necessity to P., N. & N. Y. R. R., 67 I. C. C. 252; Public Convenience Certificate to Seaboard Air Line Ry., 67 I. C. C. 258; Public Convenience Certificate to S. & B. C. Ry., 67 I. C. C. 384; Certificate of Copper Range R. R., 67 I. C. C. 502; Public Convenience Application M. & C. T. Ry., 67 I. C. C. 365; Public Convenience Certificate to P. & W. R. R., 67 I. C. C. 746; Public Convenience Application of P. R. V. R. R., 67 I. C. C. 748; Public Convenience Certificate to Ocean Shore R. R., 67 I. C. C. 760; Certificate to Arkansas & Louisiana Missouri Ry., 67 I. C. C. 781; Certificate to Orangeburg Ry., 67 I. C. C. 789; Division of Joint Rates and Fares of M. & A. R. R. Co., 68 I. C. C. 47, 52, 53; Nevada-California Ore. divs., 73 I. C. C. 330; Public Convenience Certificate to Wis. N. W. Ry., 70 I. C. C. 51; Public Convenience Certificate to D. & N. M. Ry., 70 I. C. C. 184; Public Convenience Certificate to K. & N. R. R., 70 I. C. C. 189; Public Convenience Certificate to K., G. & S. W. R. R., 70 I. C. C. 201; Public Convenience Certificate to B. & M. R. R., 70 I. C. C. 224, 226; Public Convenience Certificate to G. B. & W. R. R., 70 I. C. C. 251, 253; Public Convenience Certificate to A. & S. A. B. Ry., 70 I. C. C. 313; Public Convenience Certificate to P. M. Ry., 70 I. C. C. 324; Public Convenience Certificate to A. T. & S. F. Ry., 70 I. C. C. 377; Abandonment of part of L. & N. W. R. R., 70 I. C. C. 392; Public Convenience Certificate to L. W. R. R., 70 I. C. C. 411; Public Convenience Certificate to B. & C. R. R., 70 I. C. C. 417; Public Convenience Certificate to M. C. R. R., 70 I. C. C. 425; Abandonment of Part of C. N. E. Ry., 70 I. C. C. 441; Abandonment of S. P. Ry., 70 I. C. C. 478; Public Convenience Certificate to S. A. L. Ry., 70 I. C. C. 497; Abandonment of Lines of A. & M. R. R. Co., 70 I. C. C. 531; Public Convenience Certificate to P. M. Ry., 70 I. C. C. 535; Public Convenience Certificate to D. S. Ry., 70 I. C. C. 546; Abandonment of H. & F. S. Ry., 70 I. C. C. 566; Abandonment of Part of L. O., P. & G. R. R., 70 I. C. C. 607; Abandonment of Part of L. & P. Ry., 70 I. C. C. 629; Public Convenience Certificate to M., St. P. & S. S. M. Ry., 70 I. C. C. 698; Certificate of N. S. and C. & P. R. R., 70 I. C. C. 774; Public Convenience Certificate to G. N. Ry., 71 I. C. C. 26; Abandonment of Branch Line by L. O. P. & G. R. R. Co., 71 I. C. C. 133; Abandonment of Branch Line by L. V. R. R., 71 I. C. C. 150; Abandonment of Part of Branch Line by N., I. Ry., 71 I. C. C. 169; Abandonment of Z. & E. Ry., 71 I. C. C. 193; Abandonment of Part of Branch Line by L. & N. R. R., 71 I. C. C. 225; Abandonment of Branch Line by M. & L. S. R. R., 71 I. C. C. 329; Abandonment of Branch Line by B. & O. R. R., 71 I. C. C. 386; Abandonment of Branch Line by B. & O. R. R., 71 I. C. C. 386, 389; Loan to M. & N. A. R. R., I. C. C. 395, 399; Abandonment by C. & O. Ry., 71 I. C. C. 450; Pub. Con. Certificate to B. & A. R. R., 71 I. C. C. 579; Abandonment of Line by M. S. Ry., 71 I. C. C. 589; Abandonment of Line by C. & E. I. R. R., 71 I. C. C. 609; Abandonment of Line by Big Four, 71 I. C. C. 668; Abandonment of Branch Lines of C. & G. R. R., 71 I. C. C. 725; Public Convenience Application of A. & S. A. B. Ry., 71 I. C. C. 784; Public Convenience Application of D. & N. M. Ry., 73 I. C. C. 795; Public Convenience Application of D. & N. M. Ry., 71 I. C. C. 795, 799; Abandonment of Part of Branch Line by E. & L. S. R. R., 71 I. C. C. 816; Abandonment of Line by S. Ry., 72 I. C. C. 13; Abandonment of Part of Branch Line by G., M. & N. R. R., 72 I. C. C. 184; Abandonment of Lines by Receivers of M., D. & G. R. R., 72 I. C. C. 206; Abandonment of Line N. Y., N. H. & H. R. R., 72 I. C. C. 250; Deficit Status of A. & S. Ry., 72 I. C. C. 333; Abandonment of Branch Line by S. P. Co., 72 I. C. C. 404, 405, 407; Abandonment of N. C. O. Ry., 72 I. C. C. 433; Abandonment of Line by Leetonia Ry., 72 I. C. C. 507; Abandonment of O. & S. W. R. R., 72 I. C. C. 509; Abandonment of Branch by G. B. & W. R. R., 72 I. C. C. 647; Abandonment of Part of Line by O. T. Ry., 72 I. C. C. 679; Operation of Line by M. & A. R. R., 72 I. C. C. 585, 685; Abandonment of Boat Line by G. F. & A. Ry., 72 I. C. C. 825, 826.

V. STOCK AND CAPITAL ISSUES

§5. In general.

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(a) Competition between railways as well as between other industries is the established policy of the nation. And while the acquisition of a small minority of the stock of a competing line might

not decrease the competition, yet the acquisition of any considerable amount of stock, with representation on the board of directors of such railway, unquestionably has the effect of diminishing competition and lessening to that extent its effectiveness. So long as it is the policy of the general government and of the States to maintain competition between naturally competing lines, the ownership of any stock by one railway in a competing railway should not be permitted, and such lines of railway should be prohibited from having any common directors or officers. Consolidations and Combinations of Carriers, 12 I. C. C. 277, 306.

(ab) The time has come when some reasonable regulation should be imposed upon the issuance of securities by railways engaged in interstate commerce. We are aware that in the construction of new lines of railway, developing new territory, it has been necessary in many instances to sell railway securities at large discount, and to sell bonds with stock bonuses, and even in such cases it has many times been difficult to raise the necessary capital. Men will not invest their money and take the risk for small rates of interest. But this principle does not apply to old established railway systems having good credit. Such railways should be prevented from inflating their securities for merely speculative purposes. Railroads should be encouraged to extend their systems and develop the country. It is of the utmost importance, also, that railway securities should be safe and conservative investments for the public, and should yield good and ample return for the money invested. Reasonable regulation will tend to make them safer and more secure investments, and thereby benefit not only the railway companies but the public. Consolidations and Combinations of Carriers, 12 I. C. C. 277, 306.

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(ac) Authority to issue stock can not be claimed as a right. It is within the Commission's discretion, subject to the limitation that it shall grant authority only if it is able to make the necessary finding as provided in section 20a of the act. If a carrier is lawfully entitled to earn a return upon the fair value of property acquired out of surplus, this right will persist whether or not a stock issue is permitted. Stock of D., L. & W. R. R., 67 I. C. C. 426, 431.

(b) To render a proposed issuance of stock for distribution as a dividend "compatible with the public interest," within the meaning of the statute, a substantial surplus should remain uncapitalized as a support for the applicant's credit, providing for emergency needs, offsetting obsolescence and necessary investments in nonrevenue producing property, and serving as a general financial balance wheel. Stock of Delaware, Lackawanna & Western R. R., 67 I. C. C. 426, 433.

(c) Carrier not permitted to issue capital stock against its net account with the United States Railroad Administration, which is merely an adjusted balance, or its investments in non-operating properties where no reasons for acquiring and holding these properties are stated, and no present or contemplated future use of them in connection with the carrier's transportation service is shown. Stock of Delaware, Lackawanna & Western R. R., 67 I. C. C. 426, 434.

(d) Stocks of advertising, mining, timber, and land companies, United States government bonds and certificates of indebtedness, municipal bonds, and steel company bonds, are flexible assets which the Commission deems improper to permit applicant to capitalize. If it should be thought desirable to distribute the portion of surplus invested in such securities stockholders, applicant would be able to apportion the securities themselves or distribute the proceeds thereof. They are neither property used or useful in rendering the public service nor an assured part of any surplus. Stock of Delaware, Lackawanna & Western R. R., 67 I. C. C. 426, 433, 434.

(e) Bonds issued and delivered without authorization of the Commission having first been obtained, as provided in section 20a of the act, are, by the plain terms of the statute, void, and no means are provided for validating them. They are not obligations of the applicant, and may not be carried on its books as such. Bonds of Chicago & Western Indiana R. R., 67 I. C. C. 609.

(f) The judgment of a court of competent jurisdiction can not be made the subject of collateral attack before the Commission in a proceeding involving a proposed issue of stock. Stocks of Denver & Rio Grande Western R. R., 70 I. C. C. 106.

(g) Carrier sought authority to issue

stock dividends from time to time, as further expenditures shall be made from income for additions and betterments, thus capitalizing such expenditures. HELD: Authority therefore should be requested when such expenditures have been made. Securities Application of D. & T. S. L. R. R., 70 I. C. C. 322, 323.

(h) It is merely the commission's duty to inquire whether the securities offered by a carrier in acquiring control of another carrier are worth what the applicant proposes to pay, and an affirmative finding can not in any sense be taken as establishing or tending to establish the market value of the stock. Neither does such a finding impose upon a stockholder any obligation, or persuasion, to exchange an interest-bearing security for an equity in the applicant's property, since he is entirely free to do so or not, according to the dictates of his own judgment. If in his view the bargain is an improvident one, he is free to refuse the offer. Control of Big Four by N. Y. C., 72 I. C. C. 96, 98.

(i) While it is within the commission's province to give authorization and consent under section 20a of the act for the issuance of receiver's certificates, it is not to be understood that by giving such authority, it passes upon or in anywise determines or affects the nature of the rights or liens to be enjoyed under such certificates or the priority of the certificates in their relation to other liens. St. Louis, El Reno & Western Receiver's Certificates, 72 I. C. C. 257, 258.

(j) Transportation Act §20a, giving the Interstate Commerce Commission exclusive control over issuance of securities by railroads engaged in interstate commerce and depriving the states of power to regulate the issuance of such securities, HELD not void as an attempt to regulate the purely internal and governmental functions of railroads, since the statute is a regulation of the business of the railways, in view of the financial problem with which they are constantly faced, and the relation between such problems and the problem of rates, and therefore is within the power of Congress to regulate interstate commerce. Minneapolis, St. P. & S. S. M. Ry. Co. v. Railroad Commission (Wisc. 1924) 197 N. W. 352.

ALL OTHER CITATIONS

Stock of Delaware & Hudson Co., 67 I. C. C. 20; Bonds of Chicago & Eastern Illinois Ry., 67 I. C. C. 61, 64; Stock of Chicago, Burlington & Quincy R. R., 67 I. C. C. 156; Application of W. &. L. E. Ry., to Pledge Securities, 67 I. C. C. 293; Stocks of Chicago & Alton R. R., 67 I. C. C. 386; Stock of Delaware, Lackawanna & Western R. R., 67 I. C. C. 426, 432; Securities of Muskegon Ry., 67 I. C. C. 527; Stock of Death Valley R. R., 67 I. C. C. 670; Stock of Detroit & Ironton R. R., 67 I. C. C. 731; Stock of Atlantic Port Ry., 67 I. C. C. 734; Securities of Washington & Lincolton R. R., 67 I. C. C. 744; Reduced Rates, 1922, 68 I. C. C. 676, 682; Stock in Interstate R. R., 70 I. C. C. 7; Bonds of A. A. R. R., 70 I. C. C. 36; Stock of A. & L. M. Ry. Co., 70 I. C. C. 58; Stock of T. & N. C. Ry., 70 I. C. C. 96; Bonds of O. W. R. R. & Nav. Co., 70 I. C. C. 99; Stock of D. & R. G. W. R. R., 70 I. C. C. 102; Stock of E. P. & S. W. Co., 70 I. C. C. 208; Securities of T. C. T. Ry. Co., 70 I. C C. 244; Stock of S. T. Ry., 70 I. C. C. 258; Securities of C. & N. E. Ry., 70 I. C. C. 260; Bonds of N. Y. C. R. R., 70 I. C. C. 282; Stock of F. B. R. R., 70 I. C. C. 296; Securities of L. F. Ry., 70 I. C. C. 330; Securities of W., C. F. & N. Ry., 70 I. C. C. 370; Bonds of B. & O. R. R., 70 I. C. C. 407; Notes of E. St. L. J. R. R., 70 I. C. C. 420; Bonds of C. V. Ry., 70 I. C. C. 443; Stock of O. & A. Ry., 70 I. C. C. 460; Debentures of G. R. R. & B. Co., 70 I. C. C. 467; Stock of Miledgeville Ry., 70 I. C. C. 476; Assumption of Obligation by C., R. I. & U. Ry., 70 I. C. C. 483; Bonds of B., C. R. & N. Ry. and C., R. I. & P. Ry., 70 I. C. C. 499; Stock of A. T. & Ry. Co., 70 I. C. C. 509; Indemnity Bonds of N. Y., N. H. & H. R. R., 70 I. C. C. 517; Stock of V. & S. R. R., 70 I. C. C. 556; Stock of L. & T. R. R., 70 I. C. C. 632; Stock of C. & I. W. R. R., 70 I. C. C. 682; Bonds of M. & O. Ry. Co., 70 I. C. C. 672; Securities Application of P. & W. V. Ry., 70 I. C. C. 682; Bonds of D. M. & N. Ry., 70 I. C. C. 708; Securities of Louisville & Nashville R. R., 70 I. C. C. 751; Securities of A. & A. R. R., 70 I. C. C. 757; Bonds of C. & N. W. Ry., 70 I. C. C. 758, 762; Securities of Ft. S. & W. Ry., 70 I. C. C. 777; Bonds of C., I. & L. Ry., 70 I. C. C. 803; Notes of St. L., S. F. & T. Ry., 70 I. C. C. 828; Stock of Pullman Co., 70 I. C. C. 11, 14; Equipment-Trust Certificate of S. D. & Ariz. Ry., etc., 71 I. C. C. 29, 32; Bonds of D. T. & R. R., 71 I. C. C. 199; Securities Application of Apache R. R., 71 I. C. C. 245; Securities Applica-

tion of A. & G. Ry., 71 I. C. C. 281; Stock of C. & I. W. R. R., 71 I. C. C. 375; Bonds of M. P. R. R., 71 I. C. C. 435; Bonds of D. & H. Co., 71 I. C. C. 541; Bond of the Northern Pacific Ry., 71 I. C. C. 583, 584; Bonds of B. & O. R. R. and Subsidiaries, 71 I. C. C. 680; Securities of W. F. & S. R. R., 71 I. C. C. 694; I. C. Capital Stock, 71 I. C. C. 707; Control of P. & E. by Big Four, 71 I. C. C. 747; Stock of I. C. R. R. 71 I. C. C. 775; Construction of Line by Eastern Maine, Etc., 72 I. C. C. 39; N. Y. C. Capital Stock, 72 I. C. C. 108; E., W. F. & G. R. R. Stock and Bonds, 72 I. C. C. 181; I. T. Ry. Co. Stock, 72 I. C. C. 239; Purchase of Stock of C. & A. by Rock Island, 72 I. C. C. 273; D. V. R. R. 72 I. C. C. 295; T. C. Securities, 72 I. C. C. 414; Increase in Dividend Rate on Preferred Stock by Virginian Ry., 72 I. C. C. 473; T., A. & G. Stock, 72 I. C. C. 565; C. & O. Ry. Capital Stock, 72 I. C. C. 658; Construction of Line by S. F. and L. A. H. Ry., 72 I. C. C. 832.

VI. GOVERNMENT GUARANTY.

See Interstate Commerce Commission §9½.

§6. In General.

IMPORTANT CASES SINCE 1908

(a) The guaranty under section 209 of the transportation act is wholly independent of any damages which carriers may have suffered by reason of the temporary taking of their property during the period of Federal control. For all such damage the Government must render just compensation; and by their acceptance of the provisions of section 209 the carriers have in no way surrendered or abated any claims arising out of Federal operation. Maintenance Expenses under Section 209, 70 I. C. C. 116.

(b) The guaranty under section 209 of the transportation act was not founded upon a legal obligation, but upon the thought that in fairness it was the duty of the Government to protect the income of the carriers, following the termination of Federal control, until such time as higher rates could be made effective under the provisions of section 15a of the interstate commerce act. Maintenance Expenses under section 209, 70 I. C. C. 116, 117.

(c) The danger of the guaranty, as provided under section 209 of the transportation act, at a time when expenditures were wholly within the control of the private managements, was that the carriers might utilize the opportunity to profit unduly at the expenses of the public treasury. The danger was particularly acute in the case of maintenance, and for this reason it was plainly desirable to set some limit upon the sums which might be allowed for this purpose in computing amounts payable under the guaranty. Paragraph (3) of subdivision (f) of section 209 was the means of accomplishing this end. Maintenance Expenses under Section 209, 70 I. C. C. 117.

(d) Section 1 of the Federal control act authorized the President to agree with and to guarantee to each carrier that it should receive as just compensation during Federal control an annual sum "not exceeding a sum equivalent as nearly as may be to its average annual railway operating income for the three years ended June 30, 1917." This fixed maximum compensation, known as the "standard return" which the President might voluntarily agree to pay did not preclude him from offering less or the carriers from seeking more, and provision was made for reference, in default of agreement to a board of referees and ultimately to the Court of Claims. Maintenance Expenses under Section 209, 70 I. C. C. 117, 118.

(e) The "standard return," fixed as the maximum which might voluntarily be offered, was based on the results from operation in the so-called test period of three years ended June 30, 1917, these being the most prosperous three consecutive years in the history of the carriers. It was therefore a liberal standard of compensation for the war use of property at a time when the country was enduring grievous burdens. Maintenance Expenses under Section 209, 70 I. C. C. 118.

(f) Paragraph (a) of section 5 of the standard contract set forth a rule for measuring the compliance of the director general with the covenant of upkeep by reference to the accounts of the carriers, when kept in accordance with the Commission's requirements; the basic measure is the expenditure for maintenance during an average six months of the test period, adjusted to differences in the cost of labor and materials and in the amount and use of the property, in accordance with the provisions of paragraph (c); and differences in the "cost of labor," as these words are used in paragraph (c), do not include changes in quality or effectiveness of labor, but only changes in wages. Maintenance

Expenses under Section 209, 70 I. C. C. 123.

(g) It is not proper in determining amounts payable under the guaranty, under section 209 of the transportation act, to take into consideration differences in cost of labor and materials which would not have affected the account if guaranty-period conditions had been substituted for those of the test period, and neither depreciation nor retirement accounts will be adjusted for such differences. In fixing maximum maintenance allowances for the guaranty period, charges representing depreciation and retirements will be computed upon the same basis as those which were used during an average six months of the test period. Maintenance Expenses under Section 209, 70 I. C. C. 127.

(h) Principle that consideration must be given to the business of the carrier as a whole is not to be extended so as to include operating losses of a carrier in the operation of its affiliated companies, since that view would disregard rights of the minority. Nor is the question of profit and loss a matter to be passed upon by the courts alone. Such a construction of paragraph (18) of section 1 would condemn the provision on constitutional grounds, since any refusal on the Commission's part to consider operating losses might very well result in a denial of the application, so that the effect of the paragraph would then be to require the carrier to operate at a loss, and amount to confiscation. Abandonment of Hawkinsville & Florida Southern Ry., 70 I. C. C. 568.

(i) The intention of Congress was to be as specific as possible in designating those carriers for whose benefit the guaranty provisions of section 209 of the transportation act, 1920, should operate. The fact that the definition of the term "carrier" was made precludes the view that section was intended to apply generally to all agencies of transportation over which in the time of war Federal control was assumed; and the fact that it limits the meaning of "carrier" to (1) "a carrier by railroad or party by railroad and partly by water," and (2) "a sleeping-car company," deprives the Commission of authority to certify a payment under the guaranty to any claimant which can not bring itself clearly within these terms. Guaranty Claim of C., N. Y. & B. Refrigerator Co., 70 I. C. C. 578.

(j) December 31, 1921, fixed as the date as of all accounts pertaining to the guaranty period shall be considered closed for the purpose of computing the guaranty under section 209 of the transportation act. Final settlement under Section 209, 70 I. C. C. 712.

(k) For the purpose of the guaranty under section 209 of the transportation act, 1920, charges to operating expenses for maintaining will be limited to those applying to work done between March 1 and August 31, 1920, inclusive, and to charges accrued or equalized in accordance with the Commission's accounting rules. No charges for deferred maintenance will be considered. Final Settlement under Section 209, 70 I. C. C. 712, 713.

(l) For the purpose of the guaranty under section 209 of the transportation act, 1920, charges to operating expenses for maintenance will be limited to those applying to work done between March 1 and August 31, 1920, inclusive, and to charges accrued or equalized in accordance with the Commission's accounting rules. No charges for deferred maintenance will be considered. Final settlement under Section 209, 70 I. C. C. 712, 713.

(m) Estimates made by the Commission and agreed to by the carrier under the provisions of paragraph (b) of section 212 of the transportation act, 1920, will be considered as actual expenditures and shall be so treated in the computation of operating expenses for the guaranty period. Final Settlement under Section 209, 70 I. C. C. 713.

(n) In the computation of railway operating income or any deficit therein for the guaranty period for the purposes of section 209 of the transportation act, the Commission shall treat the provisions of subdivision (f) of that section as provisions limiting consideration to the amounts actually charged on the carrier's books of account under the accounting rules prescribed by the Commission pursuant to section 20 of the interstate commerce act, and shall not for the purpose of the guaranty make or permit any increase or addition to charges actually on the books in accordance with the accounting rules. Final Settle-

ment under Section 209, 70 I. C. C. 713, 714.

(o) Estimates of the net effect of deferred debit and credit items made by the Commission and agreed to by carriers under the authority of paragraph (b) of section 212 of the transportation act, 1920, will be considered in computing the guaranty under section 209. Final Settlement under Section 209, 70 I. C. C. 714.

(p) All carriers which accepted the provisions of section 209 of the transportation act, 1920, required to file on or before March 1, 1922, final statements of amounts due to them or to the United States thereunder. No further partial payments will be certified until the information necessary for final settlement is at hand. Forms for rendition of statements prescribed. Final settlement under Section 209, 70 I. C. C. 714.

(q) Announcement of general rule for adjustment of differences in cost of labor and material in establishing the maximum amounts to be included in operating expenses for maintenance of way and structures and for maintenance of equipment for the purposes of the guaranty under section 209 of the transportation act, 1920. Final Settlement under Section 209, 70 I. C. C. 714, 715.

(r) The commission is without authority to certify any account for payment under section 204 of the transportation act, unless the claimant during that part of the period of Federal control in which it operated independently was, in fact and in law, a carrier by railroad engaged as a common carrier in general transportation, and the burden rests upon a claimant to establish its status under that section. Deficit Claims of A. & S. S. Ry., 71 I. C. C. 90, 91.

(s) The statute makes no provision for a conditional acceptance of the transportation act, 1920. The duty and obligation of determining railroad operating income for the test and guaranty periods is imposed upon the commission, and it is required to make such determination in accordance with rules laid down in the section. If a "condition" merely contemplates the application of some rule in the statute, it might be treated as surplusage, but it is invalid if it attempts to control the computation of income in a manner not contemplated by the statute. Guaranty Status of Potato Creek R. R., 71 I. C. C. 457.

(t) The commission can not construe the act as imposing the stupendous and seemingly impractical task of analysis of every means of financing equipment for all carriers, or as precluding it from determining the most appropriate method for financing the equipment needs of a single carrier. This seems particularly true if the commission is to consider the purposes of loans under section 210 as limited by the necessities of the period immediately following the termination of Federal control. Loan to Seaboard-Bay Line, 71 I. C. C. 464, 468.

(u) The advantages which a carrier may derive by the purchase of equipment during a period of low prices and by the repair of its bad-order cars under favorable conditions make it the part of good management to do so, and form a proper basis for a loan under section 210 of the transportation act, 1920. Loan to Seaboard-Bay Line, 71 I. C. C. 464, 468.

(v) Fact that there is a general condition of over supply of cars would not justify the commission in considering the application of a carrier for a loan for the acquisition of equipment taking a stand that would require it to continue it to pay from its revenues excessive car hire to other carriers, especially when it is considered that this car hire is paid at the current per diem rate. Loan to Seaboard-Bay Line, 71 I. C. C. 464, 468.

(w) Contributions toward the purchase of equipment acquired either from the carrier's own funds or from private sources, to meet the contributions of the Government, have customarily amounted to 50 per cent of the whole in respect of locomotives and to 75 per cent in respect of freight-train cars. In loans made through the National Railway service Coropration a composite percentage for both cars and locomotives contemplating an investment of 60 per cent of private capital to 40 per cent of Government funds has usually been employed. Loan to Seaboard-Bay Line, 71 I. C. C. 464, 469.

(x) The director general regarded certain elevator and warehouse companies as a part of the system of transportation, but the commission is unable to accede to the view that the director general's determination of that question

in relation to Federal control is conclusive upon the commission in determining their status for a guaranty payment under section 209 of the transportation act, 1920. Guaranty Claim of Central Elevation & Warehouse Co., 72 I. C. C. 169, 174.

(y) The wording of section 209 of the transportation act, 1920, clearly indicates that Congress intended that of the carriers retained under Federal control at the end of the period thereof the guaranty should apply only to carriers by railroad and sleeping-car companies and not necessarily to every system of transportation which might have been taken and retained under Federal control. Guaranty Claim of Central Elevator & Warehouse Co., 72 I. C. C. 169, 174, 175.

(z) The particularity with which Congress defined the carriers which should be entitled to the guaranty forbids that the commission should, without exercising its own judgment in each case arising under section 209, accept the director general's grouping of systems of transportation made under conditions very different from those that obtained when the guaranty provisions were enacted. Guaranty Claim of Central Elevator & Warehouse Co., 72 I. C. C. 169, 175.

(aa) No definition of the term "system of transportation" appears in either the transportation act or interstate commerce act is of doubtful value as an aid in determining the meaning of "system of transportation" as used in section 209 of the transportation act, 1920. Guaranty Claim of Central Elevator & Warehouse Co., 72 I. C. C. 169, 175.

(bb) The commission is required by section 15a of the act to initiate rates which will yield as nearly as may be a fair return to carriers as a whole, or as a whole by such rate groups as the commission may fix. Reduced Rates from New York Piers, 81 I. C. C., 312, 331.

ALL OTHER CITATIONS

New England Divisions, 62 I. C. C. 513, 565; Reduced Rates, 1922, 68 I. C. C. 676, 681; Deficit Settlement with Receiver of A. & M. R. R., 70 I. C. C. 432; Guaranty Settlement with Receiver of A. & M. R. R., 70 I. C. C. 435; Guaranty Claim of E. & N. R. R., 70 I. C. C. 483; Marietta & Vincent R. R. Co., 70 I. C. C. 488; Middle Tennessee R. R. Co., 70 I. C. C. 177; Guaranty Claim of C. N. Y. & B. Refrigerator Co., 70 I. C. C. 575; Final Settlement under Section 209, 70 I. C. C. 717, 719, 748; Guaranty of C., N. Y. & B. R. Co., 70 I. C. C. 7; Guaranty of C. N. Y. & B. R. Co., 71 I. C. C. 7; Guaranty Claims of Receiver of D., T. & C. Ry., 71 I. C. C. 37; Payment of A. & S. S. Ry., 71 I. C. C. 93; Apalachicola Northern R. R. Co., 71 I. C. C. 732; Bridgton & Saco River R. R., 71 I. C. C. 732; Buffalo, Rochester & Pittsburgh Ry. Co., 71 I. C. C. 21, 262; Bullfrog Goldfield R. R. Co., 71 I. C. C. 710; Chicago & Eastern Illinois R. R. Co., 71 I. C. C. 713; Chicago Junction Ry. Co., 71 I. C. C. 185; Chicago, Milwaukee & St. Paul Ry. Co., 71 I. C. C. 603; Deering Southwestern Ry., 71 I. C. C. 603; Deering Southwestern Ry., 71 I. C. C. 413; Denver & Rio Grande R. R. Co., 71 I. C. C. 264; Detroit, Bay City & Western R. R. Co., 71 I. C C. 445; East St. Louis Connecting Ry. Co., 71 I. C. C. 84; El Paso & Southwestern Co., 71 I. C. C. 855; Flint River & Northeastern R. R. Co., 71 I. C. C. 848; Georgia Northern Ry. Co., 71 I. C. C. 525; Gulf, Florida & Alabama Ry. Co., 71 I. C. C. 507; Jefferson & Northwestern Ry. Co., 71 I. C. C. 755; Lake Erie & Western R. R. Co., 71 I. C. C. 494; Lufkin, Hemphill & Gulf Ry. Co., 71 I. C. C. 206; Manchester & Oneida Ry. Co., 71 I. C. C. 741; Minneapolis, St. Paul & St. Ste. Marie Ry. Co., 71 I. C. C. 781; Mississippi Central R. R. Co., 71 I. C. C. 716; Mount Hope Mineral R. R. Co., 71 I. C. C. 719; Oil Fields Short Line R. R. Co., 71 I. C. C. 722; Pacific Coast Ry. Co., 71 I. C. C. 332; Paris & Mt. Pleasant R. R. Co., 71 I. C. C. 872; Philadelphia & Reading Ry. Co., 71 I. C. C. 735; Rapid City Black Hills & Western R. R. Co., 71 I. C. C. 536; Raritan River R. R. Co., 71 I. C. C. 209; Rock Island Southern Ry. Co, 71 I. C. C. 619; St. Louis Merchants Bridge Terminal Ry. Co., 71 I. C. C. 84; St. Louis Transfer Co., 71 I. C. C. 84; San Antonia & Aranas Pass Ry. Co., 71 I. C. C. 485; Santa Marie Valley R. R. Co., 71 I. C. C. 293; Stanlry, Merrill & Phillips Ry. Co., 71 I. C. C. 105; Terminal R. R. Association of St. Louis, 71 I. C. C. 84; Texas Midland R. R. Co., 71 I. C. C. 576; Tonopah & Goldfield R. R. Co., 71 I. C. C. 663; Ulster & Delaware R. R. Co., 71 I. C. C. 427; Ursina & North Fork Ry. Co., 71 I. C. C. 57; Waterville Ry. Co.. 71 I. C. C. 57, 851; Western Allegheny R. R. Co., 71 I. C. C. 361; Wiggins Ferry Co., 71 I. C. C. 84; Woodstock Ry. Co., 71I. C. C. 744; Guaranty

Status of G. T. Ry., 71 I. C. C. 350; Guaranty Status of C. of P. Ry., 71 I. C. C. 370; Akron Union Passenger Depot Co., 71 I. C. C. 422;, Albany Pessenger Terminal Co., 71 I. C. C 331; Arkansas & Memphis R. R. Bridge & Terminal Co., 71 I. C. C. 455; Atlanta Terminal Co., 71 I. C. C. 411; August Union Station Co., 71 I. C. C. 551; Bay City Terminal Ry. Co., 71 I. C. C. 651; Birmington Terminal Co., 71 I. C. C. 673; Boston Terminal Co., 71 I. C. C. 367; Calumet Western Ry. Co., 71 I. C. C. 368; Camas Prairie R. R. Co., 71 I. C. C. 359; Central Union Depot & Ry. Co., of Cincinnati, 71 I. C. C. 661; Charleston Union Station Co., 71 I. C. C. 831; Chattanooga Station Co., 71 I. C. C. 673; Columbia Union Station Co., 71 I. C. C. 673; Denver Union Terminal Ry. Co., 71 I. C. C. 443; Durham Union Station Co., 71 I. C. C. 448; Erie Terminals R. R. Co., 71 I. C. C. 696; Goldsboro Union Station Co., 71 I. C. C. 416; Great Falls & Teton County Ry. Co., 71 I. C. C. 607; Great Northern Terminal Ry. Co., 71 I. C. C. 607; Gulf Terminal Co., 71 I. C. C. 673; Indianapolis & Frankfort R. R Co., 71 I. C. C. 352; Jacksonville Terminal Co., 71 I. C. C. 497; Kentucky & Indiana Terminal R. R. Co., 71 I. C. C. 528; Mason Terminal Co., 71 I. C. C. 372; Meridan Terminal Co., 71 I. C. C. 673; Minneapolis Belt Line Co., 71 I. C. C. 607; Mount Gilead Short Line Ry. Co., 71 I. C. C. 598; Norfolk Terminal Ry Co., 71 I. C. C. 423; North Charleston Terminal Co., 71 I. C. C. 673; Portland Terminal Co., 71 I. C. C. 424; St. Johns River Terminal Co., 71 I. C. C. 673; Savannah River Terminal Co., 71 I. C. C. 425; Savannnah Union Station Co., 71 I. C. C. 673; Try Center R. R. C., 71 I. C. C. 666; Union Depot Co. (Columbus, Ohio), 71 I. C. C. 430; Woodstock & Blocton Ry. Co., 71 I. C. C. 673; Guaranty Status of P. C. R. R., 71 I. C. C. 457; Guaranty Status of V. B. B. Co., 71 I. C. C. 459; Loan to Seaboard-Bay Line, 71 I. C. C. 465; Guaranty Status of C. S. S. Co., 71 I. C. C. 484; Cumberland Ry. Co., 71 I. C. C. 553; Ensley Southern Ry. Co., I. C. C. 553; Sievern & Knoxville R. R. Co., 71 I. C. C. 553; State University R. R. Co., 71 I. C. C. 553; Tennessee & Carolina Southern Ry Co., 71 I. C. C. 553; Guaranty Status of V. & S. R. R., 71 I. C. C. 555; Guaranty Status of A. S. Ry., 71 I. C. C. 569; Deficit Status of A. C. R. R., 71 I. C. C. 574; Guaranty Status of Great Falls & Teton County Ry., et al., 71 I. C. C. 607, 608; Public-Convenience Certificate to G., A., S. & C. Ry. Co., 71 I. C. C. 616, 617; Settlement with P. A. C. & D. Co., 71 I. C. C. 685; Apalachiola Northern R. R. Co., 71 I. C. C. 203, 823; Arizona & Swansea R. R. Co. 71 I. C. C. 853; Bullfrog Goldfield R. R. Co., 71 I. C. C. 825; Carolina & Yadkin River Co., 71 I. C. C. 420; Cazenovia Southern R. R. Co., 71 I. C. C. 627; Elwood, Anderson & Lapelle R. R. Co., 71 I. C. C. 492; Jefferson & Northwestern Ry. Co., 71 I. C. C. 863; Kentwood & Eastern Ry. Co., 71 I. C. C. 379; Kentwood, Greensburg & Southwestern R. R. Co., 71 I. C. C. 379; Lawndale Ry. & Industrial Co., 71 I. C. C. 865; Leetonia Ry. & Industrial Co., 71 I. C. C. 865; Leetonia Ry. Co., 71 I. C. C. 827; Nevada-California-Oregon Ry., 71 I. C. C. 548; Ocean Shore R. R. Co., 71 I. C. C. 867; Paris & Mt. Pleasant R. R. Co., 71 I. C. C. 869; Raquette Lake Ry. Co., 71 I. C. C. 829; Salina Northern R. R. Co., 71 I. C. C. 235; Silverton Northern R. R. Co., 71 I. C. C. 831; United Verde & Pacific Ry. Co, 71 I. C. C. 833; Ursina & North Fork Ry. Co., 71 I. C. C. 409; Centura County Ry. Co., 71 I. C. C. 813; Jefferson & Northwestern Ry. Co., 71 I. C. C. 863; Nevada-California-Oregon Ry., 71 I. C. C. 548; Paris & Mt. Pleasant R. R. Co., 71 I. C. C. 869; Ventura County Ry. Co., 71 I. C. C. 813; Blytheville, Leachville & Arkansas Southern R. R. Co., 72 I C. C. 29; Bridgton & Saco River R. R. Co., 72 I. C. C. 529; Butler County R. R. Co., 72 I. C. C. 87; Chesapeake Western Ry., 72 I. C. C. 431; Chicago Tunnel Co., 72 I. C. C. 794; Chicago Warehouse & Terminal Co., 72 I. C. C. 787, 813; Colorado Springs & Cripple Creek District Ry. Co., 72 I. C. C. 444; Emmitsburg R. R. Co., 72 I. C. C. 449; Fulton Chain Ry. Co., 72 I. C. C. 771; Georgia Coast & Piedmont R. R. Co., 72 I. C. C. 734; Glenmore & Western Ry. Co., 72 I. C. C. 672; Illinois Northern Ry., 72 I. C. C. 522; Intermountain Ry. Co., 72 I. C. C. 525; Knoxville, Sevierville & Eastern Ry. Co., 72 I. C. C. 165; LaSalle & Bureau County R. R. Co., 72 I. C. C. 792; Lime Rock R. R. Co., 72 I. C. C. 493; Little Rock, Maumelle & Western R. R. O., 7 I. C. C. 651; Lukin, Hamphill & Gulf Ry. Co., 72 I. C. C. 141; Madson Southern Ry. Co., 72 I. C. C. 811; Manchester & Oneida Ry. Co., 7 I. C. C. 347; Mansfield Ry. & Transportation Co., 72 I. C. C. 241; Millers Creek R. R. Co.,

72 I. C. S. 53; Moscow, Camden & San Augustine R. R. Co., 72 I. C. C. 515. 815; Neame, Carson & Southern R. R. Co., 72 I. C. C. 693; New Castle & Ohio River Ry. Co., 72 I. C. C. 513; St. John & Ophir R. R. Co., 72 I. C. C. 121; Sandy River & Rangeley Lakes R. R. Co., 72 I. C. C. 605; Butler County R. R. Co., 72 I. C. C. 87; Glenmora & Western Ry. Co., 72 I. C. C. 672; LaSalle & Bureau County R. R. Co., 72 I. C. C. 792; Little Rock, Maumelle & Western R. R. Co., 72 I. C. C. 651: Moscow, Camden & San Augustine R. R. Co., 72 I. C. C 815; Nacowdoches & Southeastern R. R. Co., 72 I. C. C. 119; Statenville Ry. Co., 72 I. C. C. 547; Millers Creek R. R. Co., 72 I. C. C. 53; Milltown Air Line Co., 72 I. C. C. 719; Moscow, Camden & San Augustine R. R. Co,. 72 I. C. C. 515; Nacogfoches & Southern R. R. Co., 72 I. C. C. 119; Northampton & Bath R. R. C., 72 I. C. S. 639; Okmulgee Northern Ry. Co., 72 I. C. C. 387; Owasco River Ry., 72 I. C. C. 263; South Buffalo Ry. Co., 72 I. C. C. 8; South San Francisco Belt Ry., 72 I. C. C. 31; Spokane & British Columbia Ry. Co., 72 I. C. C. 439; Statenville Ry. Co., 72 I. C. C. 547; Susquehanna & New York R. R. Co., 72 I. C. C. 527, 549; Wabash & Western R. R. Co., 72 I. C. C. 517; Waterville Ry. Co., 72 I. C. C. 649; Wyandotte Virginia & Western Extension, 72 I. C. C. 55, 57; Butler Piedmont R. R. Co., 72 I. C. C. 87; Knoxville, Serierville & Eastern Ry. Co., 72 I. C. C. 165; Lufkin Hemphill & Gulf Ry. Co., 72 I. C. C. 141; Guaranty Status of C. C. T. Co., 72 I. C. C. 167; Alabama Central Ry. Co., 72 I. C. C. 203; Arkansas Harbor Terminal Ry., 72 I. C. C. 441; Bennettsville & Cheraw R. R. Co., 72 I. C. C. 114; Bloomsburg & Sullivan R. R. Co., 72 I. C. C. 125; Brownwood North & South Ry. Co., 72 I. C. C. 211; Central Vermont Transportation Co., 72 I. C. C. 531; Central West Virginia & Southern R. R. Co., 72 I. C. C. 586; Charleston Terminal Co., 72 I. C. C. 737; Chesapeake Western Ry., 72 I. C. C. 757; Chicago & North Western Ry. Co., 72 I. C. C. 33; Chicago, Memphis & Gulf R. R. Co., 72 I. C. C. 339; Chicago, Peoria & St. Louis R. R. Co., 72 I. C. C. 311; Chicago, St. Paul, Minneapolis & Omaha Ry. Co., 72 I. C. C. 575; Colorado Springs & Cripple Creek District Ry. Co., 72 I. C. C. 19; Denison & Pacific Sumurban Ry. Co., 72 I. C. C. 382; Deroit & Mackinaw Ry. Co., 72 I. C. C. 500; Duluth, South Shore & Atlantic Ry. Co., 72 I. C. C. 62; Durham & Southern Ry. Co., 72 I. C. C. 815; Fernwood, Columbia & Gulf R. R. Co., 72 I. C. C. 123, 178; Ft. Smith, Subiaco& Rock Island R. R. Co., 72 I. C. S. 483; Fort Worth & Rio Grande Ry. Co., 72 I. C. C. 211; Galveston Wharf Co., 72 I. C. C. 465; Susquehanna & New York R. R. Co., 72 I. C. C. 549; Georgia Southern & Florida Ry. Co., 72 I. C. C. 602; Illinois Central R. R. Co., 72 I. C. C. 339; Emmitsburg R. R. Co., 72 I. C. C. 429; Kans. City Clinton & Springfield Ry. Co., 72 I. C. C. 211; Kansas City, Mexico & Orient Ry. Co. of Texas, 72 I. C. C. 65; LaSalle & Bureau County R. R. Co., 72 I. C. C. 712; Lehigh & Hudson River Ry. Co., 72 I. C. C. 760; Liberty White R. R. Co., 72 I. C. C. 468; Marion & Southern R. R. Co., 72 I. C. C. 785; Middle Tennessee R. R. Co., 72 I. C. C. 65; Middletown & Unionville R. R. Co., 72 I. C. C. 598; Mineral Range R. R. Co., 72 I. C. C. 59; Minneapolis Eastern Ry. Co., 72 I. C. C. 588; Mississippi Eastern Ry. Co., 72 I. C. C. 36; Missouri Valley & Blair Ry. & Bridge Co., 72 I. C. C. 33; Mobile & Ohio R. R. Co., 72 I. C. C. 572; Montana Western Ry Co., 72 I. C. C. 424; New Orleans Great Northern R. R. Co., 72 I. C. C. 44; New York, Ontario & Western Ry. Co., 72 I. C. C. 519; Owasco River Ry., 72 I. C. C. 497; Pacific Coast R. R. Co., 72 I. C. C. 818; Paris & Great Northern R. R. Co., 72 I. C. C. 211; Peoria & Pekin Union Ry. Co., 72 I. C. C. 76; Pierre, Rapid City & Northwestern Ry. Co., 72 I. C. C. 33; Port St. Joe Dock & Terminal Ry. Co., 72 I. C. C. 82; Quannah, Acme & Pacific Ry. Co., 72 I. C. C. 211; St. Louis, San Francisco Ry. Co., 72 I. C. C. 211; Salina Northern R. R. Co., 72 I. C. C. 626; Sandy River & Rangeley Lake R. R. Co., 72 I. C. C. 325; Sioux City Terminal Ry. Co., 72 I. C. C. 336; Tennessee, Alabama & Georgia R. R. Co., 72 I. C. C. 578; Texas & Pacific Ry. Co., 72 I. C. C. 486; Trans-Mississippi Terminal R. R. Co., 72 I. C. S. 478; Wabash Ry. Co., 72 I. C. C. 362; Washington & Choctow Ry. Co., 72 I. C. C. 740; Wolf River Valley Ry. Co., 72 I. C. C. 33; Wyoming & Northwestern Ry. Co., 72 I. C. C. 33; Yazoo & Mississippi Valley R. R. Co., 72 I. C. S. 339; Deficit Claim of N. L. Ry., 72 I. C. C. 265; Deficit Status of A. & S. Ry., 72 I. C. C. 333; Guaranty Status of M. & N. W. Ry., 72

I. C. C. 385; Kansas, Oklahoma & Gulf Extensions, 72 I. C. C. 392, 395; Notes of U. T. Co., 72 I. C. C. 401; Deficit Settlement with N. W. Ry., 72 I. C. C. 427; Lease of V. & W. Ry., 72 I. C. C 454; Guaranty Status of A. R. T. Co., 72 I. C. C. 475; Guaranty Status of M. & M. T. Co., 72 I. C. C. 477; Guaranty Status of K. & S. R. R., 72 I. C. C. 481; Guaranty Status of D. & D. B. Co., 72 I. C. C. 535; Construction and Operation of Line by Santa Fe Ry., 72 I. C. S. 544, 545; Guaranty Status of A. S. N. Co., 72 I. C. C. 641; Deficit Status of Roanoke River Ry., 72 I. C. C. 643; Adirondack & St. Lawrence R. R. Co., 72 I. C. C. 763; Augusta Southern Ry. Co., 72 I. C. C. 373; Marion Ry. Corp., 72 I. C. C. 557; Middletown & Unionville R. R. Co., 72 I. C. C. 691; Georgia Coast & Piedmont R. R. Co., 72 I. C. C. 734; Montana, Wyoming & Southern R. R. Co., 72 I. C. C. 779; Beaumont & Saratoga Transportation Co., 72 I. C. C. 769; Billings & Central Montana Ry. Co., 72 I. C. C. 765; Cape Girardeau Northern Ry. Co., 72 I. C. C. 715; Eastern Kentucky Ry. Co., 72 I. C. C. 778; Chicago Warehouse & Terminal Co., 72 I. C. C. 787; Chicago Tunnel Co., 72 I. C. C. 789; Fellsmere R. R. Co., 72 I. C. C. 796; St. Louis, El Reno & Western Ry. Co., 72 I. C. C. 767; Washington & Choctaw R. R. Co., 72 I. C. C. 581; Akron & Barberton Belt R. R. Co., 72 I. C. C. 799; Augusta & Summerville R. R. Co., 72 I. C. C. 117; Chicago Union Station Co., 72 I. C. C. 308; Indianapolis Union Ry. Co., 72 I. C. C. 365; Joplin Union Depot Co., 72 I. C. C. 447; Kansas City, Shreveport & Gulf Terminal Co., 72 I. C. C. 19; Pueblo Union Depot & R. R. Co., 72 I. C. C. 6; Tampa Union Station Co., 72 I. C. C. 4; Winona Bridge Ry. Co., 72 I. C. C. 797; Deficit Status of G. & W. R. R., 72 I. C. C. 807; Guaranty Status of Connecting Terminal R. R., 72 I. C. C. 809.

VII. FINANCIAL OPERATION.

§7. In General.

CASES 1887-1908

(a) Recommendations. Confining carrier to transportation, restricting stock ownership. Forbidding stock ownership of competing railway or common officials. Inflating securities for speculative purposes forbidden. In the Matter of Consolidations and Combinations of Carriers, 12 I. C. C. 277.

(aa) The Commission on its own motion instituted an investigation as to consolidations and combinations of common carriers. The investigation was directed principally as to the amalgamations brought about by the machinations of Mr. E. H. Harriman controlling the Union Pacific system. The function of a railroad corporation should be confined to the furnishing of transportation. Railroads should not be permitted to invest generally in stocks, bonds, and securities of other railway or of steamship companies, except connecting lines, for the purpose of forming through routes of transportation, including branches and feeders. It is in the interest of the public to facilitate the consolidation of connecting lines. Railroad securities should be safe and conservative investments for the people. To this end the risks of the railroad should be reduced to a minimum. It is contrary to public policy as well as unlawful for railways to acquire control of parallel and competing lines. Competition between railways as well as between other industries is the established policy of the nation. The time has come when some reasonable regulation should be imposed upon the issuance of securities by railways engaged in interstate commerce. Railways should be prevented from inflating their securities for merely speculative purposes. Railways should be encouraged to extend their systems and develop the country. Reasonable regulation will tend to make railway securities safer and more secure investments and thereby benefit not only the railway companies but the public. Consolidations and combinations of carriers, 12 I. C. C. 277.

(b) The function of a railroad corporation should be confined to the furnishing of transportation. Railroads should not be permitted to invest generally in the stocks, bonds, and securities of other railway and of steamship companies, except connecting lines, for the purpose of forming through routes of transportation, including branches and feeders. It is in the interest of the public to facilitate the consolidation of connecting lines. The credit of a railway company is founded upon the resources and prosperity of the country through which it runs. Its surplus funds and credit should be used for the betterment of its lines and in extensions and branches to develop the country contiguous to it. Consolidations and Combinations of Carriers, 12 I. C. C. 277, 305.

(c) Railroad securities should be safe

and conservative investments for the people. To this end the risks of the railroad should be reduced to a minimum. Everyone knows that railway securities fluctuate more or less, according to the prosperity of the times, and also by reason of the wide speculation in such securities. It therefore adds an element of hazard to a railroad's capital and credit to have its funds invested in the stocks of other companies, thereby endangering its solvency and its ability to pay reasonable dividends upon its own capital stock. It is a serious menace to the financial condition of the country to have large railway systems fail to meet their obligations or go into the hands of receivers, and the object of legislation and administration should be to lessen the risks of railway investments. Consolidations and Combinations of Carriers, 12 I. C. C. 277, 306.

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(d) It is difficult to separate accurately the two functions of a railroad as an operating carrier and as an investing corporation, and where the financial relationship of the two is close, the consideration of the operating function by itself is misleading in arriving at the net income of the carrier. Pittsburgh Steel Co. v. L. S. & M. S. Ry., Co., 27 I. C. C. 173, 181.

(e) For many years the railroad monopoly of New England has been more complete than in any other considerable section of this country. New England Investigation, 27 I. C. C. 560, 572.

(f) Leasing roads concentrates too much power in too small a stock holding. New England Investigation, 27 I. C. C. 560, 600.

(g) The Boston & Maine system is not overcapitalized. New England Investigation, 27 I. C. C. 560, 603.

(h) No interstate railroad should be permitted to lease or purchase any other railroad, nor to acquire the stocks or securities of any other railroad, nor to guarantee the same, directly or indirectly, without the approval of the Federal government. New England Investigation, 27 I. C. C. 560, 600.

(i) A most prolific source of financial disaster and complication to railroads in the past has been the desire and ability of railroad managers to engage in enterprises outside the legitimate operation of their railroads, especially by the acquisition of other railroads and their securities. New England Investigation, 27 I. C. C. 560, 616.

(j) It may be unwise to attempt to specify the price at which and the manner in which railroad stocks and securities shall be disposed of, but it is easy and safe to define the purpose for which they may be issued and to confine the expenditure of the money realized to that purpose. The New England Investigation, 27 I. C. C. 560, 616.

(k) The use of dummy individuals and dummy devices are but feeble and futile devices, and the use of them by a railway company indicates a low state of financial morality. Financial Investigation of N. Y. N. H. & H. R. R. Co., 31 I. C. C. 32, 60.

(l) The practice of one man serving on many boards of directors cannot be too strongly condemned. He may be thoroughly honest in his relations with each corporation, but it is not practicable for him to give the stockholders of each the full benefit of his ability and energy, when he can afford only a small fraction thereof to each. A director should be an active, not passive, force. He should understand the affairs of the corporation to which he gives the prestige of his name, at least to the extent of knowing the integrity of its designs and the absence of law-breaking methods in its operation, and he should not accept positions which he cannot so fill. Financial Investigation of N. Y. N. H. & H. R. R. Co., 31 I. C. C. 32, 66.

(m) A resolution authorizing the president and directors of a railroad company to lease for such length of time and on such terms as they may deem best, railroad property, franchises, etc., of other railroad companies in which the company owns or may own a majority of the capital stock, is manifestly unfair to the minority stockholders of subsidiary companies. Financial Relations Ect., L. & N. R. R. Co., 33 I. C. C. 168, 199

(n) Common carriers are expressly exempt from application of Clayton Anti Trust Act, making it unlawful for any person at the same time to be a director in two or more competing corporations, any one of which is capitalized, etc, at more than $1,000,000. Financial Transactions, C. R. I. & P. Ry., 36 I. C. C. 43, 61.

(o) Inflations of capital stock were incidents of the C., H. & D. consolidation in 1895 and of the P. M. consolidation in 1900. Pere Marquette R. R., and C., H. & D. Ry., 44 I. C. C. 1, 218.

(p) Exploitation of railroad securities would be more difficult if the issuance and marketing were subject to federal regulation. Pere Marquette R. R., and C. H. & D. Ry., 44 I. C. C. 1, 223.

(q) A senate resolution directing the Commission to investigate and report the relations between the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Ry. and the relation and conduct of these and other railroads in respect to various matters set out in a resolution, including the number of free passes issued by the carriers since January 1, 1911, to public officials or at their request, with the total mileage and money value thereof and which does not appear either to have been concurred in by the House of Representatives or approved by the President, is not a law of the United States and does not enlarge in any manner the authority or jurisdiction of the Commission under the Interstate Commerce Act. U. S. v. N. C. & St. L. Ry., 217 Fed. 254, 260.

(r) A Senate resolution directing the Commission to investigate the financial and other operations of the N. C. & St. L. Ry. and the L. & N. R. R. is not a law and does not vest any authority in the Commission. U. S. v. L. & N. R. Co., 35 Sup. Ct., 363, 366.

(s) Abstractly speaking, the Supreme Court of the United States is not disposed to say that a carrier may not attempt to mold or enlighten public opinion, but it is quite clear that its conduct and the expenditures of its funds are open to inquiry. If it may not rest inactive and suffer injustice, it may not, on the other hand, use its funds and its power in opposition to the policies of government. Beyond this generally it is not necessary to go. Concerning the amount of expenditures and the manner of their charge upon the books of the companies, this is within the power of the Commission to investigate. Smith v. I. C. C., 38 Sup. Ct. 30, 33, 34, 245 U. S. 33, 62 L. Ed. 135.

(t) Valuation amendment of the act authorizes commission to find a single sum as value of common-carrier property for purposes under the act; and such finding as to each carrier will ultimately be made, supplementing tentative valuations in which a single sum is not stated by such findings. Texas Midland, 75 I. C. C. 1, 6.

(u) Contention that decision of Supreme Court in Minnesota Rates cases, 230 U. S., 352, condemns method employed by commission in securing, and that cost should be ascertained as it stands on valuation date without taking into consideration any expense which would be incurred by reason of fact that it would be rebuilt, not sustained. Texas Midland, 75 I. C. C. 12, 14.

(v) Cost of reproduction, new is at best an estimate, but as now reported by the commission is derived under same general rules, and estimates regarding different properties are comparable in all cases. Texas Midland, 75 I. C. C. 16.

(w) Unit price of 69 cents per tie as basis for estimating cost of reproduction new, approved. Texas Midland, 75 I. C. C. 1, 42.

(x) Prices of $34.55 per ton as cost of new rails, and $24 per ton for relay rails, approved. Texas Midland, 75 I. C. C. 1, 42, 43.

(y) Unit price of 15 cents to cover expense of placing cinders and sand at where used, made up of 10 cents for loading and 5 cents for unloading, to which has been added one-half cent per ton-mile for estimated average haul, approved. Texas Midland, 75 I. C. C. 43.

(z) Unit prices of 65 cents per cubic yard for crushed stone ballast, and $1 per cubic yard for burnt clay ballast, to cover expense of placing at points where used, approved. Texas Midland, 75 I. C. C. 43, 44.

(aa) Sum of $900 per mile of road as cost of reproduction new of tracklaying and surfacing, approved. Texas Midland 75 I. C. C. 44.

(bb) The Minnesota Rate cases, 230 U. S., 352 and Knoxville v. Water Co., 212 U. S., 1, are full authority for proposition that depreciation is not deferred maintenance but covers loss of capacity for use due to age, inadequacy, etc. Texas Midland, 75 I. C. C. 49, 51.

(cc) In making valuations of steam railroads entire country was divided into five districts, each containing approximately 50,000 miles of railway. This division was generally a territorial one

by State lines, but an entire railway system has been usually assigned to one district, even though it extended into territory of another district. Texas Midland, 75 I. C. C. 1, 108.

(dd) Valuation act makes clear intent of Congress to provide for investigation and marshaling of every fact bearing upon value of carrier property, basis of which is inventory or list of physical property; valuation to be revised and corrected by commission from time to time. Such inventory, prepared so as to put beyond cavil physical property possessed by carrier at date of inventory and kept current to a like degree as long as may be necessary, will be of underlying and permanent value; inspection of property by some representative of the commission or his ascertainment of such facts as demonstrate existence of property to a reasonable certainty, for preparation of inventory, being necessary. Texas Midland, 75 I. C. C. 1, 109, 110.

(ee) Of telegraph and telephone property owned jointly 50 per cent of total cost of reproducing it assigned to carrier, and of property owned separately such cost of reproduction assigned directly to owner in each instance. San Pedro Los Angeles & Salt Lake, 75 I. C. C. 463, 481.

(ff) Rate of 6 per cent per annum regarded as fair in estimating cost of reproduction now. It seems clear that 6 per cent should be ample if work of reconstruction were undertaken by a construction company with a good standing and credit. Application of that rate of interest to total expenditures stated for road accounts for one-half of construction period plus three months, and for three months upon total of equipment accounts, is in accordance with method approved in Texas Midland case, 75 I. C. C., 1, pages 31, 32, and 35. San Pedro Los Angeles & Salt Lake, 75 I. C. C. 463, 485.

(gg) Rate of 0.5 cents per ton per mile has been used for a great many years by carriers, and has generally been regarded as fairly representing cost of handling company material. Investigations made by commission's engineers, taking into consideration experience of carriers generally throughout the country, disclose that 0.5 cents per ton-mile approximates very closely probable actual expense in handling this class of traffic. More reasonable and accurate results will be obtained by application of a rate which appears to be ample under average conditions than a rate which may at a particular time be developed from experience of a particular carrier. San Pedro, Los Angeles & Salt Lake, 75 I. C. C. 485, 486.

(hh) Congress was aware of Supreme Court decisions in 169 U. S. 466, and 174 U. S., 739, when it enacted section 19a of the act, and it is proper to assume that doctrine of these cases led it to provide that property owned or used by common carrier for its purposes as such should be treated separately from property held for purposes other than those of common carrier in ascertaining and reporting value the commission is required to make by the act. San Pedro, Los Angeles & Salt Lake, 75 I. C. C. 463, 508.

ALL OTHER CITATIONS

Pittsburgh Steel Co. v. L. S. & M. S. Ry. Co., 27 I. C. C. 173, 185; The New Eng. Investigation, 27 I. C. C. 560, 592; 593; United States v. L. & N. R. R. Co., 212 Fed. 486, 492; Affirmed 236 U. S. 318; U. S. v. N. C. & St. L. Ry., 217 Fed. 254, 260; St. Louis & San Francisco Railroad Investigation, 29 I. C. C. 139; St. Paul and Puget Sound Accounts, 29 I. C. C. 508; Proposed Bond Issue by N. Y. C. & H. R. R. R. Co., 30 I. C. C. 147, 152; The Five Per Cent Rate Case, 31 I. C. C. 351, 357, 359, 422; Coal and Oil Investigation, 31 I. C. C. 193, 224, 241; Financial Investigation of N. Y. N. H. R. R. Co., 31 I. C. C. 32, 48, 55, 61, 67, 70; U. S. v. L. & N. R. Co., 35 Sup Ct., 363, 366; Financial Relations, etc., L. & N. R. R. Co., 33 I. C. C. 168, 172; Newport Mining Co. v. C. & N. W. Ry. Co., 33. I C. C. 168, 173; Rates for Transportation of Anthacite Coal, 35 I. C. C. 220, 225, 226, 255; Ownership of Little Kanawha R. R., 36 I. C. C. 560; Financial Transactions, C. R. I. & P. R. R. Co., 36 I. C. C. 43, 56, 57; St. Louis, Mo.-Illinois Passenger Fares, 41 I. C. C. 584, 585; Minneapolis, Civic & Commerce Assn. v. Chicago, M. & St. P. Ry. Co., 158 N. W. (Minn. 1916) 817; Pere Marquette R. R. and C. H. & D. Ry., 44 I. C. C. 1, 131, 222; Richmond Chamber of Commerce v. S. A. L. Ry., 44 I. C. C. 455, 459, 460; The Alaska Investigation, 44 I. C. C. 680, 709; Smith v. I. C. C. 38 Sup. Ct., 30, 33, 34, 245 U. S. 33, 62 L. Ed. 135; Unification of Railroad Operation, 47 I. C. C. 757, 759,

760; Wabash Pittsburgh Terminal Investigation, 48 I. C. C. 96, 139, 144; R. R. Comm. of La. v. A. H. T. Ry., 48 I. C. C 312, 343; Financial Relations, etc., 49 I. C. C. 320; Proposed Increases in New England, 49 I. C. C. 421, 430, 431, 433, 434. Reduced Rates, 1922, 68 I. C. C. 676, 730; Texas Midland, 75 I. C. C. 1, 186; Winston-Salem Southbound, 75 I. C. C. 186, 198; Kansas City Southern, 75 I. C. C. 223, 320; Evansville & Indianapolis, 75 I. C. C. 443, 444; San Pedro, Los Angeles & Salt Lake, 75 I. C. C. 463, 614; Atlanta, Birmingham & Atlantic, 75 I. C. C. 645, 670; United States St. Louis Southwestern Ry. Co., v. Interstate Commerce Commission 44 Sup. Ct. 294; Delaware & Hudson Co. v. United States (Interstate Commerce Commission, Intervener), 295 Fed. 558.

VIII. ACTIONS AT LAW.

§8. In general.

IMPORTANT CASES SINCE 1908

(a) The Pittsburg and W. Va., Ry. Co. owns the entire capital stock of the West Side Belt R. R. amounting to $1,080,000. In addition it had advanced to it over $6,000,000.00 for construction purposes, for which it held interest bearing notes. It proposed to purchase the entire property of the Belt for $7,400,000.00 by issuing its capital stock for that amount, and then take back the stock in liquidation of its notes and the stock of the Belt. The Belt was then to be dissolved. Its application to do this to the Commission was denied. HELD, such decision could not be reviewed in a U. S. District Court by injunction. Pittsburgh & W. V. Ry. Co. v. Interstate Commerce Commission. 293 F. 1001.

(b) Where a bill to set aside an order of the Interstate Commerce Commission permitting a railroad company to acquire control of terminal railroads alleged as a fact that the Commission's finding that such acquisition of control would be in the public interest was unsupported by evidence, and the motions to dismiss did not suggest that such fact was not well pleaded, or that a copy of the evidence should have been annexed to the bill, such fact will be treated as admitted on appeal from a decree of dismissal. The Chicago Junction Case, 44 Sup. Ct. 317.

(c) An order of the Interstate Commerce Commission, under Interstate Commerce Act, §5, par. 2, as amended by Transportation Act 1920 authorizing a railroad company to acquire control over terminal railroads located within the Chicago switching district is void, and may be set aside by the court, when the commission's finding that such an acquisition will be for the interest of the public is unsupported by evidence. The Chicago Junction Case, 44 Sup. Ct. 317.

(d) In a suit against the United States, a railroad company, by competitors of defendant railroad company, and others to set aside an order of the Interstate Commerce Commission authorizing defendant railroad company to acquire control over terminal railroads located within the Chicago switching district, HELD, that it was proper to join the terminal companies and their stockholders as defendants and demand a restoration of the status quo, in view of Act Feb. 11, 1903, Judicial Code, §212 and Act Feb. 19, 1903, §2 notwithstanding a contention that Act Oct. 22, 1913, does not confer consent to sue the United States in an action in which it is sought to set aside an order and rights acquired by private persons thereunder. The Chicago Junction Case, 44 Sup. Ct., 317.

(e) Where plaintiffs were competitors of defendant railroad company, and users of terminal railroads located within the Chicago switching district, and were parties to the proceeding before the Interstate Commerce Commission, they had, under Judicial Code, § 212 such a legal interest in an order of the Interstate Commerce Commission authorizing defendant railroad company to acquire control over such terminal roads, resulting in diversion of traffic to defendant, as entitled plaintiffs to challenge the validity of the order by suit. The Chicago Junction Case, 44 Sup. Ct. 317.

FISH CARS

See Cars and Car Supply § 8½.

FLOATAGE

See Ferries; Lighterage.

CASES 1887-1908

(a) A through rate of $3.40 per ton on roofing slag in carloads from Leesport, Pa., to Harlem River Station is grossly unreasonable and is rendered so by the exclusive share of $2.10 to the New York, New Haven, & Hartford Railroad Company for transfer by its car floats from Communipaw to Harlem River, the reasonable compensation for which service would not exceed $1.00, which, with the rate of $1.30 allowed

carriers to Communipaw, would constitute the reasonable and lawful rate of $2.30 per ton. Warren-Ehret Co. v. Central R. of New Jersey, 8 I. C. C. 598.

(ab) The rate on roofing slag, carloads, from Leesport, Pa., to Harlem River station, is $3.40 per ton, of which the carriers to Communipaw, N. J., on the Hudson river, receive $1.30 per ton, the balance going to the New Haven for its service in carrying the slag by its car floats from Communipaw around New York City to its Harlem river station. Such through rate aso applies as a group rate to numerous stations on the New Haven in what is known as the Hartford group, including Waterbury, Conn. The freight could be transferred by an independent lighterage company from Communipaw to Harlem for 80c per ton, and the railroads terminating on the New Jersey shore generally allow 60c per ton for lighterage to points within the New York lighterage limits. HELD, that the through rate of $3.40 to Harlem River is grossly unreasonable, and is rendered so by the excessive share of $2.10 to New Haven for transfer by its car floats from Communipaw to Harlem River; that reasonable compensation for such delivery by car float should not exceed $1.00 per ton or a through rate of $2.30 per ton, reparation awarded. Warren-Ehret Company v. C. R. R. of N. J. 8 I. C. C. 598.

IMPORTANT CASES SINCE 1908

(ac) Carriers are justified in requiring shippers to load and unload freight to and from cars on floats when ordered and placed at vessels or outside piers. Swift & Co. v. N. Y., N. H. & H. R. R., 44 I. C. C. 481, 486.

(b) Car floats carry loaded cars and lighters carry freight which has been unloaded. Export Freight Free Time, 47 I. C. C. 162, 165.

(c) The burden is on the carrier who proposes to increase the minimum of cars for which car-float service in lieu of lighterage on lighterage free freight will be furnished. Car Float Service New York Harbor, 49 I. C. C. 259, 266.

ALL OTHER CITATIONS

Chicago Lighterage Charges, 28 I. C. C. 390, 394; Lighterage and Storage Regulations at New York, 35 I. C. C. 47, 52; Lighterage and Storage Regulations at New York, 35 I. C. C. 47, 62, 63; Cruikshank & Robinson v. P. R. R. Co., Unrep. Op. 2125; Low Moor Iron Co. of Virginia v. C. & O. Ry. Co., 42 I. C. C. 221, 227; Cruikshank & Robinson v. Pa. R. R., 43 I. C. C. 151; Swift & Co. v. B. & O. R. R., 50 I. C. C. 103

FOLLOW LOT SHIPMENTS

See Bill of Lading §5; Classificatio §21; Demurrage §6; Minimums §9.

FOREIGN COMMERCE

I CONTROL AND REGULATION.

§ ½. In General.

§ 1. Jurisdiction of Commission.

§ 2. Determination of Status.

See Adjacent Foreign Country; Alaska; Export Rates and Facilities; Mexico.

I. CONTROL AND REGULATION.

See Control and Regulation.

§½. In General.

CASES 1887-1908

(a) The decision of the Commission in New York Board of Trade & Transportation v. Pennsylvania R. Co. et al, having been overruled by the U. S. Sup. Ct. in T. & P. Ry. Co. vs. Interstate Commerce Commission, 162 U. S. 197, 40 L. ed. 940, 5 Inters. Com. Rep. 405, it follows that carriers are not, as a matter of law, prohibited from making rates from points in the United States to points in foreign countries, or from points in foreign countries to points in the United States, of which the inland division or share accruing to carriers within the United States is less than the tariff rate of such carriers on domestic shipments of similar commodities. Kemble v. Boston & Albany R. R. Co., 8 I. C. C. 110.

(b) Carrier's inland share of rates to or from foreign countries may be less than the tariff rate on domestic shipments. Kemble v. Boston & A. R. Co., 8 I. C. C. 110.

(c) The Act to Regulate Commerce does not, as a matter of law, prohibit a carrier by railroad from making a through rate from a point within the United States to a foreign destination of which its division shall be less than the amount charged by it for the corresponding transportation of domestic merchandise to the port of export. Nor is it, as a matter of law, in violation of the Act for such carrier to make a lower rate to the port of export upon traffic which is exported than upon that which is locally consumed, for the export rate is in essence the division of a through

rate. Texas & Pacific R. Co. v. Interstate Commerce Commission, 162 U. S. 197, 40 L. ed. 940, 5 Inters. Com. Rep. 405, cited and applied. Kemble v. Boston & Albany R. Co., 8 I. C. C. Rep. 110, cited and approved. Export & Domestic Rates, v. 8 I. C. C. 214.

(d) The Act to Regulate Commerce was intended to and does apply, not only in cases of direct injury to particular individuals or industries, but also in cases involving indirect injury to the community as a whole, and in the absence of some justifying reason, it would not be right for American railroads to permanently transact business for foreigners at a less rate than that for which they render a corresponding service to American citizens. Export & Domestic Rates, v. 8 I. C. C. 214, 265.

(e) The Act to Regulate Commerce applies to the transportation of export and import traffic, and the jurisdiction of the Commission over such traffic is not denied, but is distinctly affirmed in 162 U. S. 197. Export and Domestic Rates, 8 I. C. C. 214, 255.

(f) Having elected to enter into the carriage of interstate freights and thus subjected itself to the control of the Commission, it would not be competent for the company to limit that control, in respect of foreign traffic, to certain points on its roads and exclude other points. In the matter of alleged violations of the act by the St. L. & S. F. R. Co., 8 I. C. C. 290, 302.

(g) Public policy urgently requires that the inland transportation of import and export commerce should be subject to the act, and the publishing and maintaining of tariffs upon such traffic imposes in most instances no hardship upon the carrier. There may be cases in which a modification of this rule would be of service to the carrier without detriment to the public, and perhaps other instances in which such a modification should be granted in the interest of both the carrier and the public. This can only be accomplished by an amendment of the act, since the provisions of that statute are mandatory, and the Commission has no power to modify their requirements. If carriers are to any extent relieved from giving the notice now required of advances and reductions in rates upon foreign commerce, they should in all cases file with the Commission the rates actually made, and give such further notice to the public as may be possible. Re Tariffs on Export and Import Traffic, 10 I. C. C. 55, 81.

(h) The act now requires the publication of import and export tariffs in the same manner as domestic tariffs. In the matter of the publication and filing of tariffs on export and import traffic, 10 I. C. C. 55, 63.

(i) If carriers are to any extent relieved from giving the notice now required of advances and reductions in rates upon foreign commerce, they should in all cases file with the Commission the rates actually made, and give such further notice to the public as may be possible. Re Tariffs on Export and Import Traffic, 10 I. C. C. 55.

(j) While the regulating statute may be applied to the reasonableness of a rate from a point in Canada to a point in the United States, it is clear that no law of the United States can apply to a discrimination between places in a foreign country. Cist v. Michigan C. R. Co., 10 I. C. C. 217.

IMPORTANT CASES SINCE 1908

(k) Regulatory power of Congress extends to transportation of foreign commerce within United States, but jurisdiction to Commission does not. Seymour v. M. L. & T. R. R. & S. S. Co., 35 I. C. C. 492, 493.

(l) The so-called Elkins Act is inapplicable to the continuous transportation of goods in bond from a foreign country through the United States to a foreign country. Canales v. G. H. & S. A. Ry., 37 I. C. C. 573, 574.

(m) The Commission is of the opinion that the Cummins Amendment does not apply to transportation from a point in the United States to a point in an adjacent foreign country. Export Bill of Lading, 64 I. C. C. 347, 354.

(n) The act does not require that rates of Ocean S. S. Co. of Savannah on shipments moving on export bills of lading from Savannah, Ga., to nonadjacent foreign countries be published and filed with commission. This transportation has been conducted without filing of tariffs for nearly seven years; no complaint has been made; and no objection is made to its continuance. If steamship company is subjected to limitations of the act it will be deprived of a substan-

tial portion of its total traffic, and such requirement would operate to disadvantage of carriers and the public through loss of service over an available route. Ocean Steamship Co. of Savannah, 78 I. C. C. 251.

ALL OTHER CITATIONS

Hamlen & Sons v. I. C. R. R. Co., 212 Fed. 324, 327; Express Classification, 59 I. C. C. 347, 354; Ocean Steamship Co. of Savannah, 78 I. C. C. 251, 256.

§1. Jurisdiction of Commission.

See Export Rates and Facilities; Interstate Commerce Commission I.

CASES 1887-1908

(a) Import and export traffic is not removed from the jurisdiction of the Commission by the decision of the United States Supreme Court in Texas & Pacific Railway Company v. Interstate Commerce Commission, 162 U. S. 197, 40 L. ed. 940, 5 Inters. Com. 405, but, on the contrary, the effect of that decision is to extend such jurisdiction; and the Commission has full authority to pass upon the grievance of any individual or locality, which is alleged to arise from rates upon export or import goods as compared with rates on domestic merchandise. Kemble v. Boston & A. R. Co., 8 I. C. C. 110.

(ab) If carriers are to any extent relieved from giving the notice now required, of advances and reductions in rates upon foreign commerce, they should in all cases file with the Commission the rates actually made, and give such further notice to the public as may be possible. Re Publication & Filing of Tariff, 10 I. C. C. 55.

(ac) The carriers will be afforded an opportunity to adjust their tariffs and arrangements, and, if so advised, present the subject to Congress, provided, however, that in the meantime all carriers which do not publish and maintain import and export tariffs shall file with the Commission as promptly as possible a statement of the rates actually charged. If the Act is not amended within a reasonable time, it will be the duty of the Commission to enforce the publication of import and export rates in the manner now provided by law. Re Tariffs on Export and Import Traffic, 10 I. C. C. 55.

IMPORTANT CASES SINCE 1908

(b) The Commission may regulate interstate traffic, whether by rail or by a combined rail and water route, from point of receipt to point of delivery; but the Commission in its control over foreign commerce is limited to the regulation of such traffic, whether by railroad or by a combination of rail and water carriers, from and to the point of transshipment. Cosmopolitan Shipping Co. v. Hamburg-American Packet Co., 13 I. C. C. 266, 271.

(c) A rail carrier may control or connect with a line of steamships engaged in foreign commerce, with which it may interchange business as freely as with another rail carrier, and it may quote a combined rate for the through movement, the agent of the railroad company acting as the agent of the steamship company in so doing. An inland carrier may go into the foreign shipping business without contravening any provision of the Act to Regulate Commerce; nor is there anything in such statute which denies to a rail carrier the right to quote a rate from an inland point to a foreign destination over its own through route or by any other route. But as to such carriers engaged in foreign business, the rail carrier has, so far as this law is concerned, a purely contractual or proprietary relation, not a relation related or controlled in any manner by the Act. On foreign commerce the rate to be published with the Commission should be the rate to the port and from the port, an open rate, which any who desire to do so may use with equal advantage. The publication of such rates does not in any manner limit the very valuable privilege of through billing. Such through billing should clearly separate the liability of the rail and the ocean carrier and show the published rate of the inland carrier. The routing of the freight, however, should remain with the shipper and upon him may be imposed no greater charge to the port when his freight goes by one ocean line than by another. Cosmopolitan Shipping Co. v. Hamburg-American Packet Co., 13 I. C. C. 266, 281.

(d) The Commission has no control over the steamships from New York to foreign countries. Ullman v. Adams Express Co., 14 I. C. C. 340, 345.

(e) No joint through rates are recognized with water carriers beyond the seas. Borgfeldt & Co. v. S. P. Co., 18 I. C. C. 552, 553.

(f) Commission has no power to establish through routes or joint rates to destinations in a foreign country. Aransas Pass Channel & Dock Co. v. G. H. & S. A. Ry. Co., 27 I. C. C. 403, 414.

(g) Transportation of sugar from Germany, through the United States in bond, to destinations in Mexico is not subject to jurisdiction of Commission. Seymour v. M. L. & T. R. R. & S. S. Co., 35 I. C. C. 492, 493.

(h) Commission has no power to require the issuance of through bills of lading to foreign destinations, but may require the discontinuance of practices which create unjust discriminations or undue preferences. Evans Lumber Co. v. C. of G. Ry. Co., 43 I. C. C. 476, 479.

(i) The Act to Regulate Commerce specifically confers jurisdiction upon the Commission over traffic shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or in an adjacent foreign country. Carlowitz & Co. v. C. P. Ry., 46 I. C. C. 290, 291.

(j) The Commission's jurisdiction over transportation to or from a foreign country is limited to that part of the transportation which takes place within the United States. Payment of Charges in United States Currency, 59 I. C. C. 263, 264.

(k) The Commission has jurisdiction over the rail transportation which takes place wholly within a state on traffic moving to ports by water from interstate or foreign points of origin. International Agricultural Corp. v. Director General, as Agent, 60 I. C. C. 726.

(l) The Commission's territorial jurisduction carries up to the international boundary line, at which that of Congress itself halts, and as to foreign commerce is thus coextensive with that of the federal government. No act of Congress has force of law beyond that boundary line, but up to it, as everywhere else within the United States, the interstate commerce act has full effect just as the federal control act had effect when these shipments moved. International Nickel Co. v. Director General, as Agent, 66 I. C. C. 627, 629.

(m) The extent of the jurisdiction of the Commission over commerce between this country and a foreign country is limited to that part of the transportation within the United States. But all carriers parties to joint rates are jointly and severally liable for any damages resulting from their application. California Sugar & White Pine Co. v. Director General, 73 I. C. C. 338, 339.

(n) The Commission's jurisdiction over commerce between the United States and a foreign country is limited to that part of the transportation within the United States. But all carriers parties to joint rates are jointly and severally liable for any damages resulting from their application. California Sugar & White Pine Co. v. Director General, as Agent, 73 I. C. C. 338, 339.

(o) In view of the parenthetical clause in paragraph (4) of section 15 of the act, the limitation put upon the commission's authority to establish through routes and joint rates does not apply where the Commission finds it to be in the public interest to require one carrier to afford another carrier the use of its terminals. Port Arthur Chamber of Commerce v. T. & F. S. Ry. Co., 73 I. C. C. 361, 363.

(p) The Commission has no jurisdiction or control over ocean rates to foreign ports, and the equalization of port rates on basis of the water rates from the ports would place upon the rail lines the burden of the disabilities of the several ports, arising from such causes as distance from foreign markets, difference in harbor facilities, and other conditions affecting ocean rates. No stabilization of rail rates would be possible under such an adjustment. Tobacco from Ohio River Crossings, 73 I. C. C. 384, 387.

(q) Complaint attacking failure of Pacific Ocean carriers to comply with routing instructions shown in through prepaid bills of lading in connection with shipments from Australia and New Zealand to Boston, Mass., in that shipments were forwarded all-water instead of water-and-rail as routed; assessment of charges on such shipments in addition to those collected at point of origin; failure to refund amount in excess of charges applicable over route of movement; and seeking establishment of through routes and joint rates on such shipments; dismissed for want of jurisdiction. Complainant's members must seek recourse against Pacific Ocean steamship companies under their contracts of carriage elsewhere than before this commission. Boston Wool Trade

Asso. v. A., T. & S. F. Ry. Co., 83 I. C. C. 445.

(r) Commission has no jurisdiction to prescribe conditions of contract of carriage entered into at point in adjacent foreign country so far as movement to border is concerned; or of misrouting by carrier prior to receipt of shipment by American carrier at border point. This is equally applicable to shipment from nonadjacent foreign country up to time American rail carrier receives shipment. Boston Wool Trade Asso. v. A., T. & S. F. Ry. Co., 83 I. C. C., 445, 449.

(s) No specific reference whatever in the act relates to through import bills of lading. Although specific jurisdiction over through export bills of lading is conferred by section 25, and some jurisdiction is acquired because traffic originates on rail carriers within United States, the commission has refused to determine and prescribe terms and provision of export bills respecting service after delivery to steamship company at port of export, in view of limitations on commission's jurisdiction over ocean carriers. It follows that the commission has no jurisdiction over traffic, or an ocean carrier of that traffic, from nonadjacent foreign country prior to delivery at port by ocean carrier to American rail carrier. Boston Wool Trade Asso. v. A., T. & S. F. Ry., Co., 83 I. C. C. 445, 449, 450.

(t) Traffic moving from a foreign country through the United States to a foreign country is not subject to the jurisdiction of the Commission. U. S. Steel Products Co. v. Director General, 88 I. C. C., 57, 58.

ALL OTHER CITATIONS

T. & P. Ry. Co. v. R. R. Commission of Louisiana, 183 Fed. 1005, 1007; In Re Rates, etc., of the Louisiana Ry. & Nav. Co., 22 I. C. C. 558; Cosmopolitan Shipping Co. v. Hamburg-American Packet Co., 13 I. C. C. 266, 251; Fullerton Lumber & Shingle Company v. B. B. & B. C. R. R. Co., 25 I. C. C. 376, 378; Humboldt S. S. C. v White Pass & Yukon Route, 25 I. C. C. 136, 140; Eagle Pass Lumber Co. v. National Railways of Mexico, 25 I. C. C. 5, 6, 7; Rates on Soda Ash and Other Commodities, 28 I. C. C. 613, 614; Louisiana Sugar Planters' Assn. v. I. C. R. R. Co., 31 I. C. C. 311, 318; Application S. P. Co. in re Operation S. S. Co., 32 I. C. C. 690, 697; Canales v. G. H. & S. A. Ry., 37 I. C. C. 573; Big Basin Lumber Co. v. S. P. Co., 37 I. C. C. 730, 737, 738; Casey-Hedges Co. v. A. G. S. R. R., 50 I. C. C. 240; Quintal & Lynch (Ltd.) v. F. E. C. Ry. Co., 57 I C. C. 289, 290; California Sugar & White Pine Co. v. Director General, as Agent, 73 I. C. C. 338, 339; Tobacoo from Ohio River Crossings, 72 I. C. C. 384, 387; St. Louis Southwestern Ry. Co. v. White, Jackson & Co. (Tex. 1919), 211 S. W. 315; Pacific Mail S. S. Co. v. Western Pac. R. Co., 251 Fed. 218, 220.

§2. Determination of Status.

See Interstate Commerce I.

IMPORTANT CASES SINCE 1908

(a) The character of the commerce not its mere accidents, must determine whether a shipment is local or foreign. But the mere intention of the shipper to export his traffic, unaccompanied by any circumstances or outward indication that the traffic is in fact for export, is not sufficient to stamp it as foreign commerce. Port Arthur Milling Co. v. T. S. F. Ry. Co., 28 I. C. C. 697, 700.

ALL OTHER CITATIONS

Texas & N. O. R. Co. v. Sabine Train Co., 33 Sup. Ct. 229, 227 U. S. 111; Curry & Whyte Co. v. D. & I. R. R. Co., 32 I. C. C. 162, 171; Application S. P. Co. in re Operation S. S. Co., 32 I. C. C. 690, 697; Bailey v. M. P. Ry. Co. (Mo.), 171 S. W. 44, 46; Virginia-Carolina Chemical Co. v. S. A. L. Ry., 39 I. C. C. 660.

FORWARDERS

See Aggregate Shipments; Classification §12; Loss and Damage §10⅞.

CASES 1887-1908

(a) Refusal to permit a forwarding company to perform an act involving the use of the tracks and terminal facilities of a receiving company is not a discrimination or denial of equal facilities by one carrier to a conecting carrier within the prohibition of the Interstate Commerce Act. Little Rock & M. R. Co. v. St. Louis, I. M. & S. R. Co., 4 I. C. R. 537.

(b) Before allowing a carload rating to a carload shipment a carrier is entitled to require that the goods shall be loaded at one time and place, that but a single bill of lading shall be issued, and that the shipment shall be from one consignor to one consignee, but when the goods are so loaded and by the terms of sale become the property of the consignee upon delivery to the carrier, the

carrier has no right to inquire whether the consignee obtained his title from one or several owners; and if it accords the carload rate in case the consignor is the owner, failure on its part to extend the same privilege when the consignee is the owner, violates sections one, two and three of the Act to Regulate Commerce. The rule in defendant's classification covering the application of carload rates to carload lots should be so modified as to accord the same rating to consignor and consignee when the condition of ownership after the property is delivered to the carrier is the same. Buckeye Buggy Co. v. C., C., C. & St. L. Ry. Co., et al., 9 I. C. C. 620.

(c) Neither a carrier nor an agent of a carrier may act as forwarding or reconsigning agent for shipper in such manner as to evade or defeat the terms or intent or purpose of the law. Morgan v. M. K. & T. Ry. Co., 12 I. C. C. 525.

IMPORTANT CASES SINCE 1908

(d) Where shipments belonging to, and ultimately intended for, various consignees have been united in a bulk shipment from one consignor to one consignee, it is unlawful for the carrier to refuse to apply the rate applicable upon the shipment as a whole and to insist upon making a separate charge upon the package or packages intended for each ultimate consignee. California Commercial Ass'n v. Wells Fargo & Co., 21 I. C. C. 300.

(e) Under a decision of the Commission holding that carrier can not refuse to accept at carload rates carloads of goods assembled by forwarding agents, the findings of the Commission as to the operation of the business of forwarding agents and as to the difficulties involved in the efforts of carriers to determine the nature and character of a person tendering goods for shipment are findings of fact not open to review by the courts. I. C. C. v. D. L. & W. R. R., 20 U. S. 235, 256, 31 Sup. Ct. 392, 55 L. ed. 448.

(f) A forwarding agent is a person within the meaning of that word as employed in the second section of the Act. I. C. C. v. D. L. & W. R. R., 220 U. S. 235, 254, 31 Sup. Ct. 392, 55 L. ed. 488.

(g) A carrier cannot, when goods are tendered to it for transportation, make the mere ownership of the goods the test of the duty to carry or discriminate in fixing the charge for carriage, not upon any difference inhering in the goods or in the cost of the service rendered in transporting them, but upon the mere circumstance that the shipper is or is not the real owner of the goods. Hence a forwarding company is entitled to aggregate package shipments so as to take advantage of a carload rate. I. C. C. v. D. L. & W. R. R. Co., 220 U. S. 235, 252, 31 Sup. Ct. 392, 55 L. ed. 448.

(h) A finding of the Commission that to permit forwarding agents to avail themselves of carload rates does not result in unjust discrimination to shippers is one of fact and is not open to review in the courts. I. C. C. v. D. L. & W. R. R., 220 U. S. 235, 255, 31 Sup. Ct. 392, 55 L. ed. 448.

(i) Complainant consignee employed a forwarding company at New York to assemble a number of packages of goods belonging to complainants individually, and offered same in bulk to defendant express company to be carried to San Francisco at its bulk rates. Dedendant's rules forbade its agents from receiving goods so assembled and complainants were charged the individual package rate on them. HELD, said rules were unjustly discriminatory as permitting defendant to collect a greater compensation from certain persons for the transportation of property than it collected from other persons for a like and contemporaneous transportation of a like kind of traffic under substantially similar circumstances and conditions, and complainants were entitled to reparation on the basis of bulk rates (Knapp and Harlan, Comm'rs, dissenting.) California Commercial Ass'n v. Wells-Fargo & Co., 14 I. C. C. 422, 434; sustained, I. C. C. v. D. L. & W. R. R., 220 U. S. 235, 252, 31 Sup. Ct. 392, 55 L. ed. 448, reversing 166 Fed. 499, enjoining the Commission's order.

ALL OTHER CITATIONS

Sheldon & Co. v. N. Y. C. & St. L. R. R. Co., Unrep. Op. A-276; United States v. Lehigh Valley R. Co., 222 Fed. 685; Heath v. Judson Freight Forwarding Co. (Calif. 1920), 190 Pac. 839; I. C. C. v. D. L. & W. R. R., 220 U. S. 235, 254, 31 Sup. Ct. 392, 55 L. ed. 448; California Commercial Ass'n v. Wells-Fargo & Co., 14 I. C. C. 422, 425; Lehigh Valley R. R. v. U. S., 37 Sup. Ct. 434, 435, 242, 243 U. S. 444, 61 L. ed. 839; I. C. C.

v. D. L. & W. R. R., 220 U. S. 235, 252, 31 Sup. Ct. 392, 55 L. ed. 448; California Commercial Assn v. Wells-Fargo & Co., 21 I. C. C. 300; California Commercial Ass'n v. Wells-Fargo & Co., 16 I. C. C. 458, 463, 464, 422, 431, 434; Lauer & Son v. S. P. Co., 18 I. C. C. 109, 110; sustained, I. C. C. v. D. L. & W. R. R., 220 U. S. 235, 252, 31 Sup. Ct. 392, 55 L. ed. 448, reversing 166 Fed. 499, enjoying the Commission's order; Export Shipping Co. v. Wabash R. R. Co., 14 I. C. C. 437, 440; sustained, I. C. C. v. D. L. & W. R. R., 220 U. S. 235, 252, 31 Sup. Ct. 392, 55 L. ed. 448; reversing 166 Fed. 499; The Car Peddling Case, 45 I. C. C. 494, 504; Emery & Co. v. B. & M. R. R., 47 I. C. C. 200, 203.

FRACTIONS

See Advanced Rates §10½.

FREE TIME

See Demurrage §12, §15.

FREE TRANSPORTATION

See Caretakers; Crimes III; Express Companies §5; Passenger Fares and Facilities §12; Personal Injuries; Transportation §5½; Reduced Rates.

FREEZING

See Cars and Car Supply §9⅝.

FREIGHT AGENCIES

CASES 1887-1908

(a) Nearly all of the railroads south of the Ohio river, and east of the Mississippi, including the three railroad defendants in this case, are members of an association known as the Southern Railway & Steamship Association. Said association, in making rates, is governed by competition. The same influences control in the association in making rates, as would control without it; and while the influences may not go to the same extent, and there may be produced by the association more harmonious relations between its members, competition influences, and, to a large extent, controls, the rates agreed upon by the association. Interstate Commerce Commission v. Cincinnati N. O. & T. P. R. Co., 4 I. C. R. 332.

(ab) The lien of carriers upon freight for charges earned is satisfied by the payment of rates for their services which they are lawfully entitled to demand, and a guaranty executed to a carrier by consignee or third parties, which might be construed to enable the carrier, in consideration of freight delivery before settlement of transportation charges, to exact for services rendered in moving and delivering the freight whatever it chooses to demand, cannot be used by the carrier to force payment of charges in excess of those it would be entitled to collect or receive if previous freight delivery had not been made. Phelps & Company v. The Texas & Pacific Railway Company 4 I. C. R. 363.

(ac) An agreement of a transcontinental association to promote harmony of action between carriers and the maintenance of joint rates, with a proper division of through rates, is not on its face unlawful. Duncan v. Atchison, T. & S. F. R. Co. (Com.) 4 I. C. R. 385.

(ad) An association of railroad companies cannot be held to create a monopoly within the meaning of the Anti-Trust Act of Congress, where it is not intended to have any trade of its own, but to be a mere adviser of its members, who are competitors of each other. U. S. v. Trans-Missouri Freight Asso. (C. C. App. 8th C.), 4 I. C. R. 443.

(b) An association of railroad companies for mutual protection by establishing and maintaining reasonable rates, rules, and regulations, is not illegal as in restraint of trade, under the Anti-Trust Act of Congress, merely because it incidentally tends to restrict competition in some degree, where each member of the association must still compete with other members for business, and while regular monthly meetings are provided for, at which action may be taken, five days' notice of any proposed reduction of rates or change of rules must be given, and members are bound by the decision of the association unless they give written notice in ten days thereafter to the contrary, and any member may withdraw on thirty days' notice. United States v. Trans-Missouri Freight Asso. (C. C. App. 8th C.), 4 I. C. R. 443.

(ba) The division of territory between

the eastern and western lines provided for in the Southern Railway & Steamship Association Agreement, is without warrant in law and appears to be made for the benefit of the carriers without regard to the interests of shippers in the territory so divided, to whom it is in effect a denial of the privilege of shipping their goods or produce to market by the line or route they may prefer. Freight Bureau v. Cincinnati, N. O. & T. P. R. Co., 4 I. C. R. 592.

(c) An agreement of a transcontinental association to promote harmony of action between carriers and the maintenance of joint rates, with a proper division of through rates, is not on its face unlawful. Duncan v. Atchison, T. & S. F. R. Co., 6 I. C. C. 85.

(d) Joint traffic agreement not within act of 1890. A contract between railroad companies by which a joint traffic association is made, which does not lessen the number of carriers, their facilities, or raise the rates except expressly as they shall not be contrary to law, and leaves each road to carry on its own business within the lawful limits as before is not within the act of Congress of 1890 (26 Stat. at L. 209), prohibiting a contract, combination in the form of trust, or conspiracy in restraint of trade or commerce among the several states, although it dispenses with soliciting agents or with the control of them. U. S. v. Joint Traffic Asso., 7 I. C. C. App. XXXVI.

(e) United States cannot enjoin carrying out of joint traffic agreement. The right of the United States government to control carriers engaged in interstate and foreign commerce and in carrying the mails does not extend to the maintenance of a suit in equity to enjoin railroad companies not chartered by the United States from making or carrying out a joint traffic agreement which does not violate the statutes against pooling of freight or earnings. U. S. v. Joint Traffic Asso., 7 I. C. C. App. XXXVI.

(f) Association for securing proportional rates valid. A joint traffic agreement between railroads providing for reasonable, although equal or proportional, rates for each carrier, or a just and proportional rate for each carrier, or a just and proportional division of traffic among carriers,—is not a pooling of their traffic or freights, or a division of the net proceeds of their earnings within the prohibition of their Interstate Commerce Law, §5 U. S. v. Joint Traffic Asso., 7 I. C. C. App. XXXVI.

IMPORTANT CASES SINCE 1908

(g) Upon investigation in response to United States Senate resolution, the maintenance and operation of the Trans-Continental Freight Bureau found not to violate any of the provisions of the act, and facts regarding its organization, management, control, duties, activities, influences upon competition between rail carriers, and other matters ascertained. Trans-Continental Freight Bureau, 77 I. C. C. 252.

(h) Transcontinental Freight Bureau as at present organized and operated serves many useful purposes, promotes economy and efficiency, and is of advantage to shippers as well as carriers. Its operation tends to obviate or remove discrimination as between persons and localities which the law condemns. Trans Continental Freight Bureau, 77 I. C. C. 279.

FREIGHT BILLS

IMPORTANT CASES SINCE 1908

(a) The Commission considered the form of freight bills; the question being whether upon reconsignment the freight bill presented at the ultimate destination might disclose to the new consignee the name of the original consignor, original point of shipment, or route of shipment to the consigning point. HELD, (1) that the freight bill upon a reconsigned shipment must not show the name of the original consignor, except with the consent of the original consignee; and (2) must not show the point of origin or routing, except where the ultimate consignee is required to pay the through charges. In the Matter of Freight Bills, 38 I. C. C. 91.

ALL OTHER CITATIONS

In the Matter of Freight Bills, 29 I. C. C. 496, 497; Michigan Steel Boat Co. v. M. C. R. R. Co., 32 I. C. C. 576, 577.

FREIGHT CHARGES

See Credit Account; Export Rates and Facilities; Overcharges; Transportation §4; Undercharges.

CASES 1887-1908

(a) A railroad company receiving freight from a connecting road is under no obligation to advance to the latter the charges due it for transportation, although if it does so it has a lien for payment on the goods. Oregon Short Line & U. N. R. Co. v. Northern P. R. Co. (C. C. D. Or.) 4 I. C. R. 249.

(aa) The insistence by a railway company upon its rights to prepayment of the freight upon goods received from a connecting carrier rather than to consent to retain a lien upon the goods until payment is made or to hold the consignee responsible in case of delivery before payment as is done in case of freight received from other carriers cannot be construed to be a denial of equal facilities or a discrimination against the former. Little Rock & M. R. Co. v. St. Louis, I. M. & S. R. Co., 4 I. C. R. 537.

(ab) In the absence of some prohibition or restraint, common law or statutory, a common carrier may lawfully demand or contract for such compensation for carriage as he may be able to obtain, without regard to its unreasonableness. Swift v. Philadelphia & R. R. Co. (C. C. N. D. III) 4 I. C. R. 633.

(b) The lien of carriers upon freight for charges earned is satisfied by the payment of rates for their services which they are lawfully entitled to demand, and a guaranty executed to a carrier by consignees or third parties, which might be construed to enable the carrier, in consideration of freight delivery before settlement of transportation charges, to exact for services rendered in moving and delivering the freight whatever it chooses to demand, cannot be used by the carrier to force payment of charges in excess of those it would be entitled to collect or receive if previous freight delivery had not been made. Phelps & Co. v. Texas & Pacific Railway Co., 6 I. C. C. 36.

(ba) A railroad company which has agreed with connecting lines upon a joint tariff of rates in compliance with the Interstate Commerce Act is required to collect the interstate rate for freight passing over its own and such lines and which it delivers to the consignee, and not a smaller sum named in the bill of lading issued by the initial carrier. Mo. Kans. & Tex. Ry. Co., v. P. B. Stover, 7 I. C. C. App. XV.

(c) Payment for transportation. Nothing but money can be lawfully received or accepted in payment for transportation subject to the act, whether of passengers or property, or for any service in connection therewith, it being the opinion of the Commission that the prohibition against charging or collecting a greater or less or different compensation than the established rates in effect at the time precludes the acceptance of services, property, or other payment in lieu of the amount of money specified in the published schedules. Railroad Telegraph Contracts, 12 I. C. C. 11.

IMPORTANT CASES SINCE 1908

(d) A carrier has, as a matter of law, the right to require the prepayment of all charges before accepting a shipment for transportation. New York Produce Exchange v. B. & O. R. R., 46 I. C. C. 666, 671.

(e) It is well settled that the interstate shipper is liable to pay the rate fixed by the printed and published schedules of the carrier on file with the Commission. Joseph L. Lieberman Iron Co. v. Director General, 61 I. C. C. 21, 22.

(f) Payment for that part of the transportation within the United States can only be made in the currency thereof. Abrasion Co. v. Director General, 69 I. C. C. 630, 634.

(g) Refusal of carriers to adjust in United States currency, without discount, claims for charges collected in Canadian currency in excess of those applicable on traffic from points in United States to points in Canada, found not to have resulted in unjust, unreasonable, or discriminatory charges. In tendering in lawful money of the United States the difference between the charges collected in Canadian money, discounted at the then current rate of exchange, and those applicable in lawful money of the United States, carriers offered to do all that the law requires. California Sugar & White Pine Co. v. Director General, as Agent, 73 I. C. C. 338.

(h) The act prohibits a carrier from charging, demanding, collecting, or receiving a greater or less or different compensation than that specified in its tariffs, and nothing but money can be lawfully accepted in payment for transportation subject to the act. California Sugar & White Pine Co. v. Director General, 73 I. C. C. 338, 339.

(i) Nothing but money can be lawfully accepted in payment for transportation subject to the act. California Sugar & White Pine Co. v. Director General, as Agent, 73 I. C. C. 338, 339, 340.

(j) The uniform bill of lading contains an agreement that the owner or consignee shall pay the freight and all other lawful charges accruing on the property. The receipt of goods under such a bill of lading is evidence of a contract by the person receiving them to pay the freight. 4 Ruling Case Law, 858. Keith Co. v. Director General, 83 I. C. C. 167, 172.

(ja) The rule is that the consignor is primarily liable for the payment of the freight, and this rule is enforced, independent of the question whether the consignor is the owner, and regardless of the question whether the payment of freight is secured by a lien on the cargo, because the consignor is the party for whom the service is performed. Missouri Portland Cement Co. v. Director General, 88 I. C. C. 492, 495.

(k) One to whom goods are shipped on consignment and has no other interest in the goods is liable for unpaid freight charges. Great Northern Ry. v. Hyder, 279 Fed. 783.

(l) A consignee, who is not at any time the owner of goods shipped, who has not agreed with either the shipper or the carrier that he will pay the freight, and who accepts the goods on the carrier's mistaken representation that the freight has been prepaid, is bound by such acceptance to pay the freight; shipper, carrier, and consignee all being agents and trustees for the public in the matter of the enforcement of freight rates. Great Northern Ry. Co. v. Hyder, 279 Fed. 783.

(m) Where the statement of claim, in an action by carrier against shipper for deficiency resulting after deducting price for which carrier sold the coal shipped from the amount claimed for freight and demurrage, alleged that the coal was refused by consignee and it was necessary for carrier to sell it, as shipper, after notice, had failed to give orders, and that the selling price was the highest amount which could be obtained at public sale after notice, was defective, in that it stated the pleader's conclusions, rather than the ultimate facts. Davis v. Smutzinger, 281 Fed. 640.

(n) In an action by a carrier against a shipper for a deficiency resulting after deducting price for which carrier sold coal shipped from the amount claimed for freight and demurrage, where it did not appear in the statement of the claim that carrier notified shipper of consignee's refusal, as required by the demurrage rules, under the conformity section of the Revised Statutes, in view of Pennsylvania Practice Act 1915, §§5, 20 (P. L. 483; Pa. St. 1920, §§ 17185, 17200), the statement of the claim was insufficient. Davis v. Smutzinger, 281 Fed. 640.

(o) A shipper of goods is entitled to notice of the time when and the place where the goods are to be sold to pay carriage and storage charges. Davis & Smutzinger, 281 Fed. 640.

(p) A carrier brought suit against a shipper for freight on ten carloads of coal not accepted by the consignee. The freight on the shipment amounted to some $4400.00 and the coal was sold for some $370.00, and suit was brought to recover the difference. It appears that Order 34-A of the Director General, as amended provided that shipments could be sold sixty days after notice of arrival is given consignee, but was not to be construed as permitting carriers to hold the commodities referred to until the freight and demurrage charges might equal the sale value of the shipments. It did not appear whether the sale of the coal was public or private nor that any notice of the sale was sent to the shipper, and it did not appear the shipper was given any opportunity to protect itself. HELD, that the railroad could not recover the deficiencies in the charges. Davis v. Smutzinger, 281 Fed. 640.

(q) Where a car of strawberries consigned to Denver, Colo., was delivered to an express company at Troy, Kan., and while in transit shipper reconsigned the strawberries to Boston, Mass., and an agent of the express company issued a second receipt, merely showing receipt of strawberries at Troy for shipment to Boston, and this receipt was attached to a draft, the Boston consignee, taking up the draft, was liable only for transportation charges between Troy and Boston, as express company could not profit by their agent's misstatement of fact at the expense of innocent parties. American Express Co. v. Sweeney, 283 Fed. 691.

(qa A settlement between carrier and shipper by the payment and acceptance of a charge different from the rate in

the published tariff does not preclude either party from enforcing the lawful rate. Galveston, H. & S. A. Ry. Co. Lykes Bros. 294 Fed. 968.

(r) The consignee designated in the bill of lading is presumptively the owner of the goods shipped. New York Cent. R. Co. v. Warren Ross Lumber Co. (N. Y. 1922), 137 N. E. 324.

(s) The usual stipulation in a bill of lading that the consignor shall pay the freight imposes no obligation on the carrier to collect the freight before delivery to the consignee, and does not deprive the carrier of its right to collect of the consignor. New York Cent. R. Co. v. Warren Ross Lumber Co. (N. Y. 1922), 137 N. E. 324.

(t) The consignor of goods is ordinarily liable for the freight charges, since he requires the carrier to perform the service, and thereby obligates himself to pay therefor. New York Cent. R. Co. v. Warren Ross Lumber Co. (N. Y. 1922), 137 N. E. 324.

(u) Where a consignee exercises ownership over the goods by directing their delivery to another, and thereby becomes obliged to pay the freight charges, it is not relieved from its obligation merely because, in the written directions to deliver to another, it specified that delivery was to be upon collection of the freight charges, and the carrier may thereafter collect its charges from the original consignee, notwithstanding its delivery without collecting the charges. New York Cent. R. Co. v. Warren Ross Lumber Co. (N. Y. 1922), 137 N. E. 324.

(v) Consignee's direction to deliver to another on collection of freight does not relieve its liability for freight. New York Central R. Co. v. Warren Ross Lumber Co., 234 N. Y. 261, 137 N. E. 324.

(w) A stipulation that the consignee shall pay freight does not relieve consignor of duty. New York Central R. Co. v. Warren Ross Lumber Co., 234 N. Y. 261, 137 N. E. 324.

(x) Where defendant shipped certain goods under an order bill of lading, with directions to notify a certain party, and the railroad company delivered the goods without collecting freight charges, HELD, that such delivery did not waive the company's right to collect the charges from the shipper, since the company could not be held to make an election as to the party from which it desired to collect freight, nor be held to an estoppel without violating the purpose and spirit of the Interstate Commerce Commission Act, it being obliged to collect its freight charges in order to prevent preferences. New York Cent. R. Co. v. Federal Sugar Refining Co., (N. Y. 1923), 139 N. E. 234.

(y) The consignor is primarily liable for the carrier's charges, and under the Interstate Commerce Act the carrier cannot bind itself to collect the charges from the consignee, and not from the consignor, to permit which would permit discrimination between shippers, which that act was intended to prevent. New York Cent. R. Co. v. Federal Sugar Refining Co., 194 N. Y. S. 467.

(z) Where goods were shipped on a bill of lading to the order of the consignor, with instructions to notify the buyer, and the bill of lading showed on its face that the freight charges had not been prepaid, so that they should have been collected from the buyer, the delivery of the goods to the buyer without requiring payment of the freight charges, because of the negligence of the carrier's clerk in stating in the waybill that the charges were prepaid, prevents the carrier from recovering the freight charges from the consignor after the buyer had become insolvent. New York Cent. R. Co. v. Federal Sugar Refining Co., 194 N. Y. S. 467.

(aa) Where a carrier accepted a shipment of goods under an order notify bill of lading, it had no right to deliver the goods to the notify party without requiring the payment of its charges in accordance with the terms of the bill of lading, and thereafter to hold the consignor for such charges because of the insolvency of the notify party, since a rule permitting the carriers so to do would give them an opportunity to discriminate between shippers, contrary to the purpose of the Interstate Commerce Act. New York Cent. R. Co. v. Federal Sugar Refining Co., 194 N. Y. S. 467.

(bb) Even if the negligence of the carrier delivering goods shipped under an order notify bill of lading to the notify party without requiring payment of the freight by the notify party as required by the bill of lading does not relieve the consignor of its liability for the payment of such charges, the consignor can

set off against such liability its claim for damages caused by the carrier's negligence in billing the shipment as prepaid and delivering it without requiring payment of the charges. New York Cent. R. Co. v. Federal Sugar Refining Co., 194 N. Y. S. 467.

(cc) By accepting merchandise, consignees become liable for transportation charges. American Ry. Exp. Co. v. Heilbrunn, 198 N. Y. S. 801.

(cca) Where a carload of cucumbers were consigned to defendants in Buffalo, and they unloaded part of them and reshipped the car containing the balance to Rochester, with directions to deliver to a named firm on payment of freight, and this firm started unloading the car without having paid the freight charges, but on being interfered with by defendant's agent refused to accept the cucumbers, HELD, that defendants were liable for the freight. New York Cent. R. Co. v. Satuloff et al. 202 N. Y. C. 297.

(dd) Where a consignee is to pay freight, a court may take judicial knowledge of the method usually employed for the final carrier to pay the initial and the intermediate carriers their part. Southern California Commercial Co. v. Alberti, (Calif. 1922), 207 Pac. 1023.

(ee) In an action by a carrier against a shipper to recover freight, failure to plead the defense that the goods were destroyed through negligence in transportation prevents setting up the defense. Southern California Commercial Co. v. Alberti (Calif. 1922), 207 Pac. 1023.

(ff) Where a shipper consigned goods to himself, he was primarily liable to the carrier for the freight, and this obligation was not affected by the fact that the freight was not prepaid, nor by the shipper's transfer of the bill of lading, subject to the lien for freight charges, to a third party with whom the carrier had no contractual obligation. Southern California Commercial Co. v. Alberti (Calif. 1922), 207 Pac. 1023.

(gg) The carrier is entitled to its freight charges, notwithstanding a delay in shipment and its liability for such delay. Ulrich Mill Work Co. v. Missouri Pac. R. Co. (Kans. 1923), 212 Pac. 654.

(hh) Where a railroad company transports goods under a bill of lading which shows that the freight charges were to be collected from the consignee, and when the carrier, through its negligence, fails to collect, or even to attempt to collect, the charges from the consignee (although it could have collected them if it acted promptly) until after the consignee has become insolvent, the carrier can nevertheless recover the charges from the consignor. Southern Railway Co. v. Southern Cotton Oil Co., 19 Ga. App. 453, 91 S. E. 876. This ruling would not be affected by the fact that at the time of the delivery of the goods by the carrier to the consignee there existed an agreement between them that the carrier should deliver to the consignee all goods shipped, "charges collect" and allow the consignee one week in which to pay the transportation charges. Seaboard Air Line Ry. Co. v. Montgomery (Ga. 1922), 112 S. E. 652.

(ii) A common carrier may collect freight charges on goods either from the consignor or the consignee, unless it has entered into a special contract binding itself to collect the charges from one of them only. And a mere agreement between the shipper and the carrier that the goods should be shipped "charges collect" and a memorandum in the bill of lading to this effect would not constitute such a special contract. Southern Cotton Oil Co. v. Southern Railway Co., 147 Ga. 646, 95 S. E. 251. Seaboard Air Line Ry. Co. v. Montgomery (Ga. 1922), 112 S. E. 652.

(jj) A contract to pay carrier's charges will ordinarily be implied from consignee's acceptance of the freight. Davis v. Allen (S. C. 1923), 117 S. E. 547.

(kk) Consignor with whom the contract of shipment is made is primarily liable for the payment of freight charges, whether he is owner of the goods or not. Davis v. Allen (S. C. 1923), 117 S. E. 547.

(ll) In the absence of an acceptance of the goods by consignee or of other facts tending to prove that the ownership and jus disponendi is in consignee, a contract on the consignee's part to pay carrier's charges may not be implied from the mere presumption of ownership arising from his designation by shipper as consignee. Davis v. Allen (S. C. 193), 117 S. E. 547.

(mm) In an action to recover the difference between the interstate through rate and the sum of the interstate and

intrastate rates on lumber shipped to defendants at O., and reshipped to M., that possession of railroad cars was taken by the shipper at O., and that they were not rebilled to M., a point in the same state, for several days, would have justified the jury in finding, if shipper's intention had been in issue, that it was originally intended to end the movement at O., and that there was no through interstate shipment from the original shipping point to M. Baltimore & O. S. W. R. Co. v. Settle, 43 Sup. Ct. 28.

(nn) Money paid under duress or unlawful compulsion may be recovered. Bowers v. Missouri, K. & T. Ry. Co. of Texas (Tex. 1922), 241, S. W. 509.

(oo) The consignee of an interstate shipment of goods, who had made no contract with the carrier for the payment of the freight, and who assigned his interest in the goods before their delivery to him, and directed the delivery to the assignee which was made by the carrier, is not liable for the freight charges. Cleveland, C. C. & St. L. Ry. Co. v. Southern Coal & Coke Co. (Tenn. 1923), 248 S. W. 297.

(pp) The shipper's primary liability for payment of interstate freight charges based on the fact that he contracted for the shipment, cannot be released by express contract with the carrier and agreement to look to the consignee. Cleveland C. C. & St. L. Ry. Co. v. Southern Coal & Coke Co. (Tenn. 1923), 248 S. W. 297.

(qq) The consignor with whom the contract to ship is made is primarily liable for the freight, and his liability can only be discharged by a full payment either by the consignor or consignee. Cleveland C. C. & St. L. Ry. Co. v Southern Coal & Coke Co. (Tenn. 1923), 248 S. W. 297.

ALL OTHER CITATIONS

Brunswick-Balke-Collender Co. v. T. S. & M. Ry., 44 I. C. C. 598, 601; Hillsdale Coal & Coke Co. v. Pennsylvania R. R., 237 Fed. 272; Southern Pac. Co. v. California Adjustment Co., 237 Fed. 954, 962; Yazoo & M. V. R. Co. v. McMurray, 238 Fed. 789; Johnson-Brown Co. v. Delaware, L. & W. R. R., 239 Fed. 590, 592; Chicago, M. & St. P. Ry. v. George A. Hormel & Co., 240 Fed. 381; Western Union Telegraph Co. v. Hawkins (Ala. 1916), 73 So. 973; Beckwith v. A. C. L. (Fla. 1916), 73 So. 593; Central of Georgia Ry. v. Eaton Lumber Co., 14 Ga. App. 302, 80 S. E. 725 (3); Southern Ry. v. S. Cotton Oil Co. (Ga. 1917), 91 S. E. 876; Jelks v. Philadelphia & Reading Railway Co., 14 Ga. App. 96, 80 S. E. 216; Georgia R. R. v. Creety, 5 Ga. App. 424, 63 S. E. 528; Central of Georgia Ry. Co. v. Curtis, 14 Ga. App. 716, 82 S. E. 318; L. & N. Ry. Co. v. Maxwell, 237 U. S. 94, 35 Sup. Ct. 494, 59 L. ed. 853; L. R. A. 1915E, 665; Seaboard Air Line Ry. v. Luke, 19 Ga. App. 100, 90 S. E. 1041; S. F. & W. Ry. Co. v. Bundick, 94 Ga. 775, 21 S. E. 995; Barnes on Interstate Transportation, 194, 195; Watkins on Shippers and Carriers (L. Ed.) 882; Ludowici Celadon Co. v. Missouri Pac. Ry. Co., 22 Interst. Com. Com'n. Rep. 588; Cent. of Ga. Ry. v. O'Neill Mfg. Co. (Ga. 1917), 91 S. E. 877; A. T. & S. F. Ry. v. F. H. Stannard & Co. (Kans. 1917), 162 Pac. 1176, 1178, 1179; Y. & M. V. Ry. v. Picher Lead Co. (Mo. 1916), 190 S. W. 387; Kellerman v. Kansas City, St. Joseph & Council Bluffs R. Co., 136 Mo. 177, 189, 34 S. W. 41, 37 S. W. 828; Russell v. Quincy, Omaha & Kansas City R. Co., 177 Mo. App. 186, 192, 164 S. W. 164; Portland Flouring Mills Co. v. British & Foreign Marine Insurance Co., 130 Fed. 860, 65 C. C. A. 344; St. L. I. M. & S. Ry. v. McNabb (Okla. 1917), 162 Pac. 811; Miller & Victor Lumber Co. v. A. T. & S. F. Ry. (Tex. 1917), 192 S. W. 354; Dorr v. C. & O. Ry. (W. Va. 1916), 88 S. E. 666; Duncan v. United Steel Co., 244 Fed. 258; McFadden v. Ala. Great Southern R. Co., 241 Fed. 562; Pennsylvania R. Co. v. Townsend (N. J. 1917), 100 Atl. 855, 856, 857; Great Northern Ry. v. Hocking Valley Fire Clay Co. (Wis. 1918), 166 N. W. 41; Sheppard v. N. Y., N. H. & H. Ry. (Mass. 1917), 116 N. E. 556; No. Pac. Ry. v. Pleasant River Granite Co. (Me. 1917), 102 Atl. 298; L. V. R. Co. v. Wyeant, 165 N. Y. Supp. 391; Central R. R. of N. J. v. Berry, 165 N. Y. S. 1041; Atlas S. S. Co. v. Columbian Land Co., 102 Fed. 358, 42 C. C. A. 398 (§2 C. C. A.); The Kimball, 3 Wall, 37, 18 L. ed. 50; Segrist v. Crabtree, 131 U. S. 287, 9 Sup. Ct. 687, 33 L. ed. 125; Duncan v. United Steel Co., 244 Fed. 258, 259, 260, 261; Oregon Short Line R. Co. v. Portland Cattle Loan Co., 245 Fed. 214, 215, 216; Wells Fargo & Co. v. Cuneo, 241 Fed. 727; Galloway Co. v. G. B. & W. R. R., 48 I. C. C. 455; New York Cent. R. Co. v. Mutual Orange Distributors, 251 Fed. 230; Baltimore &

O. R. R. v. Carnegie Steel Co. (Pa. 1918), 251 Fed. 682; New York Cent. & H. R. R. Co. v. York & Whitney Co. (Mass. 1918), 199 N. E. 855; Chicago, M. & St. P. Ry. Co. v. Greenberg (Minn. 1918), 166 S. W. 1073; Chicago & N. W. Ry. Co. v. Queenan (Neb. 1918), 167 N. W. 410; Southern Cotton Oil Co. v. Southern Ry. Co. (Ga. 1918), 95 S. E. 251; Southern Flour & Grain Co. v. Seaboard Air Line R. R. (Ga. 1918), 95 S. E. 997; Cincinnati, N. O. & T. P. Ry. Co. v. Malsby Co. (Ga. 1918), 96 S. E. 710; Southern Ry. Co. v. Latham (N. C. 1918), 97 S. E. 234; Louisville & N. R. Co. v. Murphy (Ky. 1918), 206 S. W. 268; (Sheldon v. Chicago, B. & Q. R. Co. (Ia. 1918), 169 N. W. 189; Atchison, T. & S. F. R. R. v. Wagner (Kans. 1918), 172 Pac. 519; Washington & C. Ry. Co. v. Mobile & O. R. R., 25 Fed. 12; Boston & M. R. R. v. National Orange Co. (Mass. 1919), 122 N. E. 313; Atchison, T. & S. F. R. R. v. Wagner (Kans. 1918), 172 Pac. 519; Atchison, T. & S. F. Ry. Co. v. Boyle Commission Co. (Kans. 1919), 178 Pac. 614; Wilson v. P. R. R., 50 I. C. C. 571; Barber & Co. v. C. C. C. & St. L. Ry., 51 I. C. C. 194, 196; Lancaster v. Schreiner (Mo. 1919), 212 S. W. 19; St. Louis Southwestern Ry. Co. v. White, Jackson & Co. (Tex. 1919), 211 S.. W. 315; Wallingford Bros. v. Bush, 255 Fed. 949; Murphy v. New York Cent. R. R. (N. Y. 1919), 122 N. E. 700; Bills of Lading, 52 I. C. C. 671, 721; Schreiber Co. v. C. B. & Q., 53 I. C. C. 227; Consolidated Classification Case, 54 I. C. C. 1, 15; Ruddock Orleans Cypress Co. v. Director General, 55 I. C. C. 236, 238; Chicago Warehouse & Terminal Co., Terminal Charges, 55 I. C. C. 363, 371; Boston & M. R. R. v. Standard Wall Paper Co., 181 N. Y. S. 129; Southern Ry. Co. v. W. A. Simpkins Co. (N. C. 1919), 100 S. E. 418; Heed v. J. O. Dorris & Co. (Ga. 1920), 100 S. E. 717; Hammer Lumber Co. v. Seaboard Air Line Ry. (N. C. 1920), 102 S. E. 508; Hammer Lumber Co. v. Seaboard Air Line Ry. Co. (N. C. 1920), 102 S. W. 508, 509; Held Bros. v. E. P. & N. E. R. R., 55 I. C. C. 416, 420; Plymouth Coal Co. v. P . R. R., 56 I. C. C. 699, 707; Pittsburgh, C. C. & St. L. Ry. Co. v. Fink, 40 Sup. Ct. 27; Rice v. Louisville & N. R. Co., 264 Fed. 427; Delaware, L. & W. Ry. Co. (Ga. 1921), 270 Fed. 679; C. of G. Ry. v. Lovell, 180 N. Y. S. 922, 925; Cen. R. R. of N. J. v. Williams, 180 N. Y. S. 925; Grand Trunk Ry. Co. of Canada v. Statuloff, et al. (Sup. Ct. 1920), 182 N. Y. S. 81, 82; Pittsburgh & L. E. R. Co. v. South Shore R. Co. (Pa. 1919), 107 Atl. 680; Chicago, B. & Q. R. Co. v. Evans, et al. (Mo. 1920), 228 S. W. 853, 854;New York, N. H. & R. R. v. Tonella (N. H. 1920), 111 Atl. 341; Chicago & N. W. Ry. Co. v. J. I. Case Plow Works (Wis. 1920), 180 N. W. 846; Wabash Ry. Co. v. Bloomgarden (Mich. 1920), 180 N. W. 443; Regulations for Payment of Rates and Charges, 57 I. C. C. 591; Payment of Charges in United States Currnecy, 59 I. C. C. 263; Samuel v. Director General, as Agent, 59 I. C. C. 190, 191; Cohen-Schwartz Rail & Steel Co. v. M. L. & T. R. R. & S. S. Co., 59 I. C. C. 202, 203; New York Board of Trade v. Director General, 59 I. C. C. 205, 209; Regulations for Payment of Rates and Charges, 59 I. C. C. 456; American Smelting & Refining Co. v. Director General, 62 I. C. C. 583, 588; Nashville, C. & St. L. Ry. Co. v. Tennessee Mill Co. (Tenn. 1921), 227 S. W. 443; Louisville & Nashville R. Co. v. James (Ala. 1920), 86 So. 906; Clemons v. Payne (Ga. 1921), 105 S. E. 623; Montpelier & W. R. R. R. v. Charles Bianchi & Sons (Vt. 1921), 113 Atl. 534; Michigan Cent. R. Co. v. S. J. Peabody Lumber Co. (Ind. 1921), 131 N. E. 841; Chicago & E. R. Co. v. Lightfoot et al. (Mo. 1921), 232 S. W. 176; Payne, Director General of Railroads v. Clarke, 271 Fed. 525; Waters v. Pfister & Vogel Leather Co. (Wis. 1921), 186 N. W. 173; Sipple v. Seaboard Air Line Ry. Co. (Ga. 1921), 110 S. E. 39; Southern Cotton Oil Co. v. Southern Railway Co., 147 Ga. 646, 95 S. E. 251; T. R. Mill Co. v. Louisville & N. R. Co. (Ala. 1922), 92 Sou. 797; Davis v. City Fuel Co. (Ark. 1923), 248 S. W. 572; Hebrleev v. Hawley (Kans. 1922), 211 Pac. 129; Western Maryland Ry. Co. v. Cross (W. Va. 1922), 114 S. E. 438; California Sugar & White Pine Co. v. Director General, as Agent, 73 I. C. C. 338, 339, 340; New York Cent. R. Co. v. Federal Sugar Refining Co. (N. Y. 1923), 139 N. E. 234; New York Cent. R. Co. v. Federal Sugar Refining Co., 235 N. Y. 182, 139 N. E. 234; Este Co. v. A. C. L. R. R. Co., 34 I. C. C. 469, 471; Coal & Coke Ry. Co. v. Buckhannon River Coal & Coke Co. (W. Va. 1915), 87 S. E. 376; Union Pac. R. Co. v. W. L. Stickel Lumber Co. (Nebr. 1916), 156 N. W. 1082; International & G. N. Ry. Co. v. Carter (Tex. 1915), 180

S. W. 663, 666; In re Arlington Hotel Co., 98 Atl. (Del. 1916), 186; Illinois Cent. R. Co. v. W. L. Hoopes Sons, 233 Fed. 135; King v. Van Slack (Mich. 1916), 159 N. W. 157; Crane R. Co. v. Philadelphia & R. Ry. Co. 97 Atl. (Pa. 1916), 1055; New York Cent. & H. R. R. Co. v. York & Whitney Co., (Mass., 1918), 119, N. E. 885; Chicago M. & St. P. Ry. Co. v. Greenberg, (Minn. 1918), 166, N. W. 1073; Chicago & N. W. Ry. Co. v. Queenan, (Neb. 1918), 167 N. W. 410; Boston & M. R. v. Standard Wall Paper Co. (Sup. Ct. 1920) 181 N. Y. S. 129; Bowers v. Missouri K & T. Ry. Co. of Texas, (Tex. 1922), S. W. 509 Regulations for Payment of Rates and Charges, 69 I. C. C. 351; In Re O'Gara Coal Co. New York Cent. R. Co. v. Gardner, 294 Fed. 89; Southern Ry. Co. v. Collins (S. C. 1923) 119 S. E. 833; Galveston, H. & S. A. Ry. Co. v. Lykes Bros., 294 Fed. 968; American Ry. Express Co. v. Magnolia Fish & Oyster Co. (Tex| 1923), 255 S. W. 459; Gassman v. N. Y. Cent. R. Co., (1923), 201 N. Y. S. 740; Howell v. Seaboard Air Line R. Co. (N. C. 1923), 119 S. E. 198; Keith Co. v. Director General, as Agent, 83 I. C. C. 167, 172; 4 Ruling Case Law, 83 I. C. C. 858; Koine v. M. C. R. R. Co., 83 I. C. C. 407, 408; Boston Wool Trade Asso. v. A. T. & S. F. Ry. Co., 83 I. C. C. 445, 449; Payment of Charges in United States Currency, 59 I. C. C. 263.

FUMIGATION IN TRANSIT

See Transit.

IMPORTANT CASES SINCE 1908

(a) Through rates on imported Egyptian cotton from Mystic Wharf, Boston, Mass., to New Bedford, Mass., stopped in transit for fumigation at a point in Boston, not found unreasonable or unduly prejudicial, it not being shown that the charges are improper for the respective services performed or that they are out of line with those for similar services in New England generally. New Bedford Board of Commerce v. Director General, as Agent, 58 I. C. C. 601.

FURNACE ALLOWANCES

See Allowances §8 (3⅛).

GAS COMPANIES

CASES 1887-1908

(a) A State Legislature has no power to prohibit the conducting of natural gas from points within to points without the State. State, Corwin, v. Indiana & O. Oil, G. & Min. Co. (Ind.) 2 I. C. R. 758.

(ab) Natural gas, when brought to the surface and placed in pipes for transportation, is an article of commerce. State Corwin, v. Indiana & O. Oil, G. & Min. Co. (Ind.), 2 I. C. R. 758.

(ac) State regulation of the pressure of natural gas transported in pipes within the State, which operates upon all alike, is not an unlawful regulation of interstate commerce. Jamieson v. Indiana Natural Gas Co. (Ind.) 3 I. C. R. 613.

(ad) The regulation of the pressure of natural gas transported in pipes is within the police power of the Legislature to be exercised according to its discretion in the absence of facts showing oppression or usurpation under a pretext of exercising police power, at least so far as constitutional provisions protecting vested or contract rights are concerned. Jamieson v. Ind. Natural Gas & Oil Co. 3 I. C. R. 613.

IMPORTANT CASES SINCE 1908

(ae) Since the Act of Congress to Regulate Commerce as amended June 9, 1906, expressly excepts gas companies, there is no implied exclusion of the police power of the states to regulate the sale of gas within their borders, although in interstate commerce, if they do not impose new rather than remote and incidental burdens thereon or discriminate against foreign products or introduce diversity and conflict where there is need of uniformity and harmony. In re Pennsylvania Gas Co. (N. Y. 1919), 12 N. E. 260.

(b) Though a gas company's franchise required it to disclose the source of its supply, a company supplying it with natural gas brought into the state from other states held not to have thereby voluntarily submitted itself to the jurisdiction of the state. State of Missouri v. Kansas Natural Gas Co., 282 Fed. 341.

(c) A state or its Public Service Commission has no authority to regulate the rate chargeable for gas by a company transporting it from another state and delivering it in interstate commerce to a distributing company. State of Missouri v. Kansas Natural Gas Co., 282 Fed. 341.

(d) The transportation of natural gas from one state to another is "interstate

Valley Coal Co. v. Director General, as commerce." State of Missouri v. Kansas Natural Gas Co., 282 Fed. 341.

(e) A state Public Utilities Commission can not regulate the price chargeable to local distributing companies for gas by one transporting the gas in interstate commerce by pipe line, and exercising no franchise rights acquired from the state, though Congress has not exercised its power of control over such rates. Central Trust Company of New York v. Consumers' Light, Heat & Power Co., 282 Fed. 680.

(f) Where natural gas is bought in an adjoining state by a Pennsylvania company for delivery at the state line, the quantity to be there ascertained by meter measurement, the interstate character of the shipment ended as such line, and it did not continue while the gas was being taken by the company in its pipes through the state for sale in installments at various points therein. Peoples National Gas Co. v. Public Service Commission (Penn. 1924), 123a 799.

(g) The question whether a state may withdraw a natural product, such as natural gas, from interstate commerce, by requiring companies handling it to prefer local consumers, is essentially a judicial question, and no less so in suits between state than in suits between private parties. Commonwealth of Pennsylvania v. State of West Virginia (1923) 43 Sup. Ct. 658.

ALL OTHER CITATIONS

In re Pennsylvania Gas Co. (N. Y. 1919), 122 N. E. 260; West Virginia & Maryland Gas Co. v. Towers (Md. 1919), 106 Atl. 265; Pub. Utilities Com'n v. Landon 39 Sup. Ct. Rep. 268; Penn. Gas Co. v. Pub. Service Commission, 40 Sup. Ct. Rep. 279; Pennsylvania Gas Co. v. Saxe, 229 N. Y. 446, 128 N. E. 673; Mill Creek Coal & Coke Co. v. Public Service Commission (W. Va. 1919), 100 S. E. 557; United Fuel Gas Co. v. Hallanan, 42 Sup. Ct. 105; United Fuel Gas Co. v. Public Service Commission (W. Va., 1924), 121 S. E. 281; City of Altoona v. O'leary, 98 Atl. (Pa., 1916), 798.

GOVERNMENT GUARANTY

See Interstate Commerce Commission §9½; Finance Dockets §6.

GOVERNMENT MATERIAL

Se Reduced Rates §4.

GOVERNMENT OPERATION

See Advanced Rates §1 (5½); Finance Docket §6; Interstate Commerce Commission §13½; War Legislation.

IMPORTANT CASES SINCE 1908

(a) A rate fixed by the Director General of Railroads on the last day of federal control was as much within his power as rates theretofore fixed, and was continued in force during the period of guaranty by Transportation Act, §208a. Atlantic Coast Line Ry. Co. v. Railroad Commission of Georgia, 281 Fed. 321.

ALL OTHER CITATIONS

Williamette Valley Lumbermen's Association v. S. P. Co., 51 I. C. C. 250, 257, 258, 260, 261; California Canneries Co. v. S. P. Co., 51 I. C. C. 500, 503; Steamer Lines on Long Island Sound, 50 I. C. C. 634, 644; Building and Roofing Paper and Paper Board Rates, 52 I. C. C. 84, 102; Natchez Chamber of Commerce v. L. & A. Ry., 52 I. C. C. 130; Johnston v. A. T. & S. F. Ry., 51 I. C. C. 356, 361; Rice Potato Co. v. B. & O. R. R., 51 I. C. C. 356, 361; California Canneries Co. v. S. P. Ry., 51 I. C. C. 501; Pacific Lumber Co. v. N. W. P. R. R., 51 I. C. C. 738, 768; Natchez Chamber of Commerce v. L. & A. Ry., 52 I. C. C. 105, 130; Weissbaum & Company v. Director General, 53 I. C. C. 681, 682; National Wholesale Lumber Dealers Asso. v. Director General, 53 I. C. C. 727, 728; Michigan Paper Mills Traffic Asso. v. N. Y. C. R. R. Co., 53 I. C. C. 344, 351; Commercial Club of Greeley v. C. & S. Ry. Co., 53 I. C. C. 66, 78; Ohio Valley Coal Operators Asso. v. I. C. R. R. Co., 53 I. C. C. 148, 155; Southern Hardwood Traffic Asso. v. Director General, 53 I. C. C. 191, 196; Continental Coal Corp. v. L. & N. R. R. Co., 53 I. C. C. 377; Public Service Commission of Washington v. A. & V. Ry. Co., 53 I. C. C. 1; Portsmouth Assn. of Commerce v. S. A. L. Ry., 55 I. C. C. 377, 387; State v. Wisconsin Telephone Co. (Wis. 1919), 172 N. W. 225; State v. Northern Pac. Ry. Co. (N. D. 1919), 172 N. W. 324, 325; Anaconda Copper Co. v. Director General, 57 I. C. C. 723, 726; American Wholesale Lumber Asso. v. Director General, as Agent, 66 I. C. C. 393, 396; Lehigh

Agent, 69 I. C. C. 539; Atlantic Coast Line Ry. Co. v. Railroad Commission of Georgia, 281 Fed. 321.

GRADED RATES

See Blanket Rates §9; Distance Rates.

ALL CITATIONS

Intermediate Rate Asso. v. Director General, 61 I. C. C. 226.

GRAIN DOORS

See Allowances §8 (2); Facilities and Privileges §9.

GRAZING-IN-TRANSIT

IMPORTANT CASES SINCE 1908

(a) Defendant's agent erroneously quoted rate in effect via other routes as applying via route of movement, but tariff did not, at time shipment moved, permit grazing in transit at point here involved. Subsequently such lower rate established via route of movement. HELD, misquotation of a rate by a carrier does not of itself afford a basis for an award or reparation, and the Commission refuses to give retroactive effect to a transit arrangement except to remove unlawful discrimination. Taylor v. v. Director General, as Agent, 61 I. C. C. 109.

GROUND STORAGE

IMPORTANT CASES SINCE 1908

(a) Shipments arrived at Philadelphia Pa., and were unloaded on ground by carrier. Tariff provided for assessment of ground-storage charges, less than demurrage charges, upon written request for storage. No request for ground storage having been made, demurrage charges assessed. HELD: Following Kidston & Co., 74 I. C. C., 135, demurrage charges assessed found not unreasonable or discriminatory. International Steel Corp. v. P. R. R. Co., 78 I. C. C. 89.

GROUP RATES

See Blanket Rates

GUIDE BOOK

See Tariffs §12½.

HEAD LIGHT LAW

IMPORTANT CASES SINCE 1908

(a) Locomotive Headlight Law (Acts 1915, p. 257), has no application to engines engaged in interstate commerce; the federal Safe Locomotive Boilers Act having excluded the states from the right to legislate on the matter of interstate locomotive equipment, though the final federal rules on the subject of headlights on interstate locomotives were not promulgated by the Interstate Commerce Commission until after a railroad charged with violating the Locomotive Headlight Law of the state committed the offense. (Response of Supreme Court to certified question.) Louisville & N. R. R. v. State (Ala. 1917), 76 So. 505.

HEATER CARS

See Cars and Car Supply §9½; Demurrage §5½; Special Rates and Service.

HEATER SERVICE

See Cars and Car Supply §9½; Facilities and Privileges §9⅛.

HIGHWAYS

ALL CITATIONS

Buck v. Kuykendall, State Director of Public Works, 295 F. 197; Liberty Highway Co. v. Michigan Public Utilities Commission, 294 Fed. 703.

HOURS OF SERVICE LAW

IMPORTANT CASES SINCE 1908

(a) The penalty of $100 per day prescribed by the Interstate Commerce Act for the failure of a carrier to file such reports as may be required by the Interstate Commerce Commission, will not be exacted because the names of several employees were omitted by the carrier from its sworn report of violations of the Hours-of-Service Act which was required by an order of the Interstate Commerce Commission, where such omission was caused by an honest mistake in a genuinely doubtful case. U. S. of America v. Nor. Pac. Ry., 37 Sup. Ct. 22, 242 U. S. 190, 61 L. ed. 40.

(b) A terminal company, incorporated as a railroad company, which owned a terminal passenger station and the track leading thereto, used by various interstate railroads, which sold tickets and checked and loaded baggage for their trains, maintained a telegraph office through which their train orders were transmitted, operated all switches to and from its tracks, and through its station master directed the movements of all trains while on such tracks, HELD, a common carrier engaged in transportation of passenegrs and baggage by railroad in interstate commerce, and subject

to the provisions of the Hours of Service Act, as respects to its telegraph operator, who transmitted the train orders. United States v. Atlanta Terminal Co., 260 Fed. 779.

ALL OTHER CITATIONS

U. S. v. C. M. & S. P. Ry. Co., 218 Fed. 701, 702; United States v. Chicago, M. & S. Ry. Co., 219 Fed. 632; Elgin, J. & E. Ry. Co. v. United States, 227 Fed. 411, 412; St. Joseph & G. O. Ry. Co. v. United States, 232 Fed. 349; United States v. Colorado W. & E. Ry. Co. 292 Fed. 916; United States v. Brooklyn East District Terminal, 39 Sup. Ct. Rep. 283; U. S. v. East Dist. Terminal, 39 Sup. Ct. Rep. 283.

ICING

See Refrigeration §3½.

IMMUNITY OF WITNESSES

See Procedure Before Commission §21.

CASES 1887-1908

(a) The bare possibility that by disclosure a witness may be subjected to the criminal laws of some other sovereignty, and that he may be put to the annoyance and expense of pleading his immunity by way of confession and avoidance, notwithstanding the law has given him immunity from prosecution therefor, is not sufficient to render such immunity insufficient to satisfy the constitutional guaranty of protection against being compelled to be a witness against himself. Brown v. Walker, 5 I. C. R. 369.

IMPORTANT CASES SINCE 1908

(aa) Witnesses who voluntarily appear before the Interstate Commerce Commission and give testimony concerning the financial operations of a carrier investigated by the Commission under a senate resolution and who do not claim the constitutional privilege of refusing to testify on the ground of self-incrimination cannot set up the fact of such testimony as a bar to a subsequent criminal prosecution. U. S. v. Skinner, 217 Fed. 870, 877.

(b) In view of the purpose of Congress in enacting the Immunity Act, viz., to make available compulsory incriminating testimony, and to remove the obstacle to the use of such testimony, and in view of the fact that the only obstacle to the disclosure of such testimony that needed removal was that presented by the fifth amendment, and that it applied only in favor of witnesses who assert their constitutional privilege, and so are in the attitude of being compelled to testify, and does not apply to those who testify without asserting their privilege, and who are in the attitude of voluntary witnesses, the immunity would be limited to the class of witnesses in whose favor alone the obstacle existed, i. e., those who assert their privilege to decline to answer upon the constitutional ground of a tendency to incriminate. United States v. Skinner, 218 Fed. 870, 878.

(c) It is not the duty of the government to inquire of a witness about to give testimony which may incriminate him, whether he claims his constitutional privilege to refuse to testify. United States v. Skinner, 218 Fed. 870, 879.

(d) The Immunity Act was intended only to make available testimony compulsorily given, and only to reward the unwilling giver of such evidence; that testimony given without the assertion of the constitutional privilege, or declined to be given upon any other ground than that of its incriminating tendency, is not compulsory testimony under the fifth amendment, and has always been available without new remedial legislation; and so, there being no necessity for conferring immunity on the giver of it, Congress will not be construed to have done so, where its language may be reasonably otherwise construed. U. S. v. Skinner, 218 Fed. 870, 880.

IMPORT TRAFFIC

I. CONTROL AND DETERMINATION OF STATUS.
§1. In general.
II. REASONABLENESS OF RATES AND DISCRIMINATION.
§2. In general.
III. CONTROL AND REGULATION.
§3. In general.
IV. TARIFFS AND CONSTRUCTION.
§4. In general.

I. CONTROL AND DETERMINATION OF STATUS.

See Interstate Commerce I.

§1. In General.

CASES 1887-1908

(a) The Act to Regulate Commerce specifically provides for the regulation of the transportation of foreign merchandise when brought from a foreign

port of shipment to a port of entry of the United States and transported from such port of entry to a place within the United States upon a through bill of lading or when transported from a foreign port to a port of entry of a foreign country adjacent to the United States and transported from such port of entry to a place of destination within the United States upon a through bill of lading. N. Y. Board of Trade & Transportation v. Penn. R. Co., 3 I. C. R. 417.

(b) The regulation thus provided is such as regulates the rates, charges, facilities afforded and treatment of the foreign merchandise from the port of entry in either instance, as the case may be, to the place of destination of the merchandise within the United States, but it is not a regulation that extends to the control of rates made upon such foreign merchandise in the foreign port of shipment for its carriage to the port of entry of the United States or to the port of entry in a foreign country adjacent to the United States. N. Y. Board of Trade & Transportation v. Penn. R. Co., 3 I. C. R. 417.

(c) The regulation of the transportation of foreign merchandise from a port of entry to a place within the United States upon a through bill of lading does not extend to the control of rates made in the foreign port for its carriage to the port of entry of the United States or to a foreign country adjacent. New York Bd. of Trade & Transp. Co. v. Pennsylvania R. Co. (Com.), 3 I. C. R. 417.

(d) The circumstances and conditions surrounding the making of the rates upon such foreign merchandise in the foreign port of shipment have had their weight and operation in its foreign carriage to the port of entry and in the charges made and facilities afforded for that service, but after such foreign merchandise has been brought within the United States it encounters other circumstances and conditions that are controlling in this part of its carriage, namely, the laws of the United States made for the regulation of its rates and carriage. N. Y. Board of Trade & Transportation v. Pa. R. Co., 3 I. C. R. 417.

(e) With respect to that part of the carriage of such foreign merchandise between the ports of entry and the place of destination in the United States, the rule of the Statute is that it is entitled to no preference in rates, charges, facilities afforded and treatment over domestic merchandise or other merchandise when these are a like kind of traffic transported from such ports of entry to such places of destination, but as to that service stands upon the same basis of equality with domestic merchandise or other freight as to rates, charges, facilities afforded and treatment, and must be carried upon this part of its journey under the inland tariffs of the carriers established for the transportation of domestic merchandise or other freights, and under the same rules governing their carriage, as to weight, bulk, value, expenses of carriage and all such other circumstances and conditions as enter into the making of just and reasonable rates and of avoiding unlawful prejudice and unjust discriminations, such as is provided by the Statute. N. Y. Board of Trade & Transportation v. Pa. R. Co., 3 I. C. R. 417.

(f) The publication of inland joint tariffs for the transportation of foreign merchandise under the statute and of advances and reductions should be made at the port of entry and also at the point of destination of freight in the United States by posting the same in a public place at the depot of the carrier where the freight is received in the port of entry and where it is delivered at the place of destination in the United States. New York Board of Trade v. Pennsylvania R. Co., 3 I. C. C. 417, 442.

(g) The Act to Regulate Commerce specifically provides for the regulation of the transportation of foreign merchandise when brought from a foreign port of shipment to a port of entry of the United States and transported from such port of entry to a place within the United States upon a through bill of lading, or when transported from a foreign port to a port of entry of a foreign country adjacent to the United States and a place of destination within the United transported from such port of entry to States upon a through bill of lading. New York Board of Trade v. Pennsylvania R. Co., 3 I. C. C. 417, 439, 443.

(h) Complainant attacked rates charged on freight delivered to carriers at New York and Philadelphia as compared with rates charged on import traffic originating in a foreign country and moving within this country from New York and Philadelphia, as unreasonable and unjustly discriminatory. HELD, with respect to that part of the carriage

of such foreign merchandise between the ports of entry and the place of destination in the United States, the rule of the statute is that it is entitled to no preference in rates, charges, facilities offered and treatment over domestic merchandise or other merchandise when these are a like kind of traffic transported from such ports of entry to such places of destination, but as to that service stands upon the same basis of equality with domestic merchandise or other freight as to rates, charges, facilities afforded and treatment, and must be carried upon this part of the journey under the inland tariffs of the carriers established for the transportation of domestic merchandise, and under the same rules governing their carriage, as to weight, bulk, value, expense of carriage and all such other circumstances and conditions as enter into the making of just and reasonable rates and of avoiding unlawful prejudice and unjust discriminations, such as is provided by the statute. New York Board of Trade v. Pennsylvania R. Co., 3 I. C. C. 417.

(i) Upon the petition of the Interstate Commerce Commission, filed in this court under the sixteenth section of the Act to Regulate Commerce, for the enforcement of its order requiring the defendant to cease and desist from carrying an article of imported traffic shipped from any foreign port upon through bills of lading to any place within the United States at any other than the same rates established by the inland tariff of the defendant for the carriage of other like kind of traffic, HELD, (1) that the proceeding is not defective because the Southern Pacific Company, a connecting carrier participating with defendant in the carriage between certain points, was not made a party defendant herein. If the defendant is violating a proper order of the Commission it should be restrained from doing so and it cannot escape upon the objection that another wrong-doer is also violating it. (2) The Interstate Commerce Act would be emasculated in its remedial efficacy, if not practically nullified, if a carrier can justify a discrimination in rates merely upon the ground that, unless it is given, the traffic obtained by giving it would go to a competing carrier. A shipper having a choice between competing carriers would only have to refuse to send his goods by one of them unless given exceptional rates to justify that one in making the discrimination in his favor on the ground of the necessity of the situation. The order prayed for in the petition is grantel. The Interstate Commerce Commission v. Texas & Pacific R. Co., 4 I. C. R. 114.

(j) Disobedience of an order of the Interstate Commerce Commission prohibiting the carriage of traffic from foreign ports upon any other than the published inland tariff rates for similar freight from the port of entry to the point of destination, not permitted by the United States circuit court on the ground of the existence of competing water routes; but the general question whether rates for the inland carriage or foreign and domestic traffic must be the same, without regard to any circumstances which may exist in the foreign country, is not decided. Interstate Commerce Commission v. Texas & Pacific Ry., 4 I. C. R. 408.

(k) A carrier is not free to make dissimilarities to any extent it may choose in the freight rates on foreign and domestic traffic from the fact of the existence of some dissimilarity of conditions. Interstate Commerce Commission v. Texas & Pacific Ry., 4 I. C. R. 408.

(l) In deciding as to the lawfulness of a lower rate to import traffic than to domestic traffic in order to secure foreign freights which would otherwise go by other competitive routes, the fair interests of the carrier companies and the welfare of the community which is to receive and consume the commodities are to be considered. Texas & P. R. Co. v. Interstate Commerce Commission, 5 I. C. R. 405.

(m) That the disparity in rates between import and domestic traffic was too great to be justified by ocean competition cannot be made by the circuit court of appeals the basis of an affirmance of a decision by the circuit court sustaining an order of the Interstate Commerce Commission denying that ocean competition should be regarded, when there was no allegation or testimony in the court below as to the extent to which a disparity in rates could be justified by ocean competition if that could be considered. Texas & P. R. Co. v. Interstate Commerce Commission, 5 I. C. R. 405.

(n) Congress may prescribe standard for import. The act of Congress of March 2, 1897, prohibiting the im-

portation of tea inferior in purity, quality, and fitness to the standard established under the act, is a valid exercise of the police power of Congress to regulate commerce. Lung v. Jackson, 8 I. C. C. App. XLV.

(o) Congress may prohibit maintenance of rates on interstate railroad. Congress has the power to prohibit, as in restraint of interstate commerce, a contract or combination between competing railroad companies to establish and maintain interstate rates and fares for the transportation of freight and passengers on any of the railroads, parties to the contract or combination, even though the rates and fares thus established are reasonable. So, Congress has the power to forbid any agreement or combination among or between competing railroads for interstate commerce, by means of which competition is prevented. The court says, "The question really before us is whether Congress, in the exercise of its right to regulate commerce among the several states or otherwise, has the power to prohibit, as in restraint of interstate commerce, a contract or combination between competing railroad corporations entered into and formed for the purpose of establishing and maintaining interstate rates and fares for the transportation of freight and passengers on any of the railroads, parties to the contract or combination, even though the rates and fares thus established are reasonable. Has not Congress, with regard to interstate commerce and in the course of regulating it in the case of railroad corporations, the power to say that no contract shall be legal which shall restrain trade and commerce by shutting out the operation of the general law of competition? We think it has. We think it extends at least to the prohibition of contracts relating to interstate commerce which would extinguish all competition between otherwise competing railroad corporations, and which would in that way restrain interstate trade or commerce. We do not think that when the grantees of this public franchise are competing railroads seeking the business of transportation of men and goods from one state to another, that ordinary freedom of contract in the use and management of their property requires the right to combine as one consolidated and powerful association for the purpose of stifling competition among themselves, and of thus keeping their rates and charges higher than they might otherwise be under the laws of competition. And this is so, even though the rates provided for in the agreement may for the time be not more than reasonable. They may easily and at any time be increased. It is the combination of these large and powerful corporations, covering vast sections of territory and influencing trade throughout the whole extent thereof, and acting as one body in all matters over which the combination extends, that constitutes the alleged evil, and in regard to which, so far as the combination operates upon and restrains interstate commerce, Congress has the power to legislate and prohibit." U. S. v. Joint Traffic Asso. et al., 8 I. C. C. App. LIV.

(p) The Interstate Commerce Commission has jurisdiction over import traffic. Re Export and Domestic Rates on Grain, 8 I. C. C. 214.

(q) The Act to Regulate Commerce applies to the transportation of import traffic. Re Export and Domestic Rates on Grain, 8 I. C. C. 214.

(r) Whether rates upon import traffic contravene provisions of the Act to Regulate Commerce is a question of fact. Re Export and Domestic Rates on Grain, 8 I. C. C. 214.

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(s) And its jurisdiction over import traffic attaches at ports of entry. Carey Mfg. Co. v. G. T. W. Ry. Co., 36 I. C. C. 203, 207.

(t) So the Commission has jurisdiction over the domestic movement of traffic originating in Canada. Emery & Co. v. B. & M. R. R., 38 I. C. C. 636.

(u) The Act specifically confers jurisdiction upon the Commission over traffic from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or in an adjacent foreign country. It does not, however, give to the Commission any extra territorial authority, but merely defines the nature of the traffic to which its jurisdiction extends. The extent of its jurisdiction in connection with the transportation to or from adjacent foreign country is over that portion of the transportation within the confines of the United States. The Commission can not prescribe joint through rates from points in adjacent or non-adjacent foreign country to points in

the United States, but can control the charges for that portion of the service by carriers in the United States. Carlowitz & C. v. C. P. Ry., 46 I. C. C. 290, 291, 292.

ALL OTHER CITATIONS

Payne v. M. L. & T. R. R. & S. S. Co., 15 I. C. C. 185, 190, 191; Rates on Potash and Other Commodities, 29 I. C. C. 626, 628; Memphis Freight Bureau v. B. & O. Ry. Co., 28 I. C. C. 543; Molasses Rates from Mobile, Ala., 28 I. C. C. 666; Louisiana Sugar Planters' Asso. v. I. C. R. R. Co., 31 I. C. C. 311, 318, 319, 320; Rates on Fertilizer Material from New Orleans, La., Unrep. Op. A-758; National Dock & Storage Warehouse Co. v. B. & A. R. R., 33 I. C. C. 330, 331; Louisiana Sugar Planters' Asso. v. I. C. R. R., 34 I. C. C. 253, 254; Moore & Thompson Paper Co. v. B. & M. R. R., 34 I. C. C. 323; Louisiana Sugar Planters' Asso. v. I. C. R. R. Co., 34 I. C. C. 253, 332; Import and Domestic Rates, 36 I. C. C. 389, 392; Orange Rice Mill Co. v. T. & N. O. R. R., 49 I. C. C. 3, 5; Mitsui & Co. v. Director General, 58 I. C. C. 322, 323; New Bedford Board of Commerce v. Director General, as agent, 58 I. C. C. 601; American Mfg. Co. v. M. P. R. R. Co., 61 I. C. C. 341; Certain-Teed Products Corp. v. Director General, as Agent, 63 I. C. C. 93.

II. REASONABLENESS OF RATES AND DISCRIMINATION.

§2. In General.

See Evidence §13 (4).

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(a) In deciding as to the lawfulness of lower rates to import traffic than to domestic traffic in order to secure foreign freights which would otherwise go by other competitive routes, the fair interests of the carrier companies and the welfare of the community which is to receive and consume the commodities are to be considered. Texas & P. R. Co. v. Interstate Commerce Commission (U. S. Sup.) 5 I. C. R. 405.

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(b) Carriers may make import rates lower than domestic rates, but what carriers may do and what the Commission may compel them to do are distinct questions. Cairo Milling Co. v. M. & O. R. R. Co., Unrep. Op. 2119.

(c) A rate applied upon an imported commodity has been fixed largely with reference to the competition of other ports, and is not a proper standard with which to compare domestic rates. 1915 Western Rate Advance Case, 35 I. C. C. 497, 611.

(d) The publication of import rates on certain traffic lower than those on domestic traffic does not of itself constitute unjust discrimination against the domestic shipper, and the question of whether or not unjust discrimination exists is one of fact to be determined by considering whether the circumstances and conditions controlling the import rates are dissimilar from those surrounding the domestic rates. Import and Domestic Rates, 36 I. C. C. 389, 396.

(e) The action of carriers in maintaining lower rates on import traffic is not of itself unlawful, and unjust discrimination, if alleged, is a question of fact to be determined by the circumstances and conditions in each case. Import and Domestic Rates—Clay, 39 I. C. C. 132, 139.

(f) It is well established that the maintenance of rates and practices in connection with import traffic differing from those on domestic traffic does not of itself constitute undue prejudice against the domestic shipper, and that the question of whether or not undue prejudice exists is one of fact to be determined by considering whether the circumstances and conditions controlling the import rates are dissimilar to those surrounding the domestic rates. Storage in Transit Rules at Minnesota Transfer, 78 I. C. C. 265, 267.

(g) The Commission in determining whether the difference made by the carrier between the import and domestic rate or practice is unduly prejudicial, should consider all the circumstances and conditions, including the interests of carriers, producers, dealers, and consumers. Texas & Pac. Ry. v. Interstate Com. Com., 162 U. S. 197. Storage in Transit Rates at Minnesota Transfer, 78 I. C. C. 265, 267.

ALL OTHER CITATIONS

Kent Co. v. N. Y. C. & H. R. R. R. Co., 15 I. C. C. 439, 442; Florida Fruit and Vegetable Ass'n v. A. C. L. R. R. Co., 17 I. C. C. 552, 556, 561; Waco Freight Bureau v. H. & T. C. R. R. Co., 19 I. C. C. 22; Furnace Run Saw Mill & Lumber Co. v. B. & M. R. R., 20 I. C. C. 586; Detroit Traffic Ass'n v. L. S. & M. S. Ry. Co., 21 I. C. C. 257, 262; Swift & Co. v. B.

& O. R. R. Co., 21 I. C. C. 241; Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co., 24 I. C. C. 55, 64, 74, 674, 677; Import Rates on Manganese Ore, 25 I. C. C. 663; Philadelphia Veneer & Lumber Co. v. C. R. R. Co. of N. J., 25 I. C. C. 653; Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co., 27 I. C. C. 238; In Re Import Rates, 27 I. C. C. 245; National Dock & Storage Warehouse Co. v. B. & A. R. R. Co., 33 I. C. C. 330, 331; Peet Bros. Mfg. Co. v. I. C. R. R., 34 I. C. C. 634; National Association of Tanners v. L. V. R. R., 35 I. C. C. 175; Swift & Co. v. P. R. R. Co., Unrep. Op. 1915; Import and Domestic Rates, 36 I. C. C. 389, 399, 400; King Powder Co. v. Penn. R. R., 36 I. C. C. 653; Ferromanganese to Western Points, 37 I. C. C. 374; Texarkana Freight Bureau v. I. C. R. R., 38 I. C. C. 55; Mutual Rice Trade & Dev. Assn. v. I. & G. N. Ry., 39 I. C. C. 149; Union Sulphur Co. v. B. & O. R. R. Co., 39 I. C. C. 349, 351; Pulp & Paper Mfrs. Traffic Asso. v. Belt Ry. Co., 39 I. C. C. 360, 362; American Cyanamid Co. v. C. of G. Ry. Co., 39 I. C. C. 476, 477; Virginia-Carolina Chemical Co. v. S. A. L. Ry., 39 I. C. C. 660; Clay from Florida, 40 I. C. C. 275, 278; American Paper & Pulp Asso. v. B. & O. R. R. Co., 41 I. C. C. 506, 510, 511; Wichita Business Asso. v. A. & V. Ry. Co., 42 I. C. C. 237, 240; Winkler & Bro. v. I. C. R. R. Co., 42 I. C. C. 431; Orange Rice Mill Co. v. O. & N. W. Ry. Co., 42 I. C. C. 475, 476; Scully Syrup Co. v. A. G. S. R. R., 43 I. C. C. 567; Acme Mills v. L. & N. R. R., 44 I. C. C. 558; Rates from New Orleans and Galveston, 44 I. C. C. 727, 741; Carlowitz & Co. v. C. P. Ry., 46 I. C. C. 290; Vegetable Oils Transportation, 46 I. C. C. 674, 675; Memphis Merch. Exch. v. F. E. C. Ry., 47 I. C. C. 251; Orange Rice Mill Co. v. T. & N. O. R. R., 48 I. C. C. 673, 674; Orange Rice Mill Co. v. T. & N. O. R. R., 49 I. C. C. 3; Rapier Sugar F. Co. v. I. C. R. R., 49 I. C. C. 34; Chamber of Commerce, Houston, Tex. v. S. P. Co., 49 I. C. C. 316, 318, 319; Fox's Sons v. B. & A. R. R., 49 I. C. C. 656; Sisal from New Orleans, La., 50 I. C. C. 13; Meridian Fertilizer Factory v. B. R. R. & Co., 50 I. C. C. 379, 382; Gulfport Fertilizer Co. v. L. & N. R. R., 50 I. C. C. 432; Bernard Judae & Company v. C. M. & St. P. Ry., 52 I. C. C. 361; E. I. DuPont de Nemours & Co. v. N. Y. P. & N. R. R., 52 I. C. C. 384; George C. Holt, et al, as Receivers of Aetna Explosive Company v. L. & N. R. R., 52 I. C. C. 391; Woolson Spice Co. v. Director General, 53 I. C. C. 698; Frame & Co. v. Director General, 55 I. C. C. 721; Excelsior Powder Mfg. Co. v. Director General, 55 I. C. C. 725; E. I. DuPont de Nemours & Co. v. P. & R., 56 I. C. C. 231; Du Pont de Nemours & Co. v. Director General, 56 I. C. C. 233; Darragh Co. v. S. L. I. M. & S., 56 I. C. C. 282; General Chemical Co. v. Director General, 57 I. C. C. 222; Columbian Rope Co. v. Director General, 58 I. C. C. 158; Equitable Powder Mfg. Co. v. Director General, 55 I. C. C. 24, 27; Excelsior Powder Mfg. Co. v. Director General, 55 I. C. C. 725; General Chemical Co. v. Director General, 57 I. C. C. 222; Proctor & Gamble Co. v. Director General, 57 I. C. C. 465, 467, 468, 469; Frost & Co. v. Director General, 57 I. C. C. 755, 756; Plymouth Cordage Co. v. Director General, 58 I. C. C. 208; Mitsui & Co. Ltd., v. Director General, 58 I. C. C. 322; Ayres Bridges & Co. v. Director General, 58 I. C. C. 748; Columbian Rope Co. v. Director General, 58 I. C. C. 158; New Bedford Board of Commerce v. Director General, as Agent, 58 I. C. C. 601; Ayres Bridges & Co. v. Director General, as Agent, 58 I. C. C. 748; Du Pont de Nemours & Co. v. Director General, 59 I. C. C. 570; New Orleans Joint Traffic Bureau v. Director General, 59 I. C. C. 601; Columbian Rope Co. v. Director General, 59 I. C. C. 605; Lukens Steel Co. v. Director General, 59 I. C. C. 707; American Trading Co. v. Director General, 60 I. C. C. 272; Ludlow Manufacturing Association v. Director General, 60 I. C. C. 441; Texas Cotton Seed Crushers Assn. v. Director General, 60 I. C. C. 465; American Tobacco Co. v. Director General, 60 I. C. C. 486, 487; Meridian Traffic Bureau v. Director General, 60 I. C. C. 549; Ayres, Bridges & Co., 61 I. C. C. 339; American Mfg. Co. v. M. P., 61 I. C. C. 341; Monsanto Chemical Works v. Pa., 61 I. C. C. 399; John Manville Co. v. Director General, 61 I. C. C. 420; Jarecki Chemical Co. v. Director General, 61 I. C. C. 692; Memphis Merchants Exchange v. Director General, 62 I. C. C. 96; Du Pont de Nemours & Co. v. Director General, 62 I. C. C. 109; Planters Fertilizer & Phosphate Co. v. Director General, 62 I. C. C. 131; Peoria Cordage Co. v. Director General, 62 I. C. C. 137; D. Nagase & Co. v. Director General, 62 I. C. C. 422, 424; Fogarty v. I. C. R. R. Co., 60 I. C. C. 267; American Trading Co. v. Director General, as Agent, 60 I. C. C. 272; Southport Mill (Ltd.), v. Director General, as Agent, 60 I. C. C. 357; Texas

Cotton Seed Crushers Asso. v. Director General, as Agent, 60 I. C. C. 465; American Tobacco Co. v. Director General, as Agent, 60 I. C. C. 486, 488; Meridian Traffic Bureau v. Director General, as Agent, 60 I. C. C. 549; Red Star Yeast & Products Co. v. Director General, 61 I. C. C. 107; King Powder Co. v. Director General, 61 I. C. C. 459; Monsanto Chemical Works v. P. R. R. Co., 61 I. C. C. 399; American Mfg. Co. v. M. P. R. R. Co., 61 I. C. C. 341; Johns-Manville Co. v. Director General, as Agent, 61 I. C. C. 420; Jarecki Chemical Co. v. Director General, as Agent, 61 I. C. C. 692; Memphis Merchants Exchange v. Director General, as Agent, 62 I. C. C. 96; Du Pont de Nemours & Co. v. Director General, 62 I. C. C. 109; Monsanto Chemical Works v. S. P. Co., 63 I. C. C. 417; Certain-Teed Products Corp. v. Director General, as Agent, 63 I. C. C. 93, 97; Bedford Pulp & Paper Co. v. Director General, 64 I. C. C. 219; Silica Sand Producers Traffic Association v. C. B. & Q. R. R., 64 I. C. C. 302; Peabody & Co. v. Director General, 64 I. C. C. 429; Mitsui & Co. v. Director General, as Agent, 64 I. C. C. 585; Great Western Smelting & Refining Co. v. Director General, as Agent, 64 I. C. C. 605; Barrett Co. v. Director General, as Agent, 66 I. C. C. 381; Tanners Council v. Director General, as Agent, 66 I. C. C. 415; Du Pont de Nemours & Co. v. Director General, 66 I. C. C. 501; Andrew Dutton Co. v. Director General, 66 I. C. C. 663; Rock Products Traffic League v. B. & O. R. R., 68 I. C. C. 146; Gilpin, Langdon & Co., Inc. v. Director General, 68 I. C. C. 292; Western Grain Co. v. Director General, 68 I. C. C. 335; Storage in Transit Rules at Minnesota Transfer, 68 I. C. C. 572; Rub-No-More Company v. Director General, 69 I. C. C. 23; Jonas & Naumberg, Inc. v. Director General, 69 I. C. C. 29; Proctor & Gamble Co. v. Director General, 69 I. C. C. 438; Burlap Bags to Texas Destinations, 69 I. C. C. 458, 463; Arnhold Brothers v. Director General, 69 I. C. C. 685; Standard Time Zone Investigation, 73 I. C. C. 259; Swift & Co. v. Director General, as Agent, 73 I. C. C. 259; Wilson & Co. v. Director General, as Agent, 73 I. C. C. 438; Thomas W. Simmons & Co. v. Director General, 74 I. C. C. 187; E. I. Du Pont de Nemours & Co. v. Director General, 74 I. C. C. 191; United Paperboard Co. v. C. N. Rys., 74 I. C. C. 733; California Grain Co. v. Director General, 77 I. C. C. 35; Texas Chamber of Commerce v. A. & S. Ry., 77 I. C. C. 67; F. S. Smith & Son v. Director General, 77 I. C. C. 78; Tanners' Council v. Driector General as Agent, 78 I. C. C. 27; Boston Wool Trade Asso. v. B. & A. R. R. Co., 78 I. C. C. 178; Storage in Transit Rules at Minnesota Transfer, 78 I. C. C. 265, 267, 269; American Transing Co. v. Director General, 77 78 I. C. C. 387; Import and Domestic Rates on Vegetable Oils, 78 I. C. C. 421; Sprague Tire & Rubber Co. v. Director General, 80 I. C. C. 285; Imported Wool from New York and Boston, 80 I. C. C. 309; Spencer Kellogg & Sons v. Director General, 80 I. C. C. 485; Unified States Nickel Company v. Director General, 81 I. C. C. 162, 169; Smith & Son v. Director General, as Agent, 77 I. C. C. 78; Imported Wool from New York and Boston, 80 I. C. C. 309; Kellogg & Sons v. Director General, as Agent, 80 I. C. C. 485; Sugarland Industries v. Galveston Wharf Co., 80 I. C. C. 655; Texas Chemical Co. v. G., H. & S. A. Ry. Co.; 81 I. C. C. 371; Antoine Chris Co. v. Director General, 81 I. C. C. 503; A. Kilipstein & Company v. Director General, 81 I. C. C. 565; Dow Co. v. G. N. Ry. Co., 81 I. C. C. 649; Gorgas Piere Mfg. Co. v. Director General, 81 I. C. C. 657; J. Henry Koening Co. v. B. & O. R. R., 81 I. C. C. 683; Keith Co. v. Director General, 83 I. C. C. 167; Donner Steel Co. v. Director General, 83 I. C. C. 203.

III. CONTROL AND REGULATION.

§3. In General.

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(a) Public policy urgently requires that the inland transportation of import and export commerce should be subject to the Act to Regulate Commerce, and the publishing and maintaining of tariffs upon such traffic imposes in some instances no hardship upon the carrier. There may be cases in which a modification of this rule would be of service to the carrier without detriment to the public, and perhaps other instances in which such a modification should be granted in the interest of both the carrier and the public. This can only be accomplished by an amendment of the Act, since the provisions of the statute are mandatory, and the Commission has no power to modify their requirements. Re Publication & Filing of Tariff, 10 I. C. C. 55.

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(aa) The director general's contention that the Commission is without juris-

diction to award reparation on the shipments which moved from Vancouver through Canada to destinations in the United States on joint rates is not sustained. American Trading Co. v. Director General, 78 I. C. C. 387, 391.

ALL OTHER CITATIONS

Import and Domestic Rates on Vegetable Oils from Pacific Coast Points to Central Freight Association and Western Trunk Line Points, 78 I. C. C. 421.

IV. TARIFFS AND CONSTRUCTION.

IMPORTANT CASES SINCE 1908

§4. In General.

(a) Complainant attacked fifth class rate of$2.375 charged on imported pickled sheep skins, carloads, from Pacific ports to various destinations in Atlantic seaboard territory between June 25, 1918 and Feb. 15, 1919, unreasonable to extent it exceeded domestic rate of $1.25 applicable on sheep slats, green, carloads. In 66 I C..C. 415, rate attacked found unreasonable and reparation awarded. The tariff provision published in connection with the rate of $1.25 to the effect that 3 per cent of the gross weight at point of origin would be deducted for preservatives makes it clear that the application of that rate was not restricted to green hides in the strict sense of the word but was intended to cover untanned skins which had undergone some temporary preserving process. HELD, rate charged inapplicable and illegal to extent it exceeded $1.25, reparation awarded. Tanners Council of the United States of America v. Director General, 78 I. C. C. 27.

(b) Complainant attacked rule of defendant's that upon all goods imported from the Orient in less carload lots and combined into car load lots at Seattle and Tacoma for shipment to various points in eastern states the charge of 65c per ton exacted for loading into cars from the warehouse on G. N., docks at Seattle and C. M. & St. P., at Tacoma was unjustly discriminatory and that the charge of $7.50 per car for switching from the dock to team tracks was unjust and unreasonable. There is no way of knowing at the time of unloading into the warehouse which consignments may afterwards be consolidated into carloads. The loading charges were lawfully assessed. There appears to be no necessity for intermediate switching to a team track. Nor does it, appear that any switching service distinct from the service of handling the car from the warehouse to the assembling yard, which is included in the line haul rate, is performed. HELD, rates attacked not unreasonable nor unjustly discriminatory but collection of switching charges attacked was without tariff authority, reparation awarded. Frank P. Dow Company v. G. N. Ry., 81 I. C. C. 649.

(c) The Commission has no jurisdiction to prescribe conditions of contract of carriage entered into at point in adjacent foreign country so far as movement to border is concerned; or of misrouting by carrier prior to receipt of shipment by American carrier at border point. This equally applicable to shipment from nonadjacent foreign country up to time American rail carrier receives shipment. Boston Wool Trade Asso. v. A., T. & S. F. Ry. Co., 83 I. C. C. 445, 448, 449.

(d) No specific reference whatever in the act relating to through import bills of lading. Although specific jurisdiction over through export bills of lading is conferred by section 25, and some jurisdiction is acquired because traffic originates on rail carriers within United States, the commission has refused to determine and prescribe terms and provisions of export bills of lading respecting service after delivery to steamship company at port of export, in view of limitations on commission's jurisdiction over ocean carriers. It follows that the commission has no purisdiction over an ocean carrier or of that traffic, from a nonadjacent foreign country prior to delivery at port, by ocean carrier to American rail carrier. Boston Wool Trade Asso. v. T. & S. F. Co., 83 I. C. C. 445, 448, 449, 450.

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See Common Carrier; Tap Lines.

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(a) The Hutchinson & Arkansas River R. R. Co. owns between four and five thousand feet of railway siding adjoining one of several plants belonging to the

Hutchinson-Kansas Salt Company, in Hutchinson, Kans., designated as so-called "trust mills." This railroad company does not own any equipment or rolling stock nor is it in any way engaged as a common carrier. Three railway companies entering Hutchinson made joint tariffs with the H. & A. R. R. Co., which, on salt shipped to Missouri River points, gave the latter 25 per cent of the rate, but not exceeding 50 cents per ton. The H. & A. R. R. Co., is controlled by officers of the Salt Company and the earnings of the railroad company are subject to that control. Since this division was allowed to the H. & A. R. R. Co., the Salt Company has sold salt at Missouri River points at prices with which the independent salt mills in Hutchinson could not compete. The declared purpose of making this joint rate with the H. & A. R. R. Co. was to enable the salt manufacturers to meet competition from other quarters, and the division of the joint rate to the H. & A. R. R. Co. could not have that effect unless it inured to the benefit of the salt producers. HELD, That granting the division of the rate to this so-called railroad is a mere subterfuge to give a concession in the rate, and is therefore unlawful. Re Transportation of Salt from Hutchinson, 10 I. C. C. 1.

(ab) The Commission instituted an investigation as to divisions allowed companies owned by industries. The Granite City, Alton & Eastern Ry. was organized for the purpose of operating several thousand feet of railway used in the business of the St. Louis Sirup and Preserving Company and located on the latters private grounds at Granite City, Ill. The Granite City company has constructed a short track outside the limits of the grounds of the Preserving company and uses, jointly with other parties, another track about 3,000 feet in length. By means of these tracks the Granite City company connects with other railroad companies and is paid by the latter certain divisions and transportation charges on traffic shipped by the Preserving Company and hauled to such connections by the Granite City company. Assuming the Granite City company and the Preserving company are identical in ownership, concerning which a definite finding is not made, HELD, that the payments to the Granite City company constitute rebates and are illegal. In the matter of divisions of joint rates and other allowances to terminal railroads, 10 I. C. C. 661.

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(ac) Where the industrial line acts only in the capacity of a plant facility and not a common carrier, the trunk lines need not, in the absence of unjust discrimination, make any allowance so long as they are ready to perform the switching wherever by custom and general usage the line haul rate covers that service. Stewart Furnace Co. v. P. R. R. Co., 68 I. C. C. 528, 532.

(b) The payment by an industrial railway of per diem with or without reclaims is not the proper basis for settlement for the use or detention of foreign cars. Mount Hope Mineral Railroad v. C. R. R. of N. J., 74 I. C. C. 195, 200.

(c) The question of per diem reclaim allowances to industrial common carriers has been before the Commission for many years in connection with the general investigation concerning industrial railways and their relationship to proprietary industries. In 61 I. C. C. 551, the Commission required the industrial roads, in substance, to settle their car hire accounts with their trunk line connections on the basis of rates equivalent to the contemporaneous charge, computed as if there were an average demurrage agreement with each connection, three days free time being allowed the industrial carrier on cars received loaded and returned empty, or received empty and returned loaded, and six days on cars received loaded and returned empty under load. Certain industrial carriers requested a rehearing on the subject for the purpose of eliminating this rule so far as they were concerned. CHICAGO SHORT LINE. The controlling interest is held by interests which also have holdings in two industries which furnish over 90 per cent of the cars handled annually. The short line owns 1.18 miles of main track and 6.17 miles of yard track and has trackage rights over 9.18 additional miles of track. It has no tracks within the plant of any shipper served by it and does only such interplant service as is performed generally by railroads throughout the district. MANUFACTURERS JUNCTION RAILWAY. This railway operates 1.86 miles of main track, and 5.07 miles of siding and has trackage rights over 9.8 miles of track. The propriety industry is the Western Electric Company. ILLINOIS NORTHERN RAILWAY. It operates over 6.95 miles of main track and 29.99 miles of siding. The proprietary industry

is the International Harvester Company. PULLMAN RAILROAD. It owns 6.21 miles of main track and 6.719 miles of spur track and leases 3.03 miles of main track and 5.596 miles of spur track. It serves fourteen industries in addition to the proprietary industry. Pullman Company. All of the above companies are located in the Chicago switching district. BAY STATE RAILROAD. Fully described in 58 I. C. C. 680, located in the Toledo, O., switching district, proprietary industry, Sun Co. HELD, Previous finding in 61 I. C. C. 551, as herein modified provides a proper basis for settlement of car hire by the Chicago Short Line, Manufacturers Junction, Illinois Northern, Pullman, Bay Terminal, Lake Erie & Fort Wayne, Lakeside & Marblehead, and Valley roads; that the free time allowed in the previous order is sufficient in the case of the four carriers last named but in case of the Chicago Short Line, Manufacturers Junction, Illinois Northern and Pullman roads a proper free time would be 96 hours in case of cars received empty and returned loaded or received loaded and returned empty, and 192 hours in the case of cars received loaded and returned loaded, except cars received loaded and reconsigned or reshipped to points off the lines of these carriers without being loaded as to which the free time should be 72 hours. The Birmingham Southern rules, as applied to the eight companies named above, shall be further modified by providing that the rules shall not apply to private cars or to cars delivered to the industrial carrier through railroad error; that 24 hours free time shall be allowed on cars handled in intermediate switching service; that except in the Chicago switching district 48 hours free time shall be allowed on cars received loaded and reconsigned or reshipped to points off the lines of the industrial common carrier without being unloaded; that in the case of cars destroyed, or held for repairs, on the tracks of the industrial common carrier, car hire shall accrue or cease in the same manner as does per diem under the per diem and master car builders rules of the American Railroad Association; and that debits or demurrage accruing on cars while held for repairs shall be charged at the lowest contemporaneous demurrage rate. Lake Erie & Fort Wayne Railroad Company, 78 I. C. C. 475.

(d) The per diem agreement is not a proper basis for settlement by an industrial railway for the use or detention upon its lines of foreign cars. Lake Erie & Fort Wayne R. R. Co., 78 I. C. C. 475, 477.

(e) The possiblity of undue prejudice is just as great where there is a common ownership of the stock of the railway and the industry, and the Commission has made no distinction in this class of cases because of the different manner in which the stock was held where there was in fact an identity of interest. Lake Erie & Fort Wayne R. R. Co., 78 I. C. C. 475, 480.

ALL OTHER CITATIONS

Jones & Laughlan Steel Co. v. Director General, as Agent, 60 I. C. C. 325, 331; Tionesta Valley Ry., 62 I. C. C. 473, 478; Genessee & Wyoming R. R. 62 I. C. C. 680, 683; Flack et al. v. United States, 272 Fed. 680; Sun Co. v. Director General, 63 I. C. C. 11; Mercer Valley R. R. Co. v. P. R. R. Co., 69 I. C. C. 233; Minneapolis & St. Louis R. R. Co., v. P. & P. U. Ry. Co., 68 I. C. C. 412, 417

INITIAL CARRIER

See Loss and Damage §6.

INJUNCTIONS

See Advanced Rates §20; Commerce Court §4½; Courts §14.

INSPECTION

See Bill of Lading §9½; Cars and Car Supply §7½; Classification §12¾; Express Companies §31; Facilities and Privileges §9¼; Loss and Damage §7½; Weights and Weighing §12.

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(a) The inspection of grain is now provided for by law. The purpose of this inspection, whether performed by government or otherwise, is the determination by a competent and impartial authority, independent of both vender and vendee, of the grade of commodities offered for sale, insuring fair treatment, avoiding disputes, and promoting trade in the commodities. While it is apparent that inspection is primarily for the benefit of the trade, it indirectly benefits the carriers by tending to increase the tonnage of the commodities and, in some cases, by reducing the detention of shipments at destination through their more prompt acceptance by consignees. It cannot be assumed that these benefits to the carriers are

a fair offset to the regular detention of equipment and the other services necessitated by inspection at reconsigning points. The carriers are as clearly entitled to compensation for these services as for others. Reconsignment Case, 47 I. C. C. 590, 636, 637.

(b) Inspection is a necessary and valuable commercial adjunct of the marketing of commodities, and the stoppage and necessary detention of shipments for the purpose is a reasonable and proper service. However, the Commission can not hold that the carriers must perform this service without adequate compensation. Reconsignment Case, 47 I. C. C. 590, 641.

(c) Inspection of grain shipments springs from requirements of law based on business usage, and it is a general custom to perform this service without charge, provided disposition orders are furnished within a specified time, and it falls within the rule laid down in 35 I. C. C. 47, as being a service included in the freight rate. Reconsignment Case No. 3, 53 I. C. C. 455, 468.

(d) While it is true that in isolated cases lines at certain markets have imposed a charge upon cars held for inspection, without allowing any free time for the furnishing of disposition orders, such charges have usually been levied upon delivery of the car to a connecting line, have apparently had for their purpose retention of the traffic upon the carriers own rails, have ordinarily been absorbed by the connecting carriers, and are not at all typical of the general situation. Reconsignment Case No. 3, 53 I. C. C. 455. 469.

(e) Inspection of grain has been general for many years and the transit services of various kinds in connection with that traffic have been urged by the carriers in defending their rates on grain. Reconsignment Case No. 3, 53 I. C. C. 455, 469.

(f) There seems to be no good reason why the rules and charges which are applicable on grain held for inspection should not also extend to seeds, for no substantial differences in character or treatment have been disclosed; but this can not be said of hay or straw. Reconsignment Case No. 3, 53 I. C. C. 455, 471.

(g) It is the practice to inspect grain for export from north Atlantic ports at the elevators, most of which are owned by the railroad. Frequently the unloading tracks of these elevators are congested, with the result that the cars are held up in the railroad yards. Instead of waiting for such cars to be placed on the elevator tracks, the inspectors draw their samples while the cars are standing in the railroad yards. In such cases the cars are not held for inspection but for the convenience of the carriers. Reconsingnment Case No. 3, 53 I. C. C. 455, 472.

(h) No charge may be made when cars are inspected while being held in railroad yards or at outside points for the convenience of the carrier. Reconsignment Case No. 3, 53 I. C. C. 455, 472.

(i) The making of two charges for inspection, one at intermediate points and the other at destination market, will not arise under proposed rules, in the case of grain and seed, since the charge is made dependent upon the time when inspection is reported. Reconsignment Case No. 3, 53 I. C. C. 455, 472.

(j) Conplaint attacked as unreasonable carrier's practice of inspecting lumber in transit rather than at a point of shipment to determine whether or not the cars are loaded to full visible capacity. In their exceptions to the report proposed by the examiner complainants expressed the belief that the new minimum and loading rules prescribed in Lumber Carload Minima, 68 I. C. C., 98, will enable them to load cars in such a way as not to incur a penalty and therefore withdrew the request for inspection at point of origin. Brooks-Scanlon Lumber Co. v. Director General, as Agent, 73 I. C. C. 109, 111.

ALL OTHER CITATIONS

National Poultry, Butter & Egg Ass'n. v. N Y. C. R. R., 52 I. C. C. 47; Reconsignment Case No. 3, 53 I. C. C. 455, 474; Perishable Freight Investigation, 56 I. C. C. 449, 564, 565.

INSULATED CARS

See Cars and Car Supply §9⅝; Facilities and Privileges §7½.

INSURANCE

See Marine Insurance.

CASES 1887-1908

(a) The business of marine insurance is not interstate commerce. Hooper v. California (U. S. Sup.) 5 I. C. R. 610.

(b) Corporations engaging in marine

insurance, like other insurance companies, may be entirely excluded by a state from doing business therein, or allowed to enter only on performance of specified conditions. Hooper v. California (U. S. Sup.), 5 I. C. C. 610.

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(c) The reasonableness of insurance premiums paid by the carrier for the shippers account for property stored by the carrier in a public warehouse pending acceptance by consignee is not within the jurisdiction of this Commission; and the Act does not require that rates for such insurance be published in the carriers tariffs. No part of the insurance charges are shown to have resulted from the carriers demand for payment of an illegal rate. Cottonseed Products Co. v. St. L. & S. F., 53 I. C. C. 574.

(d) The act does not require that rates for such insurance be published in the carriers' tariffs. Cottonseed Products Co. v. St. L. S. & S. F. Ry. Co., 53 I. C. C. 574, 577.

(e) Joint tariffs limited liability for marine risk on shipments moving rail and water. Subsequently tariffs amended to include marine insurance in the rate for full value, the same as provided on shipments moving all rail. HELD, subsequent amendment amounted in effect to a voluntary reduction in the rate by amount of insurance premiums, but such voluntary reduction is not of itself sufficient ground for a finding that the rate previously in effect was unreasonable. Old Dominion Co. v. Director General, as Agent, 63 I. C. C. 43.

(f) Complainant seeks to recover as reparation the amount of certain insurance premiums paid by them to various marine insurance companies to cover the marine risk on carloads of copper bullion, copper matte and blister copper. Shipments moved from Douglas, Globe, Morenci and Clarksdale, Ariz., by rail and water through Galveston, Tex., to New York City and points in that district. There were in effect lower rail and water rates on copper bullion from Cananea, Mexico through Galveston to New York via the S. P. without limitation of marine risk to any designated value. Subsequently the Director General assumed marine insurance for the full value of the shipments. The subsequent tariff amendments by which marine insurance was included in the freight rate for the full value of the shipments amounted in effect to a voluntary reduction in the rate by the amount of the insurance premiums, which of course vary with fluctuations in value of the copper transported. HELD, failure of defendant to include marine insurance for the full value of the shipments did not result in charges which were unreasonable, unduly prejudicial or otherwise unlawful. Old Dominion Co. v. Director General, 63 I. C. C. 43.

ALL OTHER CITATIONS

Sheip Mfg. Co. v. B. & O. R. R., 45 I. C. C. 408, 409; The Alaska Investigation, 44 I. C. C. 680, 692; Public Utilities Commission of Colorado v. A. T. & S. F. Ry., 55 I. C. C. 374.

INTERCHANGE OF CARS

See Allowances; Cars and Car Supply §30; Switch track and Switching; Tap Lines; Through Routes and Joint Rates.

INTERCHANGE OF TRAFFIC

See Cars and Car Supply §20, §30; Switch Tracks and Switching §6, §7; Through Routes and Joint Rates VII; Transfer; Water Carrier.

CASES 1887-1908

(a) A carrier is not liable for rates made by a connecting road. Allen v. Louisville, N. A. & C. R. Co., 1 I. C. C. 621; Crews v. Richmond & D. R. Co., 1 I. C. R. 703.

(ab) Nor can a common carrier, as a reason for refusal to afford to another common carrier the customary reasonable and equal facilities for the interchange of traffic, assign the fact that such other common carrier supplies no public necessity, the public having been fully accommodated without it. All railroads created by competent public authority must be conclusively presumed to be conveniences, and other common carriers cannot refuse to exchange traffic with them on any suggestion or showing to the contrary. Kentucky & Indiana Bridge Co. v. Louisville & Nashville R Co., 2 I. C. R. 102.

(ac) Where the charter of a railroad company provided "that any and all such railroad or railroads hereafter constructed may connect and join with the road hereby contemplated, the connection thus authorized is a physical, and not a business connection, and it does not require an interchange of traffic at the point of junction. Kentucky & In-

diana Bridge Co. v. Louisville & N. R. Co. (C. C. D. Ky.), 2 I. C. C. 351; Overruling Decision of the Interstate Commerce Commission in the same case, 2 I. C. R. 102.

(ad) A carrier cannot be compelled by a new connection formed with its road by another railroad, at a point where there are no facilities for handling freight, to concede the use of its own track and terminal facilities to the new company, and accomplish the interchange of traffic at its own yards and with its own employes. The use of such advantages can be acquired only by mutual agreement. Kentucky & Indiana Bridge Co. v. Louisville & N. R. Co., (C. C. D. Ky.), 2 I. C. C. 351. Overruling decision of the Interstate Commerce Commission in the same case, 2 I. C. R. 102.

(ae) Complainant, Kentucky & Indiana Bridge Co., alleged the L. & N. R. R. refused to interchange traffic with it and to join in through rates and routes to interstate points. The K. & I. B. Co., has the chartered powers of a common carrier and is such de facto. It is, therefore, under the Act entitled to demand of railroad companies whose lines are intersected by its tracks, the same reasonable, proper and equal facilities for the interchange of traffic and for the receiving, forwarding and delivering of property that may lawfully be demanded by other carriers under the act. HELD, refusal unlawful. Kentucky & Indiana Bridge Co. v. L. & N. R. R., 2 I. C. C. 102.

(b) A common carrier, as a reason for refusal to afford to another common carrier the customary reasonable and equal facilities for the interchange of traffic, can not assign the fact that such other common carrier supplies no public necessity, the public having been fully accomodated without it. All railroads created by competent public authority must be conclusively presumed to be conveniences, and other common carriers can not refuse to exchange traffic with them on any suggestion or showing to the contrary. Kentucky & Indiana Bridge Co. v. L. & N. R. R., 2 I. C. C. 102, 111.

(c) Little Rock & Memphis Railroad Company attacked refusal of the East Tennessee, Vicksburg & Georgia R. R., to provide equal facilities for interchange of traffic. HELD, the Commission under the present act is not authorized to prescribe through arrangements and interchange of traffic. Little Rock & Memphis R. R. v. E. T. V. & G. R., 2 I. C. C. 454.

(d) Proceeding to compel respondent to transfer freight cars from the tracks of one company to those of another. HELD, the National regulations are not in all respects co-extensive with the power of Congress, and do not provide for ordering thru routes and through rates. While it is the duty of a state carrier which engages in interstate commerce to forward traffic offered from a connecting line, there is no authority under the Act to compel the carrier to forward the traffic over a route not operated or selected by itself. Mattingly v. Pennsylvania Company, 2 I. C. C. 806, 813.

(e) A railroad company can require a connecting company to receive through cars and take freight in them over its line without transfer, although the use of the latter's terminals and terminal facilities will necessarily be rendered for the service, and although the roads are parallel and rival lines and the service of transporting the freight has been practically performed by one company, which needs the assistance of its rival simply to deliver the freight at points near the terminus of its road; for this purpose no contract between the companies is necessary. The connecting company may be required to receive passengers under similar circumstances. Oregon Short Line & U. N. R. Co. v. N. P. R. Co., 3 I. C. R. 205.

(f) A railroad company may be compelled to offer the same facilities for interchange of cars and freight in bulk with one connecting road that it does with another. The Interstate Commerce Act prohibits such discrimination. Oregon Short Line & U. N. R. Co. v. Northern P. R. Co. (C. C. D. Or.), 3 I. C. R. 205.

(g) The intervention between two railroads of a terminal system owned by an independent company will not prevent the roads from being connecting lines, within the meaning of the Interstate Commerce Act, requiring such lines to interchange business; at least where the stock of the terminal company is owned by the two roads jointly, or by one of them in such manner that the terminal in reality forms a part of its road. Oregon Short Line & U. N. R. Co. v. Northern P. R. Co. (C. C. D. Or.), 3 I. C. R. 205.

(h) A railroad company can require a connecting company to receive through cars and take freight in them over its line without transfer, although the use of the latter's terminals and terminal facilities will necessarily be required for the service, and although the roads are parallel and rival lines, and the service of transporting the freight has been practically performed by one company which needs the assistance of its rival simply to deliver the freight at points near the terminus of its road. For this purpose no contract between the companies is necessary. The connecting company may be required to receive passengers under similar circumstances. Oregon Short Line & U. N. R. Co. v. Northern P. R. Co. (C. C. D. Or.), 3 I. C. R. 205.

(i) What are reasonable facilities for an interchange of business between connecting railroad companies, within the requirements of the Interstate Commerce Act, depends upon the state of the traffic and the business; and the question is to be determined by what is considered reasonable by the public, and what is required to conveniently transact the business. Oregon Short Line & U. N. R. Co. v. Northern P. R. Co. (C. C. D. Or.), 3 I. C. R. 205.

(j) An interest in another road, whether great or small, is not an excuse to a railroad company for discrimination in its favor against a third company. New York & N. R. Co. v. New York & N. E. R. Co. (Com.), 3 I. C. R. 542.

(k) Discrimination between connecting lines. The respondent, which is a carrier by a railroad running through the State of Connecticut to a point in New York, had had for some time a through billing arrangement and an agreement upon through rates for traffic over its own line destined to New York City, with petitioner's road, which connecting therewith at its New York terminus. This arrangement respondent broke up, and declined to enter into any new one in its place. The reason for breaking up the arrangement was that respondent had entered into a new arrangement with another road connecting with it at a point in Connecticut whereby a New York City line was formed over which it was intended to take the business which formerly passed over respondent's line to petitioner's. It was not complained that petitioner's road was insolvent or not responsible for its contracts, or that arrangement as before existing was unfair or unequal as between the parties thereto. Such action of the respondent is held to be in violation of the second paragraph of section three of the Act to Regulate Commerce, which provides that "every common carrier subject to the provisions of this Act shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business." N. Y. & N. R. Co. v. N. Y. & N. E. R. Co., 3 I. C. R. 542.

(l) One reason assigned for breaking up the arrangement with petitioner was that respondent was joint owner with the road making the new line, of a terminal company for delivery of freight in New York. This interest is not an excuse under the Statute for discrimination against petitioner's line, and this whether the interest in the terminal company was large or small. Petitioner did not require or ask the services of the terminal company, but only to be allowed to continue as competitor for the business affected by the discrimination, and to offer its services to the public as such. It is found in the case that the public interest was injuriously affected by the discrimination. N. Y. & N. R. Co. v. N. Y. & N. E. R. Co., 3 I. C. R. 542.

(m) A railroad company is not compelled to enter involutarily into contract relations with other companies by a statute requiring the adoption of joint rates, or, in default thereof, the fixing of such rates by railroad commissioners, as in the latter case the obligation of the company as to the rates is one imposed by law, and not by contract. Burlington, C, R. & N. R. Co. v. Dey (Iowa), 3 I. C. R. 584.

(n) Upon the petition of the New York & Northern Railway Company, filed in this court under the 16th section of the Act to Regulate Commerce, for the enforcement of an order of the Interstate Commerce Commission requiring

the defendant, under the third section of said Act, to cease and desist from discriminating in facilities and rates between petitioner and another connecting line. HELD, (1) The motion to dismiss must be determined upon the assumption that the averments of the petition and the findings of fact of the Commission (made by the statute prima facie evidence) correctly set forth the matters therein stated. (2) Neither the case before the Commission, nor its decision therein, was confined to the question of discrimination in rates and charges, and the requirement in the order to cease and desist from refusing to interchange traffic was proper. (3) The respondent has restored the joint through tariff and desisted from refusing to accept freight on through bills, but has so arranged the running of its trains that the facilities for interchange, forwarding and delivery are (as is alleged) substantially no better than before, and not equal to those afforded to the competing lines; and respondent contends that because no question of the hours of running trains was presented to the Commission its acts in that respect may not be shown before this court, acting summarily under section 16 of said Act. To refuse altogether to receive traffic from one connecting line; to receive it only under arrangements which impose such obligations upon the shippers as to transfer and rebilling as would make the transaction of the business impracticable in competition with a more favored line; to receive it without reshipment and transfer indeed, but to systematically neglect to forward it; to receive and forward it, but to so arrange the hours or manner of delivery as to deprive it of facilities equal to those afforded to traffic coming from the competitor; these and a great variety of other devices which might be suggested, while differing some in detail, are in substance practically the same. To require petitioner to bring a new proceeding each time the ingenuity of the offending carrier may devise some slight variation of the methods by the means of which its violation of the statute is persisted in, would be to fritter away the system of procedure provided in the statute to secure obedience to its requirements. The order of the Commission was no broader than the petition and proofs before them warranted; and this court may properly investigate the charge that respondent is disobeying the requirements of such order by acts and omissions in substance the same as those considered by the Commission, directed to the same end, and accomplishing precisely the same result. (4) There is nothing in the Act which makes mere distance between connecting points, whether a furlong, a mile, or ten or twenty, controlling of the question of discrimination in facilities to connecting lines. In the face of the finding of the Commission that "the physical conditions for interchange of traffic with both the connecting lines are suitable, adequate, and substantially equal," the requirements of the second clause of the third section seem to be plainly applicable. Until such finding is questioned, and the record in this court completed, further discussion of this point is unnecessary (5) The only link between respondent and its favored connecting line is such community of interest as springs from the existence of the contract for the interchange of traffic. If it be that such a contract makes each line a mere continuation or extension of the other, it is hard to conceive how a case of refusing equal facilities could ever be made out. The very granting of superior facilities to one line would make it a part of the one that favored it, and no longer a connecting road, when compared with its unsuccessful rival. (6) The "arrangments" between the respondent, the Housatonic road, and the New England Terminal Company, are such that they form a combination of carriers, within the meaning and effect of section 1, so as to make them a legal unit within the provisions of the Act, and, as such, jointly responsible for affording equal facilities in proper cases to competing lines connecting with such continuous lines. But, besides the duty which any one of these corporations may owe, jointly or with the others, it is not relieved from its obligation under the Act to all the roads which connect directly with itself. New York & N. R. Co. v. New York & N. E. R. Co., 4 I. C. C. 116.

(o) Combination with the other railroads, even if it charges one railroad with some duty toward lines connecting physically with another,, cannot excuse it from fulfilling its own obligations to roads which connect physically with itself, unless its union with the other combined lines is of such a character that their lines have become its own. New York & N. R. Co. v. New York & N. E. R. Co., (C. C. D. N. Y.), 4 I. C. R. 116.

(p) A railroad company which accepts freight in the cars of a connecting road, and transports it therein when it has cars of its own not in use, is not liable for mileage upon such cars, in the absence of an arrangement to that effect; but the existing custom that when a railroad takes the freight in the foreign cars because it has none of its own out of use, or because the freight would be injured by the transfer it shall pay certain mileage on the cars used, is reasonable and will be enforced. Oregon Short Line & U. N. R. Co. v. Northern Pacific R. Co., 4 I. C. R. 249.

(q) A railroad company is not, as a carrier of freight and passengers, under any obligation to take freight from a connecting road in the cars of the latter and transport it in such cars while its own cars are not in use, in the absence of any controlling custom among railroads. Oregon Short Line v. U. N. R. Co. v. Northern Pacific R. Co., 4 I. C. R. 249.

(r) The "running connections" which the Northern Pacific Railroad Company is required by its charter to make with other railroads include only such arrangements as to the time of trains and as to stations, platforms and other facilities, as will enable companies desiring to connect to do so without detriment or serious inconvenience. Oregon Short Line & U. N. R. Co. v. Northern Pacific R. Co., 4 I. C. R. 250

(s) The provision of the charter of the Northern Pacific Railroad Company that it shall permit any other railroad company to form running connections with it, imposes no obligation upon it to run the cars of another company over its road, except when the transfer of the freight contained therein would injure it Oregon Short Line & U. N. R. Co. v. Northern Pacific R. Co., 4 I. C. R. 250.

(t) No obligation to transport freight over its line in the cars of another company, when it has cars of its own not in use, to pay the charges thereon of the other company, or to honor tickets for passage over its lines issued by the other company, is imposed upon a railroad company by the Interstate Commerce Act § 3, providing that carriers shall give no undue or unreasonable preference, and shall afford all reasonable, proper, and equal facilities for the interchange of traffic. Oregon Short Line & U. N. R. Co. v. Northern Pacific R. Co., 4 I. C. R. 250.

(u) The provision of the Act of Congress of Feb. 4, 1887, § 3, that common carriers shall afford equal facilities for the interchange of traffic between their lines, but need not give the use of their tracks and terminal facilities to other carriers, does not affect a contract made by a railroad upon being given permission to use the streets of a city for its tracks, that it will pass the cars of other railway companies over its tracks when necessary to reach their customers' warehouses, and that it will not exceed a certain rate in its charges for switching. State v. Chicago, M. & St. P. R. Co. (C. C. N. D. Iowa), 4 I. C. R. 425.

(v) A railroad company receiving freight from a connecting road is under no obligation to advance to the latter the charges due it for transportation, although if it does so it has a lien for payment on the goods. Oregon Short Line & U. N. R. Co. v. Northern Pacific R. Co., 4 I. C. R. 450.

(w) A railroad company cannot be compelled to receive freight from a connecting road in cars other than its own, although it receives freight from another competing road in the cars of the latter and transports them over its road. Anthony Salt Co. v. Missouri P. R. Co. (Com.), 4 I. C. R. 537.

(x) The fact that one connecting railway company has a contract for the interchange of interstate commerce freight, which involves the use of the receiving railway's tracks and terminal facilities, will not authorize a court of equity to compel the receiving railway to grant a like contract or compensation to another connecting company. Anthony Salt Co. v. Missouri P. R. Co. (Com.) 4 I. C. R. 537.

(y) A railroad company cannot be compelled to receive connecting carriers' cars to facilitate transportation if it has idle cars of its own, although it receives freight from another competing road in the cars of the latter and transports them over its road. Little Rock & M. R. Co. v. St. Louis, I. M. & S. R. Co., 4 I. C. R. 537.

(z) The refusal of a railroad company to honor tickets or coupons for passage issued by another company over its line does not constitute a discrimination

within the Interstate Commerce Act, as, in the absence of arrangement between the companies, there is no obligation on the part of either to honor tickets issued by the other. Oregon Short Line & U. N. R. Co. v. Northern P. R. Co., (C. C. App. 9th C.), 4 I. C. R. 718 Aff'g, 249.

(aa) The provision of the Act incorporating the Northern Pacific Railroad Company, that it shall be its duty to permit any other railroad to form running connections with it on fair and equitable terms, does not require it to permit the use of its road by the cars of other companies or to honor tickets of such other companies. Oregon Short Line & U. N. R. Co. v. Northern P. R. Co. (C. C. App. 9th C.), 4 I. C. R. 718 Aff'g. 249.

(bb) The refusal by a railroad company to transport freight on foreign cars originating east of a certain meridian, when its own cars are not in use but are free to be employed in the transportation desired, or where a transfer of freight will not be injurious to it, is not an unreasonable discrimination against another railroad company, or a denial to it of reasonable and proper facilities, under the Interstate Commerce Act, although it accepts in such cars freight originating west of such meridian. Oregon Short Line & U. N. R. Co. v. Northern P. R. Co. (C. C. App. 9th C.) 4 I C. R. 718, Aff'g., 249.

(cc) The provisions of the interstate commerce law requiring connecting railroads to receive and deliver passengers and freight from other roads, and afford equal facilities for the interchange of traffic, apply with equal force to their officers and employees. Toledo, A. A. & N. M. R. Co. v. Pennsylvania Co. (C C. N. D. Ohio), 5 I. C. R. 545.

(cca) It is not within the prohibition of the act of July 2, 1890, against contracts in restraint of trade for several railroad companies to enter into a contract for the interchange of through freight among themselves to the exclusion of rival roads, since such action was not illegal at common law and is not forbidden by the Interstate Commerce Act, and the act of 1890 is directed solely against contracts which would have been unlawful before its passage. Prescott & Arizona Central Ry. Co. v. Atchison, Topeka & Santa Fe Ry. Co. 7 I. C. C. app XLVIII.

(ccb) An agreement between railroad companies for the interchange of traffic and through transportation of passengers and freight is not illegal as giving exclusive privileges to either of the companies in the use of the other's roads to the detriment of other shippers or transporters, although a clause of the contract may contemplate a violation of law under circumstances not existing at the time it is made. Cumberland Valley R. R. Co. v. Gettysburg & Harrisburg R. R. Co., 7 I. C. C. App. LXXXVII.

(dd) The Act to Regulate Commerce does not confer upon the Commission authority to make an order affirmatively requiring a railway carrier to deliver carloads of interstate freight to a connecting carrier. Railroad Commission of Kentucky v. Louisville & N. R. Co. 10 I. C. C. 173, 189.

(ee) The Act provides no means for determining when carriers shall be compelled to interchange cars, or for fixing the conditions upon which it shall be made, and in construing that Act the courts have, with practical unanimity, held that carriers were free to make arrangements of this sort by contract among themselves, and that there was nothing in the Act which authorized the Commission or the courts to compel one railroad company to deliver its cars to another. Railroad Commission of Kentucky v. L. & N. R. Co., 10 I. C. C. 173, 188.

(ff) On shipments of flour and other grain products defendant had in force certain rate for transportation between points on its own line and an arbitrary of 5 cents per 100 pounds to be applied in addition to its regular transportation charges to shipments received from connecting lines, but it discontinued imposition of the arbitrary, effective February 11, 1907: HELD, That the 5-cent arbitrary was unjust and unreasonable, and that defendant be required to refrain from applying the same during a period of two years hereafter. Complainant awarded reparation. Blackwell Milling & E. Co. v. M., K., & T. R. Co., 12 I. C. C. 23.

ALL OTHER CITATIONS

City of Nashville v. L. & N. R. R. Co., 33 I. C. C. 76; Hastings Commercial Club v. C. M. & St. P. Ry. Co., 69 I. C. C. 489, 493.

INTEREST

See Evidence §26½; Reparation §17½.

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(a) Neither costs nor interest paid by complainants, incidental to unsuccessful litigation in the courts, of which the unreasonable freight charges were not the proximate cause, can be included in an award of reparation. But allowance of interest was the equivalent of payment of claims in suit when due and payable, or of the judgments when entered, and fixes the date as of which interest on the unreasonable charges is allowable. Portland Cattle Loan Co. v. Director General, 55 I. C. C. 597, 600.

INTERMEDIATE CARRIERS

See Loss and Damage §7; Through Routes and Joint Rates §10.

INTERMEDIATE CLAUSE

See Through Routes and Joint Rates §21.

INTERMEDIATE POINTS

See Long and Short Hauls §5, §6; Loss and Damage §6, §7.

INTERSTATE COMMERCE

I. DETERMINATION OF STATUS.
- §½. In. general.
- §1. Beginning and end of transit.
- §2. State shipment through another state.
- §3. Participation in interstate movement.

II. CONTROL AND REGULATION.
- §3½. In general.
- §4. State.
- §5. United States.

CROSS REFERENCES

See Common Carriers; Crimes; Foreign Commerce §2; Gas Companies; Panama Canal Act; Pipe Lines; Through Routes and Joint Rates §19, §22; Transportation §11.

I. DETERMINATION OF STATUS.

§½. In General.

See Foreign Commerce §2; Import Traffic I.

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(a) Transportation of property from one State to another is interstate commerce, whether carriers engaged in moving it or vehicles on which it is borne, cross line of State or not. Ex parte Koehler (U. S. C. Ct. Or.) 1 I. C. R. 28.

(b) A transportation of goods under one contract and by one voyage from the interior of Illinois to New York is interstate commerce. Wabash etc. R. Co. v. People (U. S. Sup. Ct.) 1 I. C. R. 31.

(c) Telegraphing from one State to another is interstate commerce. (U. S. Sup. Ct.) 1 I. C. R. 307.

(d) Transportation of passengers from one State to another is interstate commerce. 1 I. C. R. 806.

(e) Commerce among the States consists of intercourse and traffic between their citizens and includes the transportation of persons and property, and the navigation of public waters, for that purpose, as well as the purchase, sale and exchange of commodities. Glouchester Ferry Co. v. Commonwealth of Pa., 1 I. C. R. 382.

(f) Business of ferriage between different States is interstate commerce. (U. S. Sup. Ct.), 1 I. C. R. 384.

(g) Whether a special privilege, granted by railroad companies to manufacturers in a single line of trade, but not to manufacturers in general, is consistent with the rule of equity and justice which the Interstate Law undertakes to establish, is a question upon which an opinion ought to be expressed only after the most careful consideration; and the Commission ought clearly to see that duty requires an answer, befor it proceeds to give one on ex parte application. Re Iowa Barb Steel Wire Co. v. 1 I. C. R., 605.

(h) Interstate commerce consists of intercourse and traffic between citizens of different States, and includes the transportation of property and the navigation of public waters for that purpose as well as the purchase, sale and exchange of commodities. Glouchester Ferry Co. v. Pennsylvania (U. S. Sup. Ct.) 382 S. P. cited in Bowman v. Chicago & N. W. R. Co. (U. S. Sup. Ct.) 1 I. C. R. 830.

(i) The right of transportation of an article of commerce from one State to

another includes the right of the consignee to sell it in unbroken packages at the place where the transportation terminates. Leisy & Co. v. Hardin 3 I. C. R. 36.

(j) Where the business of a through line of railroad consists in part of carrying passengers and freight into Pennsylvania from other states and out of that State into other States, and a railroad company which is a corporation of Virginia is a link in that line, such company in engaged in interstate commerce in Pennsylvania. Norfolk & W. R. Co. v. Pennsylvania (U. S. Sup Ct.) 3 I. C. R. 178.

(k) The essentiality of the business of a soliciting agent to the commerce of the road he represents is not the test as to whether that business was a part of interstate commerce. McCall v. People of State of Cal., 3 I. C. R. 181.

(l) The solicitation of orders for books within a city by an agent, who is, like his principle, a citizen of another State to which all orders are sent to be filled, such agents neither delivering the books nor collecting any money, consititutes interstate commerce, and an ordinance requiring a license for doing such business is void. Re White 3 I. C. R. 531.

(m) The shipment of fruit by local bill of lading to a forwarding agent in the same State, to be reshipped by him without unloading, breaking bulk, or delay, to ultimate consignees in another State, is interstate commerce, the rates for which cannot be prescribed by the state railroad commission. Cutting v. Florida R. & Nav. Co. (C. C. N. D. Fla.), 3 I. C. R. 665

(n) The shipment of mechandise from one state to another is interstate commerce, and any requirement of a state in respect of such commerce in conflict with the requirements of the Intestate Commerce Act is of no validity. Baird v. St. Louis, I. M. & S. R. Co., 4 I. C. R. 422.

(o) Commerce among the states consists of intercourse and traffic between their citizens, and includes the transportation of persons and property and the navigation of public waters for that purpose, as well as the purchase, sale, and exchange of commodities. Re Charge to Grand Jury (No. 3) (D. C. N. D. Cal.), 4 I. C. R. 784.

(p) Commerce among the States consists of intercourse and traffic between their citizens, and includes the transportation of persons and property and the navigation of public waters for that purpose as well as the purchase, sale and exchange of commodities. United States v. John Cassidy, 7 I. C. C. App. IX.

(q) A shipment of cattle from a place in Texas, under contract of shipment consigning them to parties at a place in Indian Territory, is an interstate shipment, although the initial carrier by such contract simply agrees to carry the cattle to a specified point in Texas, from which place they are to be shipped by the shipper over other roads to their final destination by a continuous trip. Mexican National Ry. Co. v. Savage, 7 I. C. C. App. LX.

(r) A shipment from one point to another within the same State is interstate commerce, although a bill of lading is given and charges are collected to the latter point only, where the destination of property is in a foreign State to which a continuous voyage is contemplated, with only a stop to change carriers at the terminal point mentioned in the bill of lading. Houston Direct Navigation Co. v. Insurance Co. of North America, 7 I. C. C. LXXX.

(s) A contract of shipment purporting to be for transportation from a point within a State to its boundary line, the goods being consigned to a person in another State, at a stipulated rate, is an interstate shipment. Texas & Pacific Ry. Co. v. Avery, 7 I. C. C. App. LXXX.

(t) A steamship company running a line of steamships between New York and Jacksonville stopping at the port of Charleston for receiving and landing passenges and freight, in leasing a wharf or landing, maintaining a plant and machinery for taking in and discharging freight, and engaging stevedores and longshoremen, having an agent and clerks and an office with its usual furniture, and keeping a bank account as incidental to its business, is engaged only in interstate commerce, and is not subject to a license tax by the City of Charleston. Clyde Steamship Co. v. City Council of Charleston, et al., 7 I. C. C. App. LXXXV.

(u) All internal commerce is either state or interstate. Commerce carried on between Maryland and the District of Columbia is not subject to regulation

by Maryland laws, and is therefore within the jurisdiction of Congress. Willson v. Rock Creek Ry. Co., 7 I. C. C. 83, 89.

(v) Defendant common carriers undertake to carry live stock through different States to the Union Stock-Yards in Chicago, and until delivery is made at such yards the live stock is interstate commerce and subject to the Act to Regulate Commerce. Cattle Raisers' Association v. Fort Worth & D. C. R. Co., 7 I. C. C. 513.

(w) That the place of business of an association of commission merchants to restrict, control, and monopolize the trade at a certain stock yards is located on both sides of the line between certain states is not of importance in determining whether the business in which they are engaged is interstate commerce. U. S. v. Hopkins et al., 8 I. C. C. App. XXII.

(wa) An original package for the purpose of interstate commerce is the package delivered by the importer to the carrier at the initial place of shipment, in the exact condition in which it is shipped. If in single bottles shipped singly, or if in packages of three or more fastened together and marked, or if in a box, barrel, crate, or other receptacle, the single bottle, in the first instance, the three or more bottles in another instance, the barrel, box, crate or other receptacle, respectively, constitute the original package. Guckenheimer v. Sellers, 8 I. C. C. App. XXVII.

(x) Commerce among the States consists of intercourse and traffic between ther citizens, and includes the transportation of persons and property, and the navigation of public waters for that purpose, as well as the purchase, sale, and exchange of commodities. U. S. v. Coal Dealers' Asso. of California et al, 8 I. C. C. App. XLII.

(y) A shipment of stock whose final destination is without the State, to a point within the State, because the freight charges are less if the stock is shipped to such point and then forwarded to the point of destination than if through rates were obtained, is interstate commerce, and not subject to regulation by the State or its railroad commission. St. of Tex. v. Gulf, Colorado & Santa Fe Ry. Co., 8 I. C. C. LII.

(z) Commerce between an Indian reservation and other places in the same State does not constitute interstate commerce. Plaintiff was an Indian and an actual inhabitant of White Earth Indian reservation, situated within the limits of the State of Minnesota, and a trader thereon under a license from the United States, she purchased upon the reservation from Indians residing thereon and who are members of the tribes located thereon, a quantity of game birds which were killed thereon by the Indians, and attempted to ship them out of that State. The game warden of the State seized the birds, and having sold them, paid the proceeds thereof into the State treasury under a State law providing for the protection of game. Plaintiff thereupon brought suit to recover the value of the property, claiming the State had no control over it. The court said: 'It is immaterial whether the shipment of the game in question commenced on the reservation or off it, for if it commenced on the reservation no question of interstate commerce can arise, for the reservation is a part of the state and it had jurisdiction over it,' for the purposes of this action. Selkire v. Stevens, 8 I. C. C. LXV.

(aa) A shipment from a point in one State to a point just within the line of another State, where the goods are reloaded and rebilled to final destination in the latter State to gain the benefit of rates fixed by the railway commission of the latter State, is interstate commerce until it reaches its final destination. The court places its ruling on State v. Gulf, C. & S. F. R. Co. (Tex. Civ. App.), 44 S. W. 542. St. of Texas v. Southern Kansas Ry. Co. of Texas, 8 I. C. C. App. XC.

(bb) Whenever a commodity has begun to move as an article of trade from one state to another commerce in that commodity between the states has commenced. Railroad Commission of Ohio v. H. V. Ry., 12 I. C. C. 398, 403.

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(cc) The inherent character of the traffic rather than incidents of billing determine whether it is interstate or intrastate. Hood Coal Co. v. M. V. T. Co., 73, I. C. C. 54, 57.

(cca) Waybills are mere incidents of service which in no wise determine its character as line haul or switching. Western Meat Co. v. Director General, as Agent, 78 I. C. C. 77, 80.

(ccb) Where there is an original and continuing intention to ship goods from

a point in one state to a point in another state the commerce is interstate and its character as such, is not changed by mere accidents or incidents in billing. Trojan Powder Co. v. Director General, 88 I. C. C. 447, 448.

(dd) The character of any freight shipment must be determined at the time the shipment begins and cannot be changed so far as the application of rates is concerned, by the subsequent conduct of either the consignor or the consignee. Consignor's exercise of his right to stop a shipment in transit cannot relieve him of his obligation to pay the freight charges based upon the character of the shipment as it was originally begun. Nor would consignor's determination, after a shipment was begun, to handle the freight differently from what it was originally billed, change the character of the shipment. Swift & Co. v. United States, 255 Fed. 291, 293.

(ee) In determining whether Commerce is interstate or intrastate, regard must be had to its essential character. Mere billing, or the place at which title passes, is not determinative. If the actual movement is interstate, the power of Congress attaches to it and provisions of the Act to Regulate Commerce, enacted for the purpose of preventing and redressing unjust discrimination by interstate carriers, whether in rates or facilities, apply. Rearick v. Pennsylvania, 203 U. S. 507, 512, 51 L. Ed. 295, 297, 27 Sup. Ct. Rep. 159; Southern P. Terminal Co. v. Interstate Commerce Commission, 219 U. S. 498, 526, 527, 55 L. Ed. 310, 320, 31 Sup. Ct. Rep. 279; Railroad Commission v. Worthington, 225 U. S. 101, 108, 110, 56 L. ed. 1004, 1008, 32 Sup. Ct. Rep. 653; Savage v. Jones, 225 U. S. 501, 520, 56 L. ed. 1182, 1189, 32 Sup. Ct. Rep. 715; Texas & N. O. R. Co. v. Sabine Tram Co. 227 U. S. 111, 127, 57 L. ed. 442, 448, 33 Sup. Ct. Rep 229; Railroad Commission v. Texas & P. R. Co., 229 U. S. 336, 57 L. ed. 1215, 33 Sup. Ct. Rep. 837; Illinois C. R. Co. v. DeFuentes, 236 U. S. 157, 163, ante, 275, 35 Sup. Ct. Rep. 275; Pennsylvania R. Co. v. Clark Bros. Coal Min. Co., 35 Sup. Ct. 896, 899; 238 U. S. 456, 59 L. ed 1406.

ALL OTHER CITATIONS

U. S. v. Union Stockyard & T. Co., 33 Sup. Ct. 83, 88; 226 U. S. 286; Rates on Plaster and Gypsum Rock, 27 I. C. C. 67, 69; Arkansas Pass Channel & Dock Co. v. G. H. & S. A. Ry. Co., 27 I. C. C. 403, 410; T. & P. Ry. Co. v. Sargbehn, 158 S. W. 244, 246; Port Arthur Rice Milling Co. v. T. & Ft. S. Ry. Co., 28 I. C. C. 697, 700; Ligon v. St. L. & S. F. Ry. Co., (Mo. App. 1914), 168 S. W. 647; State v. Kansas City Stock Yards Co. of Mo. (Kan. 1915), 145 Pac. 831; Jurisdiction over Urban Electric Lines, 33 I. C. C. 536, 538; Pennsylvania R. Co. v. Clark Bros. Coal Min. Co., 35 Sup. Ct. 896, 899; 238 U. S. 456, 59 L. ed.; Seymour v. M. L. & T. R. R. & S. S. Co., 35 I. C. C. 492, 493; Rates on Railroad Fuel and Other Coal, 36 I. C. C. 1, 8; Kempner v. M. K. & T. Ry. Co., 37 I. C. C. 396, 397; Slane Glass Co. v. V. & S. W. Ry. Co., 39 I. C. C. 586, 588; Virginia-Carolina Chemical Co. v. S. A. L. Ry., 39 I. C. C. 660; Missouri, K. & T. Ry. Co., of Texas v. Pace (Tex. 1916), 184 S. W. 1051, 1056; State v. Public Service Commission, 189 S. W. 377; S. P. Ownership of Atlantic S. S. Lines, 43 I. C. C. 168, 181; Memphis Merchants Exchange v. I. C. R. R. Co., 43 I. C. C. 378, 388, 389; Milk and Cream Rates to Philadelphia, Pa., 45 I. C. C. 371, 389; Texas & N. O. R. R. Co. v. Sabine Tram. Co., 227 U. S. 111, 32 Sup Ct. 229, 57 L. ed. 442; Louisiana R. R. Comm. v. Tex. & Pac. Ry., 229 U. S. 336, 333 Sup. Ct. 837, 57 L. ed. 1215; Atchison, Topeka & S. F. Ry. v. Harold, 241 U. S. 371, 36 Sup. Ct. 665, 60 L. ed. 1050; Easdale v. A. T. & S. F. Ry., (Kans. 1917), 164 Pac. 164, 165; W. U. Telegraph Co. v. Texas, 105 U. S. 464, 26 L. ed. 1067; Western Union Telegraph Co. v. Pendleton, 122 U. S. 347, 7 Sup. Ct. 1126, 30 L. ed 1187; W. U. Telegraph Co. v. James, 162 U. S. 654, 16 Sup. Ct. 934, 40 L. ed 1106; W. U. Tel. Co. v. Tyler, 90 Va. 299, 18 S. E. 281, 244 Am. St. Rep. 910; Reed v. W. U. Tel. Co., 56 Mo. App. 173; Ames v. Kirby, 71 N. J. Law 445, 59 Atl. 559; W. U. Tel. Co. v. Hughes, 104 Va. 246, 51 S. E. 227; W. U. Tel. Co. v. Bolling (Va. 1917), 91 S. E. 154; McNeill v. Southern Ry. Co., 202 U. S. 543, 26 Sup. Ct. 722, 50 L. ed. 1142; In re Greene (C. C.), 52 Fed. 104; Chicago, M. & St. P. Ry. Co. v. Voelker, 129 Fed. 522, 65 C. C. A. 226, 70 L. R. A. 264; United States v. Central of Georgia Ry. Co. (D. C.), 157 Fed. 893; Belt Ry. Co. v. United States, 168 Fed. 542, 93 C. C. A. 666, 22 L. R. A. (N. S.), 582; United States v. Boyer (D. C.), 85 Fed. 425; L. & N. R. Co. v. Meadors', Admr., (Ky. 1917) 197 S. W. 440; Morrison v.

Commercial Towboat Co. (Mass. 1917), 116 N. E. 499; Larabee v. Railway Co., 74 Kan. 808, 88 Pac. 72; Coe v. Erroll, 116 U. S. 517, 6 Sup. Ct. 475, 29 L. ed. 715; Gulf, Colorado & S. F. Ry. Co. v. Texas, 204 U. S. 403, 27 Sup. Ct. 360, 51 L. ed. 540; Chi. Mil. & St. P. Ry. v. Iowa, 33 U. S. 334, 34 Sup. Ct. 592, 58 L. ed. 988; Kempner v. M. K. & T. Ry. Co., 37 Interst. Com. Com'n R. 396; Illinois Grain to Chicago, 40 I. C. C. 124; Becher-Bartlett-Lockerby Co. v. Northern Pacific Railway (Minn., 1924), 197 N. W. 103; Binderup v. Pathe Exchange (1923) 44 Sup. Ct. 96 Farmers Grain & Merc. Co. v. Union Pacific R. R. (Kans. 1918), 175 Pacific 599, p. 601; State v. Chicago, M. & St. P. R. R. (Mo. 1918, 206 S. W. 419; McMickie v. Wabash Ry. (Mo. 1919), 209 S. W. 611; Seattle v. Baltimore & O. S. W. R. R., 249 Fed. 913, 914; Service v. Sumpter Valley R. R. (Or. 1918), 171 Pac. 202; Arkadelphia Milling Co. v. St. Louis Southwestern Ry., 39 Sup. Ct. 237; Valley & Siletz Railroad Co. v. S. P., 53 I. C. C. 397, 400; Railway Commission v. Wirthington, 225 U. S. 101, 32 Sup. Ct. 653, 56 L. ed. 1004; Texas & N. O. R. R. Co. v. Sabine Tram Co., 227 U. S. 111, 3 Sup. Ct. 229, 57 L. ed. 442; Railway Commission v. Texas & P. R. Co., 229 U. S. 336, 33 Sup. Ct. 837, 57 L. ed. 1215; Chicago, M. & St. P. R. Co. v. Iowa, 233 U. S. 334, 34 Sup. Ct. 592, 58 L. ed 988; Missouri, K. & T. Ry. Co. v. Williamson, (Okla. 1919), 180 Pac. 964, 966; Mill Creek Coal & Coke Co. v. Public Service Commission (W. Va. 1919), 100 S. E. 557; Empire Steel & Iron Co. v. Director General, 56 I. C. C. 158, 162; Pub. Utilities Comm'n. v. Landon, 39 Sup. Ct. Rep. 238; Mexico Northwestern Ry. Co. v. Wiliams (Tex. 1921), 229 S. W. 476; West Virginia Rail Co. v. P. C. C. & St. L., 59 I. C. C. 241, 242; Intrastate fares within Illinois, 59 I. C. C. 350, 361; Florida Rates, Fares and Charges, 60 I. C. C. 551, 558; Eureka Pipe Line Co. v. Hallanan (W. Va. 1921,105 S. E. 506; O'Brien v. U. S. R. R. Administration, 185 N. Y. S. 447; Boyd v. U. S. 275 Fed. 16; Hood Coal Co. v. M. V. T. Co., 73 I. C. C. 54, 57; Phillips & Sons Co. v. B. & A. R. R. Co. 74 I. C. C. 381.

§1. Beginning and End of Transit. See Through Routes and Joint Rates §19; Transportation §11.

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(a) Interstate commerce begins with the shipment of the article in one state directed and destined to another state. It ends only with the delivery at destination. All common carriers by railroad which participate in its actual transportation from the time of shipment to the time of delivery are engaged in the transportation of property from one state to another, whether their services be performed wholly within one state or in more than one state, whether such services be primary and called carriage or incidental, and called "switching," whether the carriers be paid a flat sum per car or a percentage of the through rate, and whether such payment be made directly by a shipper or consignee on the one hand, or by the initial or final carrier on the other hand. U. S. v. Union S. & T. Co., 192 Fed. 330, 339.

(b) The essential character of the commerce and the real and ultimate destination of the shipment, and not the billing, determines whether it is "interstate commerce. United States v. Philadelphia & R. Ry. Co., 232 Fed. 946.

ALL OTHER CITATIONS

S. P. Terminal Co. v. I. C. C., 219 U. S. 498, 527, 31 Sup. Ct. Rep. 279, 55 L. ed. 310; Oregon Ry. & Nav. Co. v. Campbell, 180 Fed. 253, 256; Johnson v. M. St. P. & S. Ste. M. Ry. Co., 22 I. C. C. 255, 258; Big Canon Ranch Co. v. G. H. & S. A. Ry. Co., 20 I. C. C. 523, 526; Hood & Sons v. Delaware & Hudson Co., 17 I. C. C. 15, 20; Acme Cement Plaster Co. v. C. & A. R. R. Co., 17 I. C C. 220, 221; M. K. & T. Ry. Co. v. New Era Milling Co., 80 Kan. 141, 142, 143, 101 P. 1011; Louisville & N. R. Co. v. Coquillard Wagon Works, Assignee (Ky. 1912), 144 S. W. 1080, 1081; Baldwin Land Co. v. Columbia Ry. Co., 58 Or. 285, 288, 114 P. 469; Galveston, H. & S. A. Ry. Co. v. Wood (Tex. 1912), 146 S. W. 538, 541; In re Pipe Lines, 24 I. C. C. 1; Transit Case, 24 I. C. C. 340, 351; Missouri K. & T. Ry. of Texas v. Pace (Tex. 1916), 184 S. W. 1051, 1053, State v. Public Service Commission, (Mo. 1916), 189 S. W. 377; O'Brien v. U. S. R. R. Administration, 185 N. Y. S. 447; Gardner Shipping Co v. Pennsylvania R. R. Co., 74 I. C. C. 461, 462.

§2. State Shipment Through Another State.

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(a) The fact that transportation between two points in one state is accom-

plished by passing through territory outside of the State does not make the transportation interstate commerce so as to invalidate a law imposing a tax upon receipts derived from such commerce Lehigh Valley R. Co. v. Com. (Pa.), 2 I. C. R. 226.

(b) Commerce between points in the same State, but which in being carried from one place to the other passes through another State is interstate commerce, and subject to regulation by the provisions of the Act to Regulate Commerce. New Orleans Cotton Exchange v. Cincinnati, N. O. & T. P. R. Co., 2 I. C. R. 289, 293.

(c) Transportation between points in the same State, but which passes through another State, is interstate commerce, and subject to regulation by the provisions of the Act to Regulate Commerce. New Orleans Cotton Exch. v. Cincinnati, N. O. & T. P. R. Co. (Com.). 289. See also, to same effect, Sternberger v. Cape Fear & Y. V. R. Co. (S. C.), 426; Deyaware & H. C. Co. v. Com. (Pa.), 222; State v. Chicago, St. P. M. & O. R. Co. (Minn.), 2 I. C. R. 519.

(d) Shipments between points within the same State do not constitute interstate commerce because made on a railroad which runs for part of the trip in another state. Campbell v. Chicago, Milwaukee & St. P. R. Co., 4 I. C. R. 203.

(e) In the carriage of freight and passengers between two points in one state, the mere passage over soil of another state does not render that business foreign which is otherwise domestic. Lehigh Valley R. Co. v. Pennsylvania (U. S. Sup. Ct.), 87; Campbell v. Chicago, M. & St. P. R. Co. (Iowa), 4 I. C. R. 203.

(f) Railway traffic beginning and ending in the same state is not under the authority of the Federal government, even though in the course of transportation it passes through another state. Where the entire transit is within the limits of a single state, Federal regulation is excluded by the provisions of the Act. The termination of the shipment from a point in a state at another point within the state without the contemplation of any further movement seems to stamp and characterize the movement as purely state as distinguished from interstate commerce. Chamber of Commerce of Minneapolis v. G. N. R. Co., 4 I. C. C. 230, 234.

(g) Merely crossing a portion of another state in the course of transportation between points in the same state does not constitute interstate commerce so as to prevent an application of state statutes regulating the business of the carrier. Seawell v. Kansas City, Ft. S. & M. R. Co. (Mo.), 5 I. C. R. 262.

(h) Transportation from one point to another in the same state with incidental passage through territory of an adjoining state is not interstate commerce subject to the regulation of Congress. Dillon v. Erie Ry. Co., 7 I. C. C. App. XXXVII.

(i) Traffic from one state through another state to destinations in the first state named is interstate. Milk Producers Protective Asso. v. D. L. & W. R. Co., 7 I. C. C. 92, 162.

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(j) A shipment which moves out of a state and passes for a short distance through another state to reach a destination in the state of origin is subject to the Act. Louisiana & Pine Bluffs Divisions, 40 I. C. C. 470, 472.

(k) A telegraphic message sent between points within the state, but routed through another state, is an "interstate" message. King v. Western Union Telegraph Co. (S. C. 1923), 120 S. E. 715.

ALL OTHER CITATIONS

Bridgeman-Russell Co. v. G. N. Exp. Co., 22 I. C. C. 573; Willman & Co. v. S. L. I. M. & S. Ry. Co., 22 I. C. C. 405; Wells-Higman Co. v. St. L. I. M. & S. Ry. Co., 18 I. C. C. 175, 176; Mires v. St. L. & S. F. R. R. Co., 134 Mo. App. 379, 388, 144 S. W. 1052, 1055; Board of Trade of Winston-Salem v. N. & W. Ry. Co., 26 I. C. C. 146, 147; West Virginia Rail Co. v. B. & O. R. R. Co., 26 I. C. C. 622,, 623 National Lumber Exporters' Assn v. K. C. S. Ry. Co., 25 I. C. C. 78, 81; Baker Commercial Club v. O. W. R. R. & N. Co., 25 I. C. C. 281; National Lumber Exporters' Assn. v. K. C. S. Ry. Co., 25 I. C. C. 78, 81; Johnson & Hunt v. St. L. I. M. & S. Ry. Co., 24 I. C. C. 648, 649; Cresent Brewing Co. v. O. S. L. R. R. Co. (Ida. 1913), 132 P. 975, 978; L. & N. R. R. Co. v. Allen (Ky. 1913), 153 S. W. 198; Wichita Falls & W. Ry. Co. of Tex. v. Asher (Tex. 1915), 171 S. W. 1114, 1116; Kirby v. U. P. R. Co. (Kans. 1915),

146 Pac. 1183; Potter v. K. C. S. Ry. Co. (Mo. 195), 172 S. W. 1153; Kansas City Missouri River Nav. Co. v. C. & O. Ry. Co., 34 I. C. C. 67, 69; Pulp & Paper Mfrs. Traffic Asso. v. C. M. & St. P. Ry. Co., 34 I. C. C. 500, 510; Enright v. Atchison, T. & S. F. Ry. Co. (Kans. 1915), 152 Pac. 629; Howard v. Chicago, R. I. & P. Ry. Co., (Mo. 1916), 184 S. W. 906, 907; Louisiana & Pine Bluffs Divisions, 40 I. C. C. 470, 472; Bowles v. Quincy, O. & K. Ry. Co. (Mo. 1916), 187 S. W. 131; I. C. R. R. v. Rodgers & Hurdle, (Miss 1917), 76 So. 686; In re Pennsylvania Gas Co. (N. Y. 1919), 122 N. E. 260; Missouri, K. & T. Ry. Co. of Texas v. Clement Grain Co. (Tex. 1919), 211 S. W. 347; St. L. S. W. Ry. v. Shields Co. & Coal Co. (Tex. 1920), 220 S. W. 183.

§3. Participation in Interstate Movement

See Through Routes and Joint Rates §3½, §6½.

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(a) The transportaion of property from one State to another is interstate commerce, whether the carriers engaged in moving it or the vehicles on which it is borne cross the line of the State or not. Ex Parte Koehler, Receiver of Ore. & Cal. R. Co., v. 1 I. C. R. 28.

(b) Interstate Commerce Act does not apply to carriage wholly within a State of property shipped from or destined to a point without, not in a foreign country. Ex Parte Koehler (U. S. C. C. Or.), 1 I. C. R. 28.

(c) So far as a railroad company, whose line is entirely within one State issues through bills of lading over its connecting lines to points in other States, and makes through rates, it falls under the provision of the Interstate Commerce Act. Re Annapolis, Washington & Baltimore R. R. Co. et al., v. 1 I. C. R. 315.

(d) A carrier wrote the Commission asking if its line is subject to the provisions of the law lying as it does wholly within the State of Maryland. HELD, so far as a railroad company, whose line is entirely within one State, issues through bills of lading over its connecting lines to points in other States, and makes through rates, it falls under the provision of the Interstate Commerce Act. Re Annapolis, Washington & Baltimore R. R. Co., 1 I. C. C. 315, 316.

(e) Knowledge of carrier, whose line is wholly within State, that the ultimate destination of freight is without State will not make it subject to Interstate Commerce Act. Missouri Etc. Lumber Co. v. Cape Girardeau & S. R. Co., 1 I. C. R. 607.

(ea) Where it appears that a carrier to whom freight is delivered for transportation from one point to another in the same state has nothing to do with its transportation out of the state, the fact that the ultimate destination of the freight is another state, to the knowledge of such carrier, will not bring the transportation by such carrier within the jurisdiction of the Commission. Missouri & Illinois Railroad Tie & Lumber Co. v. C. G. & S. W. R. 1. I. C. C. 607, 608.

(f) Where transportation of goods, destined for a point without the State has been actually begun, temporary stoppage within the state, without the intention of abandoning the original movement (which movement is ultimately completed), will not deprive the transportation of the character of interstate commerce. Delaware & Hudson Canal Co. v. Commonwealth, 2 I. C. R. 222.

(g) The carrying of freight and passangers from a point within a State to their destination in the same State, by continuous transit, does not become interstate commerce merely because the railroad passes through another State on a part of the route between the points of departure and destination. Lehigh Valley R. Co. v. Commonwealth, 2 I. C. R. 226.

(h) When a state carrier engages in interstate commerce it becomes a national instrumentality for the purposes of such commerce and it is subject to regulations prescribed by the national authority. It cannot limit its obligations in that business, but must serve the business offered impartially and without preference or discrimination. Mattingly v. Pennsylvania Company, 2 I. C. C. 806, 812.

(i) A Company whose road lies wholly within the state in which it was organized is engaged in interstate commerce in transporting property between points without the State and points within the State under a common arrangement for a continuous carriage or shipment, where it receives any receipts for its

part of through freight, as provided for in a joint freight tariff, upon through waybills, although the proportion received is the same in amount as its regular local rate. U. S. ex rel. I. C. C. v. Seaboard Ry. Co., 8 I. C. C. App. XXV.

(j) A railroad company whose road wholly lies within the State in which it was organized is engaged in interstate commerce in transporting property between points without the State and points in the State under a common arrangement for a continuous carriage or shipment, where it receives and receipts for its part of through freight, as provided for in joint freight tariff, upon through waybills, although the proportion received is the same in amount as its regular local rate. U. S. ex rel. Interstate Commerce Commission v. Seaboard Ry. Co., 8 I. C. C. App. XXV.

(k) A railway company whose road is wholly within a single State, and which voluntarily engages as a carrier in interstate commerce business, making an arrangement for a continuous carriage or shipment of goods and merchandise, is subjected, so far as such traffic is concerned, to the provisions of the Act to Regulate Commerce. Pennsylvania Millers' State Asso. v. Philadelphia & R. R. Co., 8 I. C. C. 531.

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(l) Where rough rice from originating points is shipped to mills in the same State and the clean product reshipped to points in other States, HELD, inasmuch as the transportation charges on the clean rice are, on this traffic, adjusted on basis of through rates from the rough rice originating points to ultimate destinations, the shipments into the milling points become parts of interstate movements. Lake Charles Rice Milling Co. v. A. & N. Ry. Co., 77 I. C. C. 708.

(m) Interstate commerce begins with the shipment of the article in one state directed and destined to another state. It ends only with the delivery at destination. All common carriers by railroad which participate in its actual transportation from the time of shipment to the time of delivery are engaged in the transportation of property from one state to another, whether their services be performed wholly within one State or in more than one State, whether such services be primary and called "carriages," or incidental, and called "switching," whether the carriers be paid a flat sum per car or a percentage of the through rate, and whether such payment be made directly by a shipper or consignee on the one hand, or by the initial or final carrier on the other hand. U. S. v. Union S. & T. Co., 192 Fed. 330, 339.

(n) The test of through billing is not necessarily determinative in deciding whether commerce is state or interstate. Ohio R. R. Comm. v. Wothington, 225 U. S. 101, 110, 32 Sup. Ct. 653,, 56 L. ed. 1004.

(o) A car of grain billed from a point in one state to a point in another state bearing an order on the face of the bill of lading to notify the consignor, care the Santa Fe railway for shipment, "makes it apparent that it is not contemplated that the shipment should terminate at such destination" but that the car should move on as a result of such direction as might be given while it was in transit, and therefore, where such car is reconsigned in transit, to a new destination and an exchange bill of lading issued covering such shipment, it is, as to its movement from its original point of shipment to its ultimate destination a continuous interstate shipment. Atchison, T. & S. F. Ry. Co. v. Harold, 36 Sup. Ct. 665, 667, 241 U. S. 371, 60 L. ed. 1050.

ALL OTHER CITATIONS

Fisher v. Great Northern Ry. Co., 49 Wash. 205, 209, 95 P. 77; Leonard v. K. C. S. Ry. Co., 13 I. C. C. 573, 579; Baer Brothers Merchantile Co. v. M. P. Ry. Co., 13 I. C. C. 329, 340; Board of Mayor & Aldermen v. V. & S. W. Ry. Co., 15 I. C. C. 453, 454; D. & R. G. R. R. Co. v. I . C. C. 195 Fed. 968; Baer Bros. Merchantile Co. v. M. P. Ry. Co. 17 I. C. C. 225, 226, sustained; Roach & Seeber Co. v. C. M. & St. P. Ry. Co., 18 I. C. C. 172, 173; In Re Transportation of Sugar, 22 I. C. C. 558, 563; Citizens of Somerset v. Washington Ry. & Elec. Co., 22 I. C. C. 187, 191; Badenoch Co. v. C. & N. W. Ry. Co., 22 I. C. C. 36, 37; Grand Junction Chamber of Commerce v. D. & R. G. R. R. Co., 23 I. C. C. 115, 120; Dencer & R. G. R. R. Co. v. I. C. C. 195 Fed. 968, 971; Duluth-Superior Milling Co. v. N. P. Ry. Co. (Wis., 1913), 140 N. W. 1105; Pittsburgh Vein Operators of Ohio v. P. Co., 24

I. C. C. 280; Mixon-McClintock Co. v. St. L. I. M. & S. Ry. Co., 25 I. C. C. 8; Smith v. G. C. & S. F. Ry. Co. (Mo. App. 1914), 164 S. W. 132; Glenlyon Dye Works v. Interstate Exp. Co. (R. I., 914) 91 Atl. 5; Curry & Whyte Co. v. D. & I. R. R. R. Co., 32 I. C. C. 162, 171; Howard & Callahan v. I. C. R. R. Co. (Ky., 1914), 171 S. W. 442, 444; Wichita Falls & W. Ry. of Texas v. Asher, (Tex., 1915), 171 S. W. 1114, 1116; Otis v. Great Northern Ry. Co. (Minn., 1915) 150 N. W. 922, 923; State v. Kansas City Stock Yard Co., of Mo. (Kan. 1915) 145 Pac. 831; Deardorff v. C. B. & Q. Ry. Co. (Mo., 1914), 172 S. W. 333; C. M. & St. P. Ry. Co. v. State Public Utilities Comm'n. (Ill., 1915), 108 N. E. 729, 731; Shellabarger Elevator Co. v. Illinois Cent. R. Co. (Ill. 1917) 116 N. E. 170; Lynch v. N. Y. C. & H. R. R. Co. 153 N. Y. S., 633, 637; Krauss Bros. Lumber Co. v. N. C. & St. L. Ry. Co., 36 I. C. C. 285, 286; Trowbridge v. Kansas City & W. B. Ry. Co. (Mo., 1915), 179 S. W. 777, 779; Pecos & N. T. Ry. Co. v. Stinson (Tex., 1916), 181 S. W. 526, 527; Missouri K. & T. Ry. Co. of Texas v. State (Tex., 1916), 181 S. W. 721; Stockton Elevator & Shipping Ass'n. v. Missouri Pac. Ry. Co., (Kans., 1916), 154 Pac. 1126; Conley v. Chicago B. & G. R. Co. (Mo., 1916), 183 S. W. 1111, 1112; Detroit Coal Exchange v. M. C. R. R. Co., 38 I. C. C. 79, 80; United States v. Illinois Cent. R. Co., 230 Fed. 940, 941; Texas & New Orleans Railroad Co. v. Sabine Tram Co., 227 U. S. 111, 33 Sup. Ct. 229, 57 L. ed 442; Southern Pacific Terminal Co. v. Interstate Commerce Commission, 219 U. S. 498, 31 Sup. Ct. 279, 55 L. ed. 310; Interstate Commerce Commission v. Diffenbaugh, 222 U. S. 42, 32 Sup. Ct. 22, 56 L. ed. 83; Ohio Railroad Commission v. Worthington, 225 U. S. 101, 32 Sup. Ct. 653, 56 L. ed. 1004; Alabama G. S. R. Co. v. George H. M'Fadden, 232 Fed. 1000, 1003; Lusk v. Atkinson (Mo., 1916), 186 S. W. 703; Lake Shore & Michigan Southern R. R. v. Ohio, 173 U. S. 285, 19 Sup. Ct. 465, 43 L. ed. 702, and Atlantic Coast Line R. R. v. North Carolina Corporation Commission, 206 U. S. 1, 27 Sup. Ct. 585, 51 L. ed. 933, 11 Ann. Cas., 398; Chesapeake & O. Ry. Co. v. Public Service Commission (W. Va., 1916), 89 S. R. 846, 844; Keithley & 621; Memphis Merchants' Exchange v. Quinn v. Lusk, (Mo., 1916), 189 S. W. I. C. R. R. Co. 43 I. C. C. 373, 388; Pennsylvania R. R. v. Sonman Shaft Coal Co., 37 Sup. Ct. 46, 242 U. S. 120, 61 L. ed. 188; Bushnell v. St. L. & S. F. R. R., 46 I. C. C. 445, 446; Andrews v. Union Pac. R. R., (Kans., 1916), 161 Pac. 600; Easdale v. A. T. & S. F. Ry. (Kans., 1917), 164 Pac. 164; Reynolds v. St. Louis, S. W. Ry. (Mo., 1916), 190 S. W. 423; McFadden v. Ala. Great Southern R. Co., 241 Fed. 562; Landon v. Public Utilities Comm., 242 Fed. 658; Landon v. Public Utilities Comm. of Kansas, 245 Fed. 950; Shellabarger Elevator Co. v. Ill. Cent. R. Co. (Ill., 1917) 197 S. W. 440; G. C. of S. F. Ry. v. Mathis, (Tex., 1917), 194 S. W. 1135; V. & S. R. R. v. S. P. Co., 50 I. C. C. 235; Farmers' Grain & Merc. Co. v. Union Pacific Co., (Kans., 1918), 175 Pac. 559; Bracht v. San Antonio & A. P. Ry., (Mo., 1919), 209 S. W. 579; So. Pacific Co. v. Arizona, 39 Sup. Ct. 313; Baltimore & O. S. W. R. R. v. Settle et al., 272 Fed. 675; Missouri, K. & T. Ry. Co. of Texas v. Plano Milling Co., et al., (Tex., 1921), 231 S. W. 100; State v. Public Service Commission, (Mo., 1923), 249 S. W. 65; Bobbins v. Shelby County Taxing District, 120 U. S. 489, 7 Sup. Ct. 592, 30 L. ed. 694; Purchase v. State, (Nebr., 1922), 191 N. W. 677! Becher-Bartlett-Lockerby Co. v. Northern Pacific Railway Co., (Minn. 1924), 197 N. W. 103; People v. Smith, 196 N. Y. S. 241; United Leather Worker's International Union v. Herkett & Meisel Trunk Co., 284 Fed. 446; Neubert v. Chicago, R. I. & G. Ry. Co., (Tex. 1923), 248 S. W. 141.

II. CONTROL AND REGULATION.

See Constitutional Law; Control and Regulation.

§3½. In General.

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(a) The control of commerce, being in the federal government, is not to be restricted by state authority. Pembina Consol. Silver Min. & Mill. Co. v. Pennsylvania (U. S. Sup. Ct.), 2 I. C. R. 24.

(b) Corporations are not citizens, within the meaning of the clause of the Constitution declaring that "citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." Pembina Consol. Silver Min. & Mill. Co v. Pennsylvania (U. S. Sup. Ct.), 2 I. C. R. 24.

(c) The Legislature, in the exercise of its power of regulating fares and

freights, may classify the railroads according to the length of their lines. If the same rule is applied to all railroad of the same class, there is no violation of the constitutional provision securing to all the equal protection of the laws. Dow v. Beidelman (U. S. Sup. Ct.), 2 I. C. R. 56.

(d) Railroad companies are subject to legislative control as to their rates of fare and freight, unless protected by their charters. Dow v. Beidelman (U. S. Sup. Ct.), 2 I. C. R. 56.

(e) Where property has been clothed with a public interest, the Legislature may fix a limit to that which in law shall be reasonable for its use. This limits the courts as well as the people. If it had been improperly fixed, the Legislature, not the courts, must be appealed to for the change. Dow v. Beidelman, 2 I. C. R. 56.

(f) When a state carrier engages in interstate commerce it becomes a national instrumentality for the purposes of such commerce, and is subject to regulations prescribed by the national authority. Mattingly v. Pennsylvania Co. (Com.), 2 I. C. R. 806.

(g) The business of an agent, to solicit passenger traffic out of California into and through other States to New York City, is a part of interstate commerce. McCall v. People of State of Cal., 3 I. C. R. 181.

§4. State.

See Courts V; Crimes XI; Discrimination §11; Evidence §35; Express Companies §1½; Loss and Damage §9; State Rates and Regulation; Transportation §9, §11.

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(a) With reference to the subjects of commerce which are local and limited in their nature or sphere of operation the States may prescribe regulations until Congress intervenes and assumes control. Glouchester Ferry Co. v. Commonwealth of Pa., 1 I. C. R. 382.

(b) Laws passed by the individual States, under their general authority over internal concerns, may incidentally affect foreign and interstate commerce without conflicting with the Constitution of the United States, provided they do not discriminate against such commerce and are not inconsistent with the Acts of Congress. State, Waterbury, v. Newton (N. J.), 2 I. C. R. 63.

(c) It is only after the importation is completed and the property imported is mingled with and becomes a part of the general property of the State by a sale by the importer, that state regulations can act upon it. Lines & Company v. Harden, 3 I. C. R. 36.

(d) A law of a State which forbids the receipt of an imported commodity, or its sale before it has ceased to be an article of trade between one State and another, is a regulation of commerce between the States, and void. Leisy v. Hardin (U. S. Sup. Ct.), 3 I. C. R. 36.

(e) A law of a State which forbids the receipt of an imported commodity, or its sale before it has ceased to be an article of trade between one State and another, is a regulation of commerce between the States, and void. Lewis & Co. v. Hardin, 3 I. C. R. 36.

(f) A State cannot exclude, directly or indirectly, the subjects of interstate commerce, or, by the imposition of burdens thereon, regulate such commerce, without congressional permission. Lyng v. Michigan (U. S. Sup. Ct.), 3 I. C. R. 143.

(g) No State has the right to lay a tax on interstate commerce, by way of duties laid on the transportation of the subjects of that commerce, or on the receipts derived from that transportation, or on the occupation or business of carrying it on. Lyng v. Michigan, (U. S. Sup. Ct.), 3 I. C. R. 143.

(h) A statute compelling railroad companies to furnish double decked cars for sheep under a penalty for failure to do so, and limiting the price per carload, is void as an attempted regulation of commerce, when applied to interstate shipments. Stanley v. Wabash St. L. & P. R. Co. (Mo.), 3 I. C. R. 176.

(i) A State, under the guise of a license tax, cannot exclude from its jurisdiction a foreign corporation engaged in interstate commerce, or impose any burden upon such commerce within its limits. Norfolk & W. R. Co. v. Pennsylvania (U. S. Sup. Ct.), 3 I. C. R. 178.

(j) A license cannot be required, by State or municipal authority, of an agent whose business it is to solicit passenger traffic for an interstate carrier. McCall v. California (U. S. Sup. Ct.), following cases 3 I. C. R. 181; Norfolk & W. R. Co. (U. S. Sup. Ct.) 3 I. C. R. 178.

(k) The commerce clause of the

United States Constitution not only prohibits a State from taxing interstate commerce when it passes through its own territory, but also when it passes through another state. McCall v. People of California (U. S. Sup. Ct.), 3 I. C. R. 181.

(l) The Commerce clause not only prohibits a State from taxing interstate commerce when it passes through its own territory, but also when it passes through other states. McCall v. People of State of Cal., 3 I. C. R. 181.

(m) The business of an agent, being to solicit passenger traffic out of California into and through other States to New York City, is a part of interstate commerce, which cannot be restricted or taxed by a municipal corporation McCall v. California (U. S. Sup. Ct.), 3 I. C. R. 181.

(n) A burden imposed by a state upon interstate commerce is not to be sustained simply because the statute imposing it applies alike to the people of all the States, including the people of the State enacting such statute. Minnesota v. Barber (U. S. Sup. Ct.), 3 I. C. R. 185.

(o) The statute of Virginia which prohibits the running of through passenger trains on Sunday is in conflict with U. S. Const. art 1, §8, vesting in Congress the power to regulate commerce among the several States. Com. v. Chesapeake & O. R. Co., (Lynchburg Corp Ct.), 3 I. C. R. 398.

(p) The police power of the State cannot be exercised over the interstate transportation of subjects of commerce. Commonwealth of Va. v. Chesapeake & Ohio R. Co., 3 I. C. R. 398.

(q) The Statute of Virginia, prohibiting the running of freight trains on Sunday, so far as it applies to trains carrying freight from another State into and through it, is in conflict with the Constitution of the United States, vesting in Congress the power to regulate interstate commerce. Commonwealth of Va. v. Chesapeake & Ohio R. Co., 3 I. C. R. 398.

(r) A State cannot, under the guise of exerting its police powers, or of enacting Inspection Laws, make discriminations against the products and industries of some of the States in favor of the products and industries of its own or of other States. Brimmer v. Rebman, 3 I. C. R. 485.

(s) The Virginia Statute of 1890 to prevent the sale of unwholesome meats is a regulation of commerce beyond the power of the State to establish. Brimmer v. Rebman, 3 I. C. R. 485.

(t) A city ordinance, prohibiting any railroad company from allowing the sale of fruit, vegetables or perishable freight arriving in the city over its lines from cars on the tracks, from any platform, shed or building at the depot on the grounds of the company, is, where the merchandise affected largely comes from other States, an interference with interstate commerce, and, if not based on considerations of public health, or intended to prevent the crowding and obstruction of streets and public places, but solely to hinder competition between nonresident shippers and resident licensed dealers in the same line, it is a regulation of commerce and threfore unconstitutional and void. Spellman v. City of N. Orleans, 3 I. C. R. 575.

(u) A statute giving railroad commissioners authority to fix joint rates for a railroad makes the rates thus fixed only prima facie evidence of their reasonableness, although not expressly limiting them to that effect where the only penalties are for charging unjust and unreasonable rates, and a former statute which did not extend to joint rates, and of which this was an amendment, expressly limited the effect of the commissioners' orders as to rates to prima facie evidence. Burlington, Cedar Rapids & N. R. Co. v. Dey, 3 I. C. R. 584.

(v) A state statute prohibiting freight trains running on Sunday between sunrise and sunset, except with livestock or perishable freight or to complete a trip which can be finished before 9 a. m., is invalid as a regulation of commerce so far as it applies to interstate freight trains. Norfolk & W. R. Co. v. Com. (Va.), 3 I. C. R. 671.

(w) A state statute prohibiting game birds to be killed for the purpose of conveying them out of the state is not unlawful interference with interstate commerce. State v. Geer (Conn), I. C. R. 732.

(x) A state statute compelling the shipment of freight within a certain time after receiving it, under penalty for default, is not an unconstitutional regulation of interstate commerce as to freight for shipment out of the state, as

it tends, not to trammel or obstruct, but to expedite such commerce. Bagg v. Wilmington, C. & A. R. Co. (N. C.), 3 I. C. R. 803.

(y) The title of an Act "To Regulate the Planting and taking of Oysters in the Waters" of the state, is sufficient to cover provisions against the taking of oysters by non-residents and the transportation out of the state by any person of oysters in shells. State of Alabama v. Harrub, 4 I. C. R. 99.

(z) A statute prohibiting the shipment out of the state of oysters taken in the public waters of the state, while they are in shells, and which also prohibits the taking of such oysters by any person who is not a resident of the state, is not unconstitutional as a regulation of interstate commerce. State of Alabama v. Harrub, 4 I. C. R. 99.

(aa) A state statute making railroad tickets good for six years, and giving the holder of one the right to stop off at as many stopping places as he pleases before reaching his destinations, cannot, in view of the power of Congress over commerce, be applied, contrary to their terms, to tickets sold beyond the limits of the state and entitling their holders to passage from a point in a foreign state or country to one in the state which enacted the statute. Lafarier v. Grand Trunk R. Co. (Me.), 4 I. C. R. 198.

(bb) A state statute regulating the rights of carriers and declaring what rates shall be regarded as extortionate does not apply to the case of interstate stipments. Mobile & O. R. Co. v. Dismukes (Ala.), 4 I. C. R. 200.

(cc) The provisions of Ga. Code §4578 making it a misdemeanor to run a freight train upon any railroad in that state on the Sabbath Day, is a regulation of internal police, and not a regulation of interstate commerce, even as to freight trains passing through the state from and to adjacent states, and laden exclusively with goods and freight received on board before the trains entered the state, and con signed to points beyond its limits. Hennington v. State (Ga.), 4 I. C. R. 413.

(dd) The shipment of merchandise from one state to another is interstate commerce, and any requirement of a state in respect of such commerce, in conflict with the requirements of the Interstate Commerce Act, is of no validity. Baird v. St. Louis, I. M. & S. R. Co. (C. C. E. D. Ark.), 4 I. C. R. 422.

(ee) The imposition by a state of a condition, upon giving permission to lay railroad tracks in the streets of a city, that such tracks shall be public and open to the use of citizens; and a regulation by the state of the switching rates to be charged by such railroad in the city.—do not clearly show an unconstitutional interference with or regulation of commerce between the states, although cars engaged in interstate traffic may be switched over such tracks. State v. Chicago, M. & S. P. Ry. Co., (C. C. N. D. Iowa), 4 I. C. R. 425.

(ff) A state law prohibiting the exaction by carriers of unreasonable rates is, as applied to a contract for shipment from one state to another, an interference with interstate commerce and cannot be so applied. Swift & Co. v. Philadelphia & R. R. Co., 4 I. C. R. 633.

(gg) A contract for interstate shipment does not come within a state law regulating rates because made in that state so that such law will introduce a new term into the contract, but its utmost effect would be to forbid a contract for an unreasonable rate and make the contract unlawful, leaving the transaction open to adjustment under the laws of the United States. Swift & Co. v. Philadelphia & R. R. Co., 4 I. C. R. 633.

(hh) A statute regulating the sale of transportation tickets is not an interference with interstate commerce. State v. Corbett (Minn.), 4 I. C. R. 694.

(ii) If a business, as that of common carriers, is a proper subject of police regulation, so are its incidents and accessories; as, for example, the issue and sale of transportation tickets. State v. Corbett, 4 I. C. R. 694.

(jj) The regulation of the charges of a grain elevator is not a regulation of interstate commerce, although the gain passing through it is brought from another state. Pudd v. New York (U. S. Sup. Ct.), 45; Brass v. North Dakota Stoesser (U. S. Sup. Ct.), 4 I. C. R. 670.

(kk) The clause in the charter of the Union Pacific Railroad Company giving Congress power over the rates of freight to be charged thereon, does not preclude the several states from interfering with such rates. Ames v. Union Pacific R. Co., 4 I. C. R. 835.

(ll) A state statute limiting the rates to be charged by freight carriers does not interfere with interstate commerce because it adopts a different classification for freight from that which has been established by the railroads for the section of country in which such state is located. Ames v. Union P. R. Co., (C. C. D. Neb.), 4 I. C. R. 835.

(mm) The fact that a contract was for the carriage of goods from one state to another does not relieve a corporation of the state in which the contract was made from the rule of law existing in that state, which prohibits special contracts limiting liability. St. Joseph & G. I. R. Co. v. Palmer (Nebr.), 4 I. C. R. 494.

(nn) All internal commerce is either state or interstate. Commerce carried on between the State of Maryland and the District of Columbia is not subject to regulation by Maryland laws, and is therefore within the jurisdiction of Congress. Willson v. Rock Creek R. Co., 7 I. C. C. 83.

(oo) A state statute prescribing a penalty for failure of a carrier to deliver goods in its possession on demand of the consignee and tender of the freight specified in the bill of lading is inoperative so far as it imposes a penalty against a carrier engaged in interstate commerce. The decision is based upon that of Gulf, C. & S. R. R. Co. v. Hefley, 158 U. S. 98, 39 L. ed. 910, and the court says that the act of Congress and the state statute operate on the same subject-matter and prescribe different rules concerning it; and this is so they conflict, and the state law must necessarily give way to the Federal. Houston, East & West Texas Ry. Co. v. Peters, 7 I. C. C. App. XCIX.

(pp) The police power of the state cannot be set up to control the inhibitions of the Federal Constitution or the powers of the United States government created thereby. People of the St. of N. Y. v. Hawkins, 7 I. C. C. App. CIII.

(qq) Discrimination by a railroad company between its customers in delivering on spur tracks at the point of delivery carloads of coal shipped from another state is within the control of Congress as interstate commerce; and no penalty for such discrimination can be recovered under a state statute. The court says: The right of Congress to control interstate commerce is not solely limited while the commerce is in actual transportation, but extends to and includes the necessary handling of that commerce at terminal points. It is as much necessary to the interest of interstate commerce and the uniformity of rule that should apply to transportation of that character of commerce, which is one of the objects intended to be accomplished by reserving this power solely to Congress, that it should retain control and dominion over the shipments at the beginning and terminal points, as well as during the actual transportation of the commerce. Fielder v. Miss., Kans. & Tex. Ry. Co. of Texas, 7 I. C. C. App. CIV.

(rr) Interstate commerce originating within the state may be subject to the a mileage basis so that a portion thereof within the state bay be subject to the control of the state over its rates. Northern Pacific Ry. Co. v. Keyes, 8 I. C. C. App. LVII.

(ss) A state has no jurisdiction to reduce excessive income of a carrier derived from interstate business. Northern Pacific Ry. Co. v. Keyes, 8 I. C. C. App. LVII.

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(tt) In the absence of Congressional action the states may legislate with respect to matters which are strictly local in character, even though by so doing they may to some extent regulate interstate commerce, but whatever subjects of this power are in their nature national or admit only of one uniform system or plan of regulation may justly be said to be of such a nature as to require exclusive legislation by Congress. Wilson Produce Co. v. Penn. R. R. Co., 14 I. C. C. 170, 174.

(uu) The Interstate Commerce Act of Feb. 4, 1887, applies only to interstate commerce and does not prevent states from passing laws regulating the facilities to be supplied by carriers in intrastate commerce. S. P. Co. v. Campbell, 189 Fed. 696, 698.

(vv) The deafening noise from seaplanes going at frequent intervals up and down a small body of water may well constitute a nuisance, which is within the power of the Legislature to abate. People v. Smith, 196 N. Y. S. 241.

(ww) Over interstate commerce transportation rates a state has no juris-

diction, and an attempt to regulate such rates by the state or under its authority is void. Ohio R. R. Comm. v. Worthington, 225 U. S. 101, 107, 32 S. Ct. 653, 56 L. ed. 1004.

(xx) Where a state statute provides penalties against a carrier for refusing to accept goods for interstate transportation, even though for the carrier so to do would violate the provisions of the Interstate Commerce Act forbidding carriers to transport property in the absence of lawfully published rates, is invalid and must give way to such Act. Southern Ry. Co. v. Reid, 222 U. S. 424, 442, 32 Sup. Ct. Rep. 140, 56 L. ed. 257; Southern Ry. Co. v. Reid & Beam, 222 U. S. 445, 32 Sup. Ct. 145; Southern Ry. Co. v. Burlington Lumber Co., 225 U. S. 99, 32 Sup. Ct. 657.

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T. & P. Ry. Co. v. R. R. Comm. of La., 183 Fed. 1005, 1007; St. L. I. M. & S. Ry. Co. v. Edwards (Ark. 1910), 127 S. W. 713, 714, 715; Chicago, etc. Ry. Co. v. R. R. Comm., 173 Ind. 469, 473, 87 N. E. 1030; Pittsburg, etc. R. Co. v. State, 172 Ind. 147, 157, 161, 87 N. E. 1034; Pittsburg, ets. R. Co. v. R. R. Comm., 171 Ind. 189, 211, 86 N. E. 328; McElvain v. Railroad, 151 Mo. App. 126, 155, 131 S. W. 736; State v. Missouri P. R. Co., 81 Neb. 15, 21, 115 N. W. 614; Reid v. Southern Ry. Co., 153 N. C. 490, 493, 69 S. E. 618; Reid & Beam v. Southern Ry. Co., 150 N. C. 753, 765, 64 S. E. 874; Atchison, T. & S. F. Ry. Co. v. State (Okla. 1912), 123 P. 1065; St. L. & S. F. R. Co. v. State, 26 Okla. 62, 72, 107 P. 929; Martin v. Oregon R. & Nav. Co. (Ore. 1910), 113 P. 16, 20; Meetze v. Southern Express Co. (S. C. 1912), 74 S. E. 823, 824; L. & N. R. R. Co. v. Smith (Tenn. 1911), 134 S. W. 866, 872; Railroad Commission of Texas v. T. & P. Ry. Co. (Tex. 1911), 140 S. W. 829, 834, 835; Trinty & B. V. Ry. Co. v. Geppert (Tex. 1911), 135 S. W. 164, 165; Adams Express Co. v. Charlottesville Woolen Mills (Va. 1908), 68 S. E. 8, 9; St. L. I. M. & S. Ry. Co. v. Edwards, 33 Sup. Ct. 262; 227 U. S. 265; Memphis Freight Bureau v. I. C. R. R. Co., 27 I. C. C. 1, 2; Public Service Commission of Washington v. N. P. Ry. Co., 26 I. C. C. 272, 274; Truckers' Transfer Co. v. C. & W. C. Ry. Co., 27 I. C. C. 275; Sargent v. Rutland R. R. (Vt. 1913), 85 A. 654, 659; Wabash R. R. Co. v. Priddy (Ind. 1913), 101 N. E. 724, 728, 729; State v. C. M. & St. P. Ry. Co. (Wis. 1913), 140 N. W. 70, 74; Duluth-Superior Milling Co. v. N. P. Ry. Co. (Wis. 1913), 140 N. W. 1105; Sullivan v. M. & R. R. Ry. Co. (Minn. 1913), 142 N. W. 3, Ford v. C. R. I. & P. R. R. Co. (Minn. 1913), 143 N. W. 249; Chicago, R. I. & P. Ry. Co. v. Beatty, (Okla. 1912), 126 P. 736; St. L. & S. F. R. R. Co. v. Bilby (Okla. 1913), 130 P. 1089; St. L. & S. F. R. R. Co. v. Zickafoose (Okla. 1913), 135 P. 406, 407; National Rice Milling Co. v. N. O. & N. E. R. R. Co. (La. 1912), 61 So. 165, 166; Pace Mule Co. v. S. A. L. Ry. Co. (N. C. 1912), 76 S E. 513, 520; Harring v. A. C. L. R. R. Co. (N. C. 1912), 76 S. W. 527; State v. Western & A. R. R. Co. (Ga. 1912), 76 S. W. 577; Ezell v. City of Atlanta (Ga. 1913), 78 S. E. 821; M. K. & T. Ry. Co. v. Hailey (Tex. 1913), 156 S. W. 1119; Barrett v. New York, 34 Sup. Ct. 203, 208; 232 U. S. 14, 58 L. ed.; St. L. & S. F. Ry. Co. v. Cox, Perry & Murray (Okla. 1914),, 138 Pac. 144; M. K. & T. Ry. Co. v. Harris, 34 Sup. Ct. 790, 793, 234 U. S. —; 58 L. ed. —; Hocking Valley R. R. Co. v. New York Coal Co. , 217 Fed. 727, 735; Johnson Grain Co. v. C. B. & Q. R. R. Co. (Mo. App. 1914), 164 S. W. 182; Trier v. C. St. P. M. & O. Ry. Co., 30 I. C. C. 352, 355, 707, 709; Cement Rates from Mason City, 30 I. C. C. 426, 428; New York Shippers' Protective Asso. v. N. Y. C. & H. R. R. Co., 30 I. C. C. 437, 438; St. L. I. M. & S. Ry. v. Faulkner (Ark. 1914), 164 S. W. 763, 764; Howard & Callaghan v. I. C. R. R. Co., (Ky. 1914), 171 S. W. 442, 444; A. C. Cheney P. A. Co. v. N. Y. C. & H. R. R. Co., 152 N. Y. Suppl. 285, 290; C. M. & St. P. Ry. Co. v. State Utilities Comm'n (Ill. 1915), 108 N. E. 729, 731; Illinois C. R. Co. v. Mulberry Hill Coal Co., 35 Sup. Ct. 760; Castle v. Mason (Ohio 1915), 110 N. E. 463, 465; Chicago M. & St. P. Ry. Co. v. Rock County Sugar Co., (Wisc. 1916), 156 N. W. 607, 609; Western Union Telegraph Co. v. Foster; Macleod, Public Service Commission v. Western Union Telegraph Co., 113 N. E. (Mass. 1916), 192; Lusk v. Atchison, (Mo. 1916), 186 S. W. 703; Kaw Valley Drainage Dist. v. Mo. Pac. Ry., (Kans. 1916), 161 Pac. 937, 938; M. P. Ry. v. McGrew Coal Co., 37 Sup. 518, 244 U. S. 191, 61 L. ed; W. U. Tele. Co. v. Bailey (Tex. 1917), 196 S. W. 516, 517; Southern Ry. Co. v. Morris (Ga. 1918), 95 S. E. 84; Arkansas rates and fares,

59 I. C. C. 471, 473; Florida rates, fares and charges, 60 I. C. C. 551, 558; Public Service Commission, Second Dist. v. N. Y. C. R. R. Co., 185 N. Y. S. 267, 274; People v. Long Island R. R. et al., 185 N. Y. S. 594; Public Service Commission, Second Dist. v. N. Y. C. R. R. Co., 230 N. Y. 149; 129 N. E. 455 N. Y. S. Suppl. Vol. 185, No. 7 (Index-Digest). Jones v. Southern Express Co., (Miss., 1913) 61 So. 165, 166. State v. Public Service Commission, (Mo., 1923), 249 S. W. 65; Purchase v. State, (Nebr., 1922), 191 N. W. 677; Minneapolis, St. P. & S. S. M. Ry. Co., v. Railroad Commission, (Wisc., 1924), 197 N. W. 352.

§5. United States.

See Constitutional Laws.

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(a) Where its power is exclusive, the failure of Congress to make express regulations indicates its will that the subject shall be left free from any restriction or impositions. Robbins v. Taxing District of Shelby County 1 I. C. R. 45.

(b) The power of Congress to regulate commerce is exclusive when its subjects are national in character, or admit only of one uniform system or plan of regulation. Robbins v. Taxing District of Shelby County, 1 I. C. R. 45.

(c) Regulation of fares and freights for transportation between different states is within power of Congress. Philadelphia etc. Steamship Co. v. Pennsylvania (U. S. Sup Ct.), 1 I. C. R. 308.

(d) The regulation of fares and freights receivable for the transportation of persons and goods between different states, and between the states and foreign countries, is within the power of Congress equally with the regulation of such transportation itself. Phil. v. Southern Mail S. S. Co. v. Penn., 1 I. C. R. 308.

(e) The failure of Congress to make express regulations indicates that the subject shall be free. Gloucester Ferry Co. v. Pennsylvania (U. S. Sup. Ct.) 382; Phila. etc. Steamship Co. v. Pennsylvania (U. S. Sup. Ct.) 308; Robbins v. Taxing District of Shelby Co. (U. S. Sup. Ct.) 45; S. P. cited in Bowman v. Chicago & N. W. R. Co. (U. S. Sup. Ct.), 1 I. C. R. 829.

(f) The power of Congress is supreme over interstate commerce, unembarrassed by state laws. Id.; Stockton v. Baltimore etc. R. R. Co. (U. S. C. Ct., N. J.) 411, S. P. cited in Bowman v. Chicago & N. W. R. Co. (U. S. Sup. Ct.), 1 I. C. R. 833.

(g) The power to regulate interstate and foreign commerce vested in Congress is the power to prescribe the rules by which it shall be governed—that is, the conditions upon which it shall be conducted; to determine when it shall be free from, and when subject to, duties or other exactions. Gloucester Ferry Co. v. Commonwealth of Pa., 1 I. C. R. 382.

(h) When the subjects of commerce are national in character and require uniformity of regulation affecting alike all of the states, the power of Congress is exclusive. Gloucester Ferry Co. v. Commonwealth of Pa., 1 I. C. R. 382.

(i) The commerce with foreign nations and between the states, which consists in the transportation of persons and property between them, is a subject of national character and requires uniformity of regulation. Congress alone can deal with such transportation, and its non-action is a declaration that it shall remain free from burdens imposed by state legislation. Gloucester Ferry Co. v. Commonwealth of Pa., 1 I. C. R. 382.

(j) United States may condemn land within state without consent of state. Stockton v. Baltimore etc. R. Co. (U. S. C. Ct., N. J.), 1 I. C. R. 411.

(k) The United States, when it does not seek to acquire exclusive jurisdiction over land within a state, may condemn such land for its purposes without the consent of the state. Stockton v. Balt. & N. Y. R. R. Co., 1 I. C. R. 411.

(l) The power of Congress is supreme over the whole subject of interstate commerce, unimpeded and unembarrassed by state lines or state laws. Stockton v. Balt. & N. Y. R. R. Co., 1 I. C. R. 411.

(m) In carrying on foreign and interstate commerce, corporations, equally with individuals, are within the protection of the commercial pawer of Congress and cannot be molested in another state by state burdens or impediments. Stockton v. Balt. & N. Y. R. R. Co., 1 I. C. R. 411.

(n) Congress can confer upon a state corporation powers not contained in its original charter. Stockton v. Balt. & N. Y. R. R. Co., 1 I. C. R. 411.

(o) The power to regulate commerce between the states extends not only to the control of the navigable waters of the country and the lands under them for the purpose of navigation, but for the purpose of erecting piers, bridges, and all other instrumentalities of commerce which in the judgment of Congress may be necessary or expedient. Stockton v. Balt. & N. Y. R. R. Co., 1 I. C. R. 411.

(p) Where it appears that a carrier to whom freight is delivered for transportation from one point to another in the same state has nothing to do with its transportation out of the state, the fact that the ultimate destination of the freight is another state, to the knowledge of such carrier, will not bring the transportation by such carrier within the jurisdiction of the Commission. Mo. & Ill. R. Tie & Lumber Co. v. Cape Girardeau & Southwestern R. Co., 1 I. C. R. 607.

(q) In the absence of any legislation upon the subject, the courts must decide for the company, as they do for private persons, when controversies arise, what is reasonable. Dow v. Beidelman, 2 I. C. R. 56.

(r) Where property has been clothed with a public interest, the Legislature may fix a limit to that which in law shall be reasonable for its use. This limits the courts as well as the people. If it has been improperly fixed, the Legislature, not the courts, must be appealed to for the change. Dow v. Beidelman (U. S. Sup Ct.), 2 I. C. R. 56.

(s) Congress may, in the exercise of its power to regulate interstate commerce, construct or authorize individuals or corporations to construct railroads across the state and territories of the United States. California v. Central P. R. Co. (U. S. Sup. Ct.), 2 I. C. R. 153.

(t) Congress, under its sovereign exclusive power to regulate commerce among the several states, has the power to create a commission, for the purpose of supervising, investigating, and reporting upon, matters or complaints, connected with, or growing out of, interstate commerce. And no valid constitutional objection can be urged against making the findings of the Commission "prima facie" evidence, in subsequent judicial proceedings. Such a provision, merely prescribes a rule of evidence, clearly within well recognized powers of the Legislature, and in no way encroaches upon the court's proper functions. Kentucky & Indiana Bridge Co. v. Louisville & Nashville R. Co., 2 I. C. R. 351.

(u) The grant to the Federal government of the power to regulate interstate commerce is full and complete and cannot be narrowed or encroached upon by state authority, either directly or indirectly. The fact, therefore, that one or more states have adopted a particular regulation is not a reason for applying it in interstate commerce, if in itself it appears to be objectionable. State action will always be treated with the highest deference and respect, but cannot be allowed to control in matters within the federal jurisdiction. Leonard v. C. & A. R. Co., 2 I. C. C. 600, 603.

(v) The provisions of the Act, construed in the light of the principles that apply to interstate commerce as enumerated by the courts, must be understood as intended to regulate all the commerce subject to the exclusive jurisdiction of Congress, including the agents and instrumentalities employed and the commodities carried, with only the limitations found in the act itself. Mattingly v. Pennsylvania Company, 2 I. C. C. 806, 812.

(w) The absence of a law by Congress as to any article of commerce is equivalent to its declaration that the importation of that article into the states shall be unresricted; and it is for the courts to determine what state action is or is not a regulation of such commerce. Lewis & Co. v. Hardin, 3 I. C. R. 36.

(x) Commerce between the states has been confided exclusively to Congress by the Constitution and is not within the jurisdiction of the police power of the state, unless placed there by Congressional action. Lewis & Co. v. Hardin, 3 I. C. R. 36.

(y) The power vested in Congress to regulate commerce among the states cannot be stopped at the external boundary of a state., but is capable of authorizing the disposition within the state of the article imported. Leisy v. Hardin, (U. S. Sup. Ct.), 3 I. C. R. 36.

(z) The absence of a law by Congress as to any article of commerce is equivalent to its declaration that the importation of that article into the states

shall be unrestricted; and it for the courts to determine what state action is or is not a regulation of such commerce. Leisy v. Hardin (U. S. Sup. Ct.), 3 I. C. R. 36.

(aa) Commerce between the states has been confided exclusively to Congress by the Constitution, and is not within the jurisdiction of the police power of the state, unless placed there by congressional action. Leisy v. Hardin, (U. S. Sup. Ct.), 3 I. C. R. 36.

(bb) The power vested in Congress to regulate commerce among the states cannot be stopped at the external boundary of a state, but is capable of authorizing the disposition within the state of the article imported. Lewis & Co. v. Hardin, 3 I. C. R. 36.

(cc) The power to regulate commerce among the states is absolute in Congress, and rates on such commerce may be regulated by Federal authority with reference to trade conditions and circumstances of localities without infringing the rights or immunities of such commerce under the Constitution. Kauffman Milling Co. v. Missouri Pac. R. Co., 3 I. C. R. 400, 407.

(dd) Contracts concerning interstate transportation must be regarded as made upon the basis and with the understanding that changes in the law applicable to them may be made by Congress; and there is no vested right in the law as it existed at the time they were made. Fitzgerald v. Grand Trunk R. Co. (Vt.), 3 I. C. R. 633.

(ee) The grant to Congress of the power to regulate commerce among the states does not embrace that commerce which is completely internal or between different parts of the same state. Lehigh Valley R. Co. v. Pennsylvania (U. S. Sup. Ct.), 4 I. C. R. 87.

(ff) Congress has plenary power, subject to the limitations imposed by the Constitution, to prescribe the rule by which commerce among the several states is to be governed. Interstate Commerce Commission v. Brimson (U. S. Sup. Ct.), 4 I. C. R. 545.

(gg) Congress may in its discretion employ any appropriate means not forbidden by the Constitution, to carry into effect, and accomplish the objects of, a power given to it by the Constitution. Interstate Commerce Commission v. Brimson (U. S. Sup. Ct.), 4 I. C. R. 545.

(hh) Several railroad companies which bill and carry freight from points in one state to points in another will not be heard to say that the carriage by each is local and that they are not engaged in interstate commerce for the purpose of avoiding the requirements of the Interstate Commerce Act. Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co., 4 I. C. R. 582.

(ii) Congress has not adopted the common law of England as a national municipal law. The enforcement of the common law by the courts of the United States has in every instance been as the municipal law of the state by which the subject-matter was affected. Swift & Co. v. Philadelphia & R. R. Co., 4 I. C. R. 633.

(jj) Outside of the Interstate Commerce Act there is no law of the United States, as a distinct sovereignty, imposing upon the imposition by a carrier of unreasonable rates. Swift & Co. v. Philadelphia & R. R. Co., 4 I. C. R. 633.

(kk) The duties and obligations of carriers to their patrons when engaged in interstate commerce are governed by the common law, in the absence of any legislation of Congress on this subject. Murray v. Chicago & N. W. Ry. Co., 4 I. C. R. 806.

(ll) Interstate shipments only are affected by the United States Act of March 2, 1889, against obtaining transportation for property over railroads at less than regular rates. United States v. Howell (D. C. W. D. Mo.), 4 I. C. R. 818.

(mm) A carrier which has elected to enter into the carriage of interstate freights, and thus subjected itself to the control of the Interstate Commerce Commission, cannot limit that control in respect to foreign traffic to certain points on its road and exclude other points. Cincinnati, N. O. & T. P. R. Co. v. Interstate Commerce Commission (U. S. Sup.), 5 I. C. R. 391.

(nn) A state railroad company, having elected to engage in the carriage of interstate freight, and thus subjected itself to the control of the Interstate Commerce Commission, cannot limit that control in respect to interstate traffic to certain points on its road, and exclude other points. C. N. O. & T. P. R. Co. v. Inters. Com. Commission, 5 I. C. R. 391.

(oo) The entire commerce of the United States, foreign and interstate, is subject to the provisions of the act of Congress to regulate commerce. Texas & P. R. Co. v. Interstate Commerce Commission (U. S. Sup.), 5 I. C. R. 405.

(pp) The legitimate interests of carrying companies, as well as of traders and shippers, should be considered in determining the lawfulness of rates under the act of Congress to regulate commerce. Texas & P. R. Co. v. Interstate Commerce Commission, 5 I. C. R. 405.

(qq) Interstate commerce is not subject to common law regulations as to discriminating charges of common carriers in the absence of congressional action. Gatton v. Chicago, R. I. & P. R. Co. (Iowa), 5 I. C. R. 474.

(rr) The act of a railroad company in carrying coal from one point to another in the same state is not within the scope of interstate commerce regulations, although such coal was originally shipped from another state, if the carrier receives it without any understanding or arrangement, express or implied, that it shall become a link in a chain of interstate transportation. Ft. Worth & Dodge City Ry. Co. v. Whitehead, 7 I. C. C. App. VIII.

(ss) A railroad engaged in forwarding merchandise in the course of commerce between state is subject to the operations of the Interstate Commerce Act, although it is wholly within one state. Augusta Southern Ry. Co. v. Wrightsville & Tennville Ry. Co., 7 I. C. C. App. XXXVIII.

(tt) The validity of a contract for interstate transportation will be determined in accordance with the principles of the common law in the absence of any legislation to the contrary by Congress under its power to regulate commerce. Davis v. Chicago, Milwaukee & St. Paul Ry. Co., 7 I. C. C. App. XLI.

(uu) It is well settled that a railway company whose road is wholly within the bounds of a single state, "when it volutarily engages as a common carrier in interstate commerce by making an arrangement for a continuous carriage or shipment of goods and merchandise, is subjected, so far as such traffic is concerned to the regulations and provisions of the Act to regulate commerce." Interstate Commerce Commission v. Detroit, G. H. & M. R. Co., 167 U. S. 642, 42 L. ed 309, 17 Sup. Ct. Rep. 986; Cincinnati, N. O. & T. P. R. Co. v. Interstate Commerce Commission, 162 U. S. 184, 40 L. ed. 935, 5 Inters. Com. Rep. 391 16 Sup. Ct. Rep. 700; The Daniel Ball, 10 Wall. 565, 566, sub nom; The Daniel Ball v. United States, 19 L. ed. 1002; Pa. Millers' State Asso. v. Philadelphia & R. Ry. Co., 8 I. C. C. 531.

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(vv) Congress has power to regulate interstate commerce to prevent favoritism, and to secure equal rights to all engaged in interstate trade. N. Y. Central v. U. S., 212 U. S. 481, 495, 29 Sup. Ct., 304, 53 L. ed. 613.

(ww) The power granted to Congress to regulate commerce among the states and foreign nations is complete in itself, is unrestricted except by the limitations upon its authority to be found in the Constitution. L. & N. R. R. v. Mottley, 219 U. S. 467, 480, 31 Sup. Ct. 265, 55 L. ed. 297.

(xx) Whatever amounts to a more or less constant practice and threatens to obstruct or unduly burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause. Stafford v. Wallace, 42 Sup Ct. 397.

ALL OTHER CITATIONS

B. & O. R. R. v. I. C. C., 221 U. S. 612, 619;, 31 Sup. Ct. 621, 55 L. ed 878; M. P. Ry. v. Larabee Mills, 211 U. S. 612, 623, 29 Sup. Ct. 214, 53 L. ed. 352; Ford v. C. R. I. & P. Ry. Co. (Minn. 1913), 143 N W. 249; D. L. & W. Ry. Co. v. United States, 34 Sup Ct. 65, 66, 231 U. S. 363, 58 L. ed. —; A. T. & S. F. Ry. Co. v. Robinson, 34 Sup. Ct. 556, 558, 233 U. S. 173, 58 L. ed. —; Collins v.D.& R.G. Ry. Co. (Mo. App. Mo. 1914), 167 S. E. 1178; Central of Ga. Ry. Co. v. Patterson, (Ala. 1915), 68 So. 513; Colby v. American Express Co. (N. H. 1915), 94 Atl. 198, 199; Wabash, etc., R. R. Co. v. Priddy, 179 Ind. 483, 494, 101 N. E. 724; Adams Express Co. v. Croninger, 226 U. S. 491, 33 Sup. Ct. 148, 57 L. ed. 314, 44 L. R. A. (N. S.), 257, and notes; 4 R. C. L. p. 909; Toledo, St. L. & W. R. Co. v. Milner (Ind. 1915), 110 N. E. 756, 758; Baldwin & Riggs v. Chicago, R. I. & P. Ry. Co. (Ia. 1916), 156 N. W. 17; Chicago, M. & St. P. Ry Co. v. Rock County Sugar Co. (Wis. 1916), 156 N. W. 607; Donovan v. Wells, Fargo & Co. (Mo. 1915). 177 S. W. 839, 842;

Chicago R. I. & G. Ry. Co. v. Whaley (Tex. 1915), 177 S. W. 543, 544; Chicago, R. I. & G. Ry. Co. v. Dalton (Tex. 1915), 177 S. W. 556, 557; Banaka v. Missouri Pac. Ry. Co., (Mo. 1916), 186 S. W. 7; Lusk v. Atchison (Mo. 1916), 186 S. W. 703; Cincinnati, N. O. & T. P. Ry. Co. v. Rankin, 36 Sup. Ct. 555, 241 U. S. 319, 60 L. ed. 1022; Mayer v. Southern Pac. Co., 159 N. Y. S. 93; Tampa Fuel Co. v. A. C. L. R. R., 43 I. C. C. 231, 233; Standard Oil Co. v. Graves (Wash. 1917), 162 Pac. 558; Louisville & N. R. R. v. State, (Ala. 1917), 76 So. 505; C. R. I. & G. Ry. v. Shroyer, (Tex. 1917), 197 S. W. 773; R. R. Comm. of La. v. A. H. T. Ry. Co., 48 I. C. C. 312, 359; U. S. v. Hill, 39 Sup. Ct. 143; John Lysaght v. Lehigh Valley R. R., 254 Fed. 351; New York Cent. & H. R. R. Co. v. York & Whitney Co. (Mass. 1918), 119 N. E. 855; Nashville, C. & St. L Ry. Co. v. Camper, (Ala. 1918), 78 So. 925; Lewis Poultry Co. v. New York Cent. R. R. Co., (Me. 1918), 105 Atl. 109; Northwestern Consol. Milling Co. v. Chicago, B. & Q. R. R., (Minn. 1917), 160 N. W. 1028; Midway Co-op. Elevator Co. v. Great Northern Ry. (N. Dak. 1918), 169 N. W. 494; Atchison, T. & S. F. Ry. v. Cooper (Okla. 1918), 175 Pac. 539; St. Louis, I. M. & S. Ry. v. Bentley (Okla. 1918), 176 Pac. 250; Monumental Brewing Co. v. Whitlock (S. C. 1918), 97 S. E. 56; Houston E. & W. Ry. v. Houston Packing Co. (Tex. 1918), 203 S. W. 1140; Rhodes v. Tatum (Tex. 1918), 206 S. W. 114; Chicago, I. & L. Ry. v. Peterson, (Wis. 1918), 169 N. W. 558; Midway Co-op. Elevator Co. v. Gt. Northern Ry. Co. (N. Dak. 1918), 169 N. W. 494; Adams Express Co. v. Croninger, 226 U. S. 491, 505, 509, 33 Sup. Ct. 148, 57 L. ed. 314, 44 L. R. A. (N. S.) 257; Southern Railway Co. v. Prescott, 240 U. S. 632, 639, 640, 36 Sup Ct. 469, 60 L. ed. 836; Olsen v. Chicago, B. & Q. R. R., 250 Fed. 372; Intrastate fares within Illinois, 59 I. C. C. 350, 363, 364; Public Service Commission, Second Dist. v. N. Y. Cent. R. Co., 185 N. Y. S. 267; People v. Long Island R. R. et al., 185 N. Y. S. 594; Lowery et al. v. United States, 271 Fed. 946; Stafford v. Wallace, 42 Sup. Ct. 397; Atlantic Coast Line Ry. Co. v. Railroad Commission of Ga., 281 Fed. 321; St. Louis-San Francisco Ry. Co. v. Conly (Ark. 1922), 241 S. W. 365; Minneapolis, St. P. & S. S. M. Ry. Co. v. Railroad Commission, (Wisc., 1924), 197 N. W. 352; Pittsburgh & W. V. Ry. Co., v. Interstate Commerce Commission 293 F. 1001; Dayton-Goose Creek Ry. Co. v. United States 44 Sup. Ct. 169; St. Louis Southwestern Ry. Co. v. Interstate Commerce Commission 44 Sup. Ct. 294; Atchison T. & S. F. Ry., Co. v. Railroad Commission, Calif., 1922; 211 Pac. 460; Doolittle v. Trigg, (S. C. 1922), 114 S. E. 869; United Leather Workers' International Union v. Herkert & Meisel Trunk Co., 284 Fed. 446; Neubert v. Chicago, R. I. & G. Ry. (Tex. 1923), 248 S. W. 141.

INTERSTATE COMMERCE COMMISSION

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CROSS REFERENCES

See Adjacent Foreign Country I; Advanced Rates §21; Control and Regulations; Government Control; Jurisdiction of Commission; Procedure Before Commission.

I. JURISDICTION.

§1. In General.

See Accounting §1; Adjacent Foreign Country §1; Advanced Rates §1, §2; § 9; §20; Alaska I; Allowances I; Bill of Lading I; Blanket Rates §1; Branch Lines §6; Bridges and Tolls; Classification §2; Commerce Courts I; Control and Regulation; Courts; Demurrage §1, §1½; Differentials §½; Discrimination §2; Divisions §1; Electric Lines I; Equalization of Rates §1; Export Rates and Facilities §1; Express Companies §1; Facilities and Privileges §1; Foreign Commerce §1; Government Control; Interstate Commerce §2; Lighterage §1; Long and Short Hauls §2; Loss and Damage §4; Overcharges §2; Passenger Fares and Facilities; Precooling I; Procedure Before Commission; Proportional Rates §1; Reconsignment §9; Reduced Rates §1; Refrigeration §1; Released Rates §1; Reparation §1; Routing and Misrouting §1; Storage §1; Switch tracks and Switching §2; Substitution of tonnage §1; Tariffs §1; Terminal Facilities §1; Through Routes and Joint Rates §1; Transportation §1½; Tap Lines § 2; Undercharges §1; Water Carriers 2; Weights and Weighing §2.

CASES 1887-1908

(a) The Commission has no authority to call a railroad company to account for any wrong of which such company may have been guilty prior to April, 1887, when the Interstate Commerce Act went into operation. Holbrook v. St. Paul, M. & M. R. Co. 1, I. C. R. 323.

(b) If, at the hearing before the Commission of a complaint against a railroad company, the defendant avows a purpose to comply with the law, the Commission must not only assume that the company will do so but must act upon that assumption until it has evidence that the purpose is not lived up to. Holbrook v. St. Paul, M. & M. R. Co., 1 I. C. R. 323.

(c) The Commission has no authority to call a railroad company to account for a wrong committed prior to time when Act went into effect. Holbrook v. St. Paul, M. & M. R. Co., 1 I. C. R. 323.

(d) The Commission has only a limited power, expressly defined by the Act, to interfere to prevent wrong and oppression in specified cases. Traders & Travelers Union v. Phila., etc., R. R. Co. 1 I. C. R. 371. Re Iowa Barb Steel Wire Co., I I. C. R. 605.

(e) Every ground of the jurisdiction of the Commission relates directly or indirectly to the transportation of persons and freight by carriers at fair and reasonable rates, and with absolute impartiality as to facilities and accommodations. Traders & Travelers Union v. P. & R. R. Co. 1 I. C. C. 371, 374.

(ea) The Commission will not express an opinion whether neither by complaint nor by application for relief is a case stated which will come within its jurisdiction. Re Iowa Barb Steel Wire Co., 1 I. C. C. 605.

(f) The Commission has not been given a general dispensing power to relieve hardships under the Law, but its power in that regard is strictly limited. Re Iowa Barb Steel Wire Co. 1 I. C. R. 605, 606.

(g) The Commission will not determine a collateral inquiry or question presented by evidence admissible only for other purposes, until an opportunity has been furnished the parties to be heard in a proceeding such as is provided for by the statute. Business Mens Asso. v. Chicago & N. W. R. Co. (Com.) 2 I. C. R. 48.

(ga) Traffic destined to another State is not interstate so as to be within the jurisdiction of the Interstate Commerce Commission, if the delivery by the carrier is made in the same State where the rates were made and the traffic originated. New Jersey Fruit Exchange v. Central R. Co. (Com.) 2 I. C. R. 84.

(h) The Commission has no power to impose penalties for violations of the Law, the penal provisions of which are only enforceable through the ordinary machinery of the courts of the United States. Slater v. N. P. R. Co., 2 I. C. C. 243, 244.

(i) The Act to Regulate Commerce does not undertake either to create an inferior court", or to invest the Commission, appointed thereunder, with judicial powers,

or functions. Kentucky and Indiana Bridge Co. v. Louisville & Nashville R. Co., 2 I. C. R. 351.

(j) The Interstate Commerce Commission is invested with only administrative powers of supervision and investigation, which fall far short of making it a court or its action judicial, in the proper sense of the term. Its action or conclusion upon matters brought before it for investigation is neither final nor conclusive. Nor is it invested with any authority to enforce its decision or award. Kentucky & I. Bridge Co. v. Louisville & N. R. Co. (C. C. D. Ky.) 2 I. C. R. 351.

(ja) The Commission is charged with the duty of investigating and reporting upon complaints; and the facts, found or reported by it, are only given the force and weight of "prima facie" evidence, in such judicial proceedings, as may thereafter be had, for the enforcement of its recommendation, or order. The functions of the Commission are those of referees, or special commissioners, appointed to make preliminary investigation of, and report upon, matters for determination. In respect of interstate commerce matters, covered by the Law, the Commission may be regarded as the general referee of each and every Circuit Court of the United States, upon which the jurisdiction is conferred, of enforcing the rights, duties, and obligations, recognized and enforced by said law. Kentucky and Indiana Bridge Co. v. Louisville & Nashville R. Co., 2 I. C. R. 351.

(jb) The Interstate Commerce Commission is invested with only administrative powers of supervision and investigation, which fall far short of making it a court, or its action judicial, in the proper sense of the term. Its action, or conclusion, upon matters brought before it for investigation, is neither final, nor conclusive. Nor is it invested with any authority to enforce its decision, or award. It hears, investigates, and reports upon complaints made before it, but subsequent judicial proceedings are contemplated, and provided for, as the remedy for the enforcement of the order or report of the Commission, in all cases, where the party against whom its decision is rendered, does not yield voluntary obedience thereto. Kentucky and Indiana Bridge Co. v. Louisville & Nashville R. Co., 2 I. C. R. 351.

(jc) Congress, under its sovereign and exclusive power to regulate commerce among the several States, has the power to create a commission for the purpose of supervising, investigating, and reporting upon matters or complaints connected with or growing out of interstate commerce. Kentucky & I. Bridge Co. v. Louisville & N. R. Co., (C. C. D. Ky.) 2 I. C. R. 351.

(k) Investigation by the Commission, on its own motion, concerning a course pursued by certain carriers in respect to compliance with the provisions of the Act to Regulate Commerce. Re Altanta & W. P. R. Co., (Com.) 2 I. C. R. 461.

(ka) When a question of general public interest is involved, the Commission, in its own discretion and in furtherance of justice, may open a case to give parties the benefit of a more extended investigation of the same subject matter in other pending cases. Rice v. Western New York & P. R. Co. (Com.) 2 I. C. R. 496.

(l) The Interstate Commerce Commission has authority to institute investigations and to deal with violations of the law independently of a formal complaint, or of direct damage to a complainant. Re Grand Trunk R. Co. (Com.) 2 I. C. R. 496, 497, 504.

(m) Complainant attacked as unreasonable rates on lumber from Covington, Va., to New York City, N. Y. Rate charged 24 cents, via N. N. & M. V., R. F. & P., and Pennsylvania, which included lighterage within limits of New York. This route was cancelled and a new route entered with the B. & O., as a party but with an additional charge of 5 cents per 100 pounds on all less than lots of 5 cars to the same consignee and at the same point of delivery. At time of movement tariffs did not have to be filed and a circular was issued containing this information. Shipments moved thereunder. Subsequently the law of 1887 was passed making it necessary to file tariffs with the Commission at which time the rate and privilege was withdrawn. HELD, as the Act as amended was not in effect at time of movement, Commission has no jurisdiction, complaint dismissed. Rawson v. N. N. & M. V. R. Co. 2 I. C. C. 626.

(n) A complaint, under the Act to Regulate Commerce, based on acts which were done before the passage of the statute, charge no violation of the Act, within the cognizance of the Interstate Commerce Commission. White v. Michigan C. R. Co. (Com.) 2 I. C. R. 641.

(o) When applied to by petition the Commission must investigate matters complained of and must, to enforce the Act, make investigations and prosecute inquiries instituted on its own motion. On making any investigation, the Commission is required to make a report in writing of its recommendations, conclusions and findings of fact on which its conclusions are based, which recommendations and conclusions, if not complied with, can only be enforced through the courts, after trial, in accordance with established procedure. In such trial the facts found by the Commission, in conformity with the Statute, have legal effect and are prima facie evidence; but the recommendations, conclusions, and orders of the Commission are of no binding force in the courts. Rates & Charges on Food Products, 3 I. C. R. 151.

(p) The Commission is a special tribunal whose duties, though largely administrative, are sometimes semi-judicial, but it is not a court empowered to render judgments and enter decrees. The rule of estoppel by record, which is at all times technical in character and applies to the record of courts and proceedings before federal officials whose acts are final, is not applicable to the complaint of Kemble who had appeared before the Commission in a representative capacity as member of a committee of a complaining mercantile society in proceedings heretofore dismissed which involved questions similar to those presented in the case now under consideration and brought by him as an individual. Toledo Produce Exchange v. Lake Shore & M. S. R. Co. 3 I. C. R. 830, 835.

(q) The fact that the property and affairs of a carrier have been placed by a United States court in the hands of a receiver does not effect the jurisdiction of the Interstate Commerce Commission under a complaint charging such carrier with violations of the Act to Regulate Commerce. Troy Bd. of Trade v. Alabama Midland R. Co. (Com.) 4 I. C. R. 348.

(r) The opinion of the Interstate Commerce Commission has not the effect of a judicial determination, and in a proceeding to enforce it the court proceeds to hear the complaint de novo. Shinkle W. & K. Co. v. Louisville & N. R. Co. (C. C. S. D. Ohio) 5 I. C. R. 282.

(s) The Commission is an administrative board, and the courts are only to be resorted to when the Commission prefers to enforce the provisions of the statute by a direct proceeding in court, or when the orders of the Commission have been disregarded. The purposes of the act to regulate commerce call for full inquiry by the Commission into all the circumstances and conditions pertinent to the question involved in any proceeding under the statute, and the facts of the case are to be disclosed before the Commission. A procedure under which railroad companies withhold the larger part of their evidence from the Commission and first adduce it in the circuit court,—disapproved. C., & N. O. & T. P. R. Co. v. Inters. Com. Commission, 5 I. C. R. 391.

(t) The Interstate Commerce Commission is made a body corporate with legal capacity to be a party plaintiff or defendant in the Federal courts, by the acts of Congress creating the Commission, providing that it shall have an official seal and making it lawful for it to apply by petition for the enforcement of its orders. Texas & P. R. Co. v. Interstate Commerce Commission (U. S. Sup.) 5 I. C. R. 405.

(u) An order by the Interstate Commerce Commission, based upon an estimate which rests upon an erroneous principle and is unreliable, will not be judicially enforced. Interstate Commerce Commission v. Lehigh Valley R. Co. (C. C. E. D. Pa.) 5 I. C. R. 643.

(v) An order of the Interstate Commerce Commission is administrative and not final or conclusive in the sense of a court judgment or decree, and the order of the court giving effect to that of the Commission does not make it a final judgment so that change or modification cannot be made when changed traffic conditions arise. Interstate Commerce Commission v. Louisville & N. R. Co. (C. C. M. D. Tenn.) 5 I. C. R. 656.

(w) Where, in a given case, it is the duty of the Commission to receive and take into account evidence of certain facts, its failure to do so is error of law. And so, where an issue of fact is raised before the Commission, its failure to dispose of it is an error of law. Interstate Commerce Commission v. L. & N. R. Co., 5 I. C. R. 656.

(x) The function of the Commission is both quasi-judicial and administrative in its nature. The Commission is required to make reports in writing in respect

to complaints made to it. Such reports must include the findings of fact upon which the conclusions of the Commission are based, and such findings so made are to be deemed prima facie evidence as to each and every fact so found in any judicial proceeding thereafter had. Interstate Commerce Commission v. L. & N. R. Co., 5 I. C. R. 656.

(y) The exceptional and special nature of the cases in which such discretion may be exercised, renders the application of any general rule impracticable, and every special case must be determined upon its own facts and special circumstances and in view of the objects for which the law was enacted. Petition of Cincinnati, Hamilton & Dayton R. Co., 6 I. C. C. 323.

(z) Under the "Act to Regulate Commerce" the Commission has continuing jurisdiction over the rates and practices of carriers subject to its provisions, and is not precluded from rehearing a particular case, and amending or modifying its original order therein, by the refusal of a Circuit Court of the United States to enforce such order against the carriers affected thereby,—especially when the reasons assigned for such refusal do not relate to the principal question in controversy and are consistent with an approval of the amended or modified order. Page v. Delaware, L. & W. R. Co., 6 I. C. C. 548.

(za) The Interstate Commerce Commission is authorized and required by the Act to Regulate Commerce to determine in appropriate proceedings whether the rates or practices of carriers complained of are unlawful, and if so, to what extent, and to require such carriers by suitable order to cease from doing what is ascertained to be unlawful, and also from omitting to do that which is found to be lawful. Page v. Delaware, L. & W. R. Co. 6 I. C. C. 548.

(aa) The Commission is authorized and required in appropriate proceedings to determine whether rates or practices of carriers complained of are unlawful, and, if so, to what extent; and to require such carriers by suitable order to cease and desist, not only from doing what is ascertained to be unlawful, but from omitting to do what is found to be unlawful. Page v. Delaware, L. & W. R. Co., 6 I. C. C. 548, 554.

(bb) The Interstate Commerce Commission cannot correct wrongs caused by improperly adjusted rates over independent lines from connecting cities to a common destination, as it is without authority to prescribe a maximum and minimum rate. Savannah Bureau of F. & T. v. Charleston & S. R. Co., 7 I. C. C. 458.

(cc) In proceedings involving issuance of an order concerning the publication and enforcement of transportation or terminal charges, rules and regulations, investigation is useful to enable the Commission to determine what, if any, administrative order should be directed to defendant carriers, and whether such order should be made to apply to all carriers subject to the regulating statute. American Warehousemen's Asso. v. Illinois Cent. R. Co., 7 I. C. C. 556.

(cca) Newly organized companies into which the railroads of two companies, violating an order of the Interstate Commerce Commission in pursuance of a common arrangement between them and other roads, pass, are properly made defendants in a suit to enforce the order of the Commission. Interstate Commerce Commission v. Western N. Y. & Philadelphia R. R. Co. 7 I. C. C. App. LXII.

(dd) Manifestly, the power of the Commission can not be greater than the power of Congress or of a state legislature to control or prescribe the rates of railroad carriers. And if the courts would not uphold an act of legislation which required defendants to grant special rates to complainants and others in like situation, it is plain that an order of the Commission directing them to do so would be equally invalid for want of authority to make it. Sprigg v. B. & O. R. Co., 8 I. C. C. 443, 454.

(ee) A decision of the Supreme Court sustaining the view of the Commission as to the illegality of certain terminal charges, but dismissing the proceeding on account of a subsequent reduction in the through rate, which had been made from certain territory, and which reduction amounted to more than the terminal charges involved; and authorizing the Commission to commence proceedings to correct any unreasonableness in the rate resulting from the additional terminal charge as to any territory to which the reduction referred to did not apply,—does not estop the Commission from further proceeding and investigation as to the legality of a terminal charge for the future, without the institution of a

new proceeding, as the Commission is not functus officio; and the mere use by the Supreme Court in its decree of the word "commencing," with reference to further proceeding, is not construed to require the formal institution of a new proceeding. The case will, therefore, stand reopened for further investigation and order, with leave to complainant to show to what territory the through rate reduction applied. Cattle Raiser's Asso. v. Chicago, B. & Q. R. Co., 10 I. C. C. 83.

(ff) To prescribe future rates, may be exercised upon complaint filed prior to time when jurisdiction was conferred. Cattle Raisers' Asso. v. M. P. & T. R. Co., 12 I. C. C. 1.

(gg) Not the proper form to which to appeal for the enforcement either of a charter, statutory, or common-law obligation to provide station facilities, and possesses no common-law jurisdiction. Jones v. St. Louis & S. F. R. Co., 12 I. C. C. 144.

(hh) The jurisdiction of the Commission and the purposes of the law cannot be defeated by the omission or failure of carriers to include in their schedules and to keep posted and open to public inspection the rates, fares and charges for the entire service, both transportation proper and refrigeration, which under the law they are bound to provide. Maxelbaum & Co. v. Atlantic Coast Line R. R. Co., 12 I. C. C. 178.

(ii) Analogy to court of equity. Railroad Commission of Ohio v. Hocking Valley R. Co., 12 I. C. C. 398.

(jj) There is an analogy between the jurisdiction of the Commission and that of a court of equity. A court of equity will not assume to dictate the policy or business management of a common carrier aside from its clear duty under its charter or the statutes. That function belongs exclusively to the company itself, and will not be interfered with because changes ought to be made as apparently reasonable, necessary or otherwise. But where the common carrier itself adopts as a part of its business policy any advantageous facility for handling freight it must not discriminate in its use by the public, but must afford the facility equally to all, and to this extent equity will interfere by injunction to prevent such favored use thereof and compel its equal service to all. Railroad Commission of Ohio v. H. V. Ry., 12 I. C. C. 398, 404.

(kk) An administrative body, to be unembarrassed by technical considerations in the examination of formal complaints. Missouri & K. Shippers' Asso. v. M. K. & T. R. Co., 12 I. C. C. 483.

(ll) The Commission is essentially an administrative body, and in the examination of formal complaints ought to get at the real substance of the issue presented unembarrassed by technical considerations. Mo. & Kan. Shippers' Association v. M. K. & T. Ry. Co., 12 I. C. C. 483.

(mm) HELD, that the decree of a court dismissing a bill brought to enforce an order of the Commission made previous to the amendment of June 29, 1906, is not a bar to the right of the Commission to examine with respect to a date subsequent to June 29, the same rate involved in that proceeding. Cattle Raisers' Asso. v. C., B. & Q. R. R. Co., et al, 12 I. C. C. 507.

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(nn) The law contemplates the exercise of the Commission's judgment upon facts disclosed, and implies the right or duty to require or decline to require publications of joint rates. Chicago, Ottawa & Peoria Ry. Co. v. C. & N. W. Ry. Co., 33 I. C. C. 573, 576.

(oo) The powers of the Commission are only such as are conferred by the Act. Streever Lumber Co. v. C. M. & St. P. Ry. Co., 34 I. C. C. 1, 2.

(pp) The whole scope of the Act shows it to have been intended that the Commission and not the courts shall pass upon administrative questions. Pennsylvania Paraffine Works v. P. R. R. Co., 34 I. C. C. 179, 190.

(qq) It is not the function of the Commission to prescribe either the public policy or the managerial policy of carriers. Western Passenger Fares, 37 I. C. C. 1, 41.

(rr) It was urged that the Commission is not in the attitude of a traffic manager. The Act to Regulate Commerce, however, makes it the duty of the Commission to intervene between shippers and misdirected judgment of traffic officials where the result would so plainly produce an unlawful discrimination. Stonega Coke & Coal Co. v. L. & N. R. R. Co., 39 I. C. C. 523, 544.

(ss) By the amendment of June 29, 1906, the Commission was for the first time given power to prescribe a reason-

able maximum rate for the future. Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R., 51 I. C. C. 635, 643.

(tt) The Commission's plenary power under section 15, to correct unreasonable practices on the part of common carriers, as having had fullest confirmation in cited decisions of the Supreme Court, was declared in Missouri & Illinois Coal Co., 22 I. C. C. 39, 48, 49. Postal Telegraph-Cable Co. v. Western Union Telegraph Co., 59 I. C. C. 512, 516.

(uu) The Commission's opinion is that the manifest intent of Congress was to repose in the Commission full and final authority to provide the revenues found necessary to yield the specified return by considering the entire structure of rates, both state and interstate, and the aggregate value of the railroad property held for and used in the service of transportation without regard to state lines, and to protect interstate commerce against any rate, fare, charge, classification, regulation, or practice that causes any undue, unreasonable or unjust discrimination. Intrastate rates within the state of Texas. 60 I. C. C. 421, 426.

(vv) Section 206 c of the act confers upon the Commission jurisdiction to hear and decide complaints arising during the period of federal control. Wasatch Coal Co. v. Director General, 66 I. C. C. 118, 120.

(ww) It is an intent clearly disclosed that the Commission shall keep continually in view of the public interest, the public need for a transportation system strong in all its parts, and the consequent necessity that carriers shall receive compensation fairly proportioned to the amount and character of the service which they perform and adequate to enable them to perform it efficiently. Divisions of joint rates and fares of M. & N. A. R. R., 68 I. C. C. 47, 51.

(xx) The function of the Commission is not that of mere computers and can not thus be atrophied. The duty to prescribe rates for the future carries with it the obligations to exercise an informed judgment upon all pertinent facts, present and past, in order to forecast the future as best it may. Reduced Rates 1922, 68 I. C. C. 676, 730.

(yy) The Commission is given authority to determine the lawfulness of a new rate, whether it be increased or decreased. The duty of specifying in what respect and to what extent the new rate will be lawful or unlawful is not laid upon the Commission, although it may make any order which would be proper in a proceeding pending upon complaint. Salt from Louisiana mines to Chicago, 69 I. C. C. 312, 313.

(zz) The law does not require the performance of a vain act. Gardner Shipping Co. v. Pennsylvania R. R. Co., 74 I. C. C. 461, 462.

(3a) The Commission should not set up its judgment as to the possible and proper thing to do as against the judgment of other public officers, presumed to be performing their duty lawfully, who met a situation of extreme difficulty as best they could under the limitations imposed by war, and with existing or procurable facilities overtaxed. Clearly it should not do so when the preponderance of evidence supports the action as having been taken in good faith, in a timely manner, to the extent reasonably necessary, and so as to apply with substantial uniformity upon all similarly circumstanced persons and traffic. American Mfg. Co. v. Director General, as Agent, 77 I. C. C. 52, 57.

(3b) It is the Commission's duty to apply a statute as it finds it, and for the courts to determine its validity where that question arises. Interchangeable Mileage Ticket Investigation, 77 I. C. C. 200, 202.

(3c) Under section 6 of the act a carrier must abide by published tariff rule, just as it must charge a published rate; but there is no reason why, when it is found that the rule has resulted in unreasonable charges under section 1, the Commission should fail to afford relief. The Commission's powers should not be construed so narrowly as to defeat justice. Hawkins & Sons v. Director General, as Agent, 80 I. C. C. 225, 227.

(3d) If paragraph (12) of section 1 of the act is at all doubtful in construction, the construction adopted by the Commission as administrative agency in its enforcement, followed for many years, without any attempt of Congress to change it, even when a bill for that purpose was long pending before it, and without any challenge of its correctness by any other department of the Government, while not controlling, is not to be disregarded without most cogent and persuasive reasons. Robertson v. Downing, 127 U. S., 607, 80 I. C. C. 529.

(3da) Fact that rates to certain points are maintained under contract between carriers and shippers does not affect authority of the commission to require carriers to desist from violations of the act. Ohio Rates, Fares, and Charges, 64 I. C. C., 493; Cape Girardeau Commercial Club, 51 I. C. C., 105. Graham & Gila Counties Traffic Asso. v. A. E. R. R. Co., 81 I. C. C. 134, 143.

(3db) The commission has no jurisdiction to construe or enforce contracts, and may inquire into contractual relations only in so far as is necessary to determine who, in fact, paid and bore freight charges as such. International Coal Products Corp. v. Director General, as Agent, 81 I. C. C. 435, 438, 439.

(3de) Desire of competitive manufacturing points to be each accorded its "fair share" of business in common destination territory does not, standing alone, justify exercise of commission's power to fix minimum rates. Sugar Cases of 1922, 81 I. C. C., 448, 454, 462, 472.

(3df) Reasonableness of charge during Federal control for use of motive power, cars, and crew in intraplant movement over plant tracks found not within commission's jurisdiction under section 206 (c) of transportation act, 1920. Such intrastate transactions were no more within purview of that act than they would now be if a State line were crossed in a similar intraplant movement. Furnishing of cars, locomotive, and crew did not make act performed a service of common carriage merely because owner was a common carrier. Movement was part of operation of complainant's plant, which defendant was under no legal duty to perform, and charges therefor was matter of contract. Grasselli Chemical Co. v. Director General, as Agent, 81 I. C. C. 562.

(3dg) The function of the Commission under the law is not that of mere computers and can not thus be atrophied. The duty to prescribe rates for the future carries with it the obligation to exercise an informed judgment upon all pertinent facts, present and past, in order to forecast the future as best it may. Express rates, 1922, 89 I. C. C. 297, 311.

(3e) The Interstate Commerce Commission is an administrative body, and is not to be hampered in its proceedings by the hard and fast rules as to pleading and practice which governs courts of law. Pennsylvania R. Co. United States, (Pa. 1923), 288 Fed. 88.

(3f) The Interstate Commerce Commission cannot conduct a fishing expedition into the affairs of strangers on the chance that something discreditable might turn up. Ellis v. I. C. C., 35 Sup. Ct. Rep. 646, 647; 237 U. S. 434; 59 L. Ed.

(3g) The jurisdiction of the Commission is determined by the essential character of the commerce in question. Pennsylvania R. Co. v. Clark Bros. Coal Min. Co., 35 Sup. Ct. 896, 900; 238 U. S. 456, 59 L. ed.

(3h) Though the Interstate Commerce Commission has broad powers, and may investigate and decide whether a rate has been, is, or would be discriminatory, it cannot pass on the question whether a hypothetical lower rate would under conceivable conditions have been discriminatory, in order to enable a shipper to sue for damage for conspiracy to fix a higher rate. Keogh v. Chicago & N. W Ry. Co., 43 Sup. Ct. 47.

ALL OTHER CITATIONS

L. & N. R. R. Co. v. Scott, 133 Ky. 724, 730, 118 S. . 990; National Petroleum Ass'n. v. Ann Arbor R. R. Co., 14 I. C. C. 272, 281; Eichenberg v. S. P. Co., 14 I. C. C. 250, 266; Bulte Milling Co. v. C. & A. R. R. Co., 15 I. C. C. 351, 36[illegible] Co., 15 I. C. C. 334, 337; Black Mountain Coal Land Co. v. S. Ry. Co., 15 I. C. C. 286, 295; Woodward & Dickerson v. L. & N. R. R. Co., 15 I. C. C. 170, 172; Washer Grain Co. v. M. P. Ry. Co., 15 I. C. C. 147, 155, 156, 157, 153; Nebraska-Iowa Grain Co. v. U. P. R. R. Co., 15 I. C. C. 90, 94; Blume & Co. v. Wells, Fargo & Co., 15 I. C. C. 53, 55; Porter v. St. L. & S. F. R. R. Co., 15 I. C. C. 1, 5; Snook v. C. R. R. Co., of N. J., 17 I. C. C. 375, 376; Joynes v Penn. R. R. Co., 17 I. C. C. 361, 369; In Re Jurisdiction in Alaska, 19 I. C. C. 81, 93; Southwestern Produce Distributers v. W. R. R. Co., 20 I. C. C. 458, 461; Lum. v. G. N. Ry. Co., 21 I. C. C. 558, 561; Sterling & Son v. M. C. R. R. Co., 21 I. C. C. 451, 454; In Re Advances on Port Coal to Lake Ports, 22 I. C. C. 604, 612; Boileau v. P. & L. E. R. R. Co., 22 I. C. C. 640, 654; In Re Advances on Coal to Lake Ports, 22 I. C. C. 604, 613; Albree v. B. & M. R. R. Co., 22 I. C. C. 303, 319; In Re Wharfage Charges at Galveston, 23 I. C. C. 535, 544; Mobile Chamber of Commerce v. M. & O. R. R. Co., 23 I. C. C. 417, 421;

Mattison v. Penn. Co., 23 I. C. C. 233, 234; Cosby v. Richmond Transfer Co., 23 I. C. C. 72, 77; L. & N. R. R. Co. v. I. C. C., 184 Fed. 118, 122; I. C. C. v. C. B. & Q. Ry. Co., 218 U. S. 113, 30 Sup. Ct. 660, 54 L. ed. 959; I. C. C. v. C. R. I. & P. Ry., 218 U. S. 88, 103, 30 Sup. Ct. 651, 54 L. ed 946; Larkin Co. v. E. & . T. Co., 24 I. C. C. 645, 647; Transit Case, 24 I. C. C. 340, 343; In re Express Rates, 24 I. C. C. 380, 430; Pittsburgh Vein Operators of Ohio v. S. P. Co., 24 I. C. C. 280; Flour City S. S. Co. v. L. V. R. R. Co., 24 I. C. C. 179, 186; Iowa v. A. C. L. R. R. Co., 24 I. C. C. 134, 135; Boileau v. P. & L. E. R. R. Co., 24 I. C. C. 129, 132; Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co., 24 I. C. C. 55, 74; In re Pipe Lines, 25 I. C. C. 1, 3; Corporation Commission of Oklahoma v. A. T. & S. F. Ry. Co., 25 I. C. C. 120, 121; National Wool Growers' Asso. v. O. S. L. R. R. Co., 25 I. C. C. 675, 677; Griffing v. C. & N. W. Ry. Co., 25 I. C. C. 134, 135; Robinson Land & Lumber Co. v. M. & O. R. R. Co., 26 I. C. C. 427, 429; R. R. Com. of Montana v. N. P. Ry. Co., 26 I. C. C. 407, 409; Blakely Southern R. R. Co. v. A. C. L. R. R Co., 26 I. C. C. 244, 249; New England Investigation, 27 I. C. C. 560, 614; Sioux City Terminal Elevator Co. v. C. M. & St. P. Ry. Co., 27 I. C. C. 457, 463; Reconsignment and Storage of Lumber and Shingles, 27 I. C. C. 451, 454, 455; Central Commercial Co. v. L. N. R. R. Co., 27 I. C. C. 114, 115; American Sugar Refining Co. v. D. S. & W. R. R. Co., 207 Fed. 733, 737; S. P. Co. v. U. S., 197 Fed. 167, 170; U. S. v. Union Stockyard & T. Co., 33 Sup. Ct. 83, 88; 226 U. S. 286; United States v. A. T. & S. F. Ry. Co., 34 Sup. Co. 986, 991; 234 U. S. 476; 58 L. Ed.; P. & R. Ry. Co. v. U. S., 219 Fed. 989, 995, 996; U. S. v. U. P. R. R. Co., 28 I. C. C. 518, 520, 524; Memphis Freight Bureau v. B. & O. R. R. Co., 28 I. C. C. 543, 547; Rates on Soda Ash and Other Commodities, 28 I. C. C. 613, 614; Waverly Oil Works v. P. R. R. Co., 28 I. C. C. 621, 628; Omaha Grain Exchange v. C. R. I. & P. Ry. Co., 28 I. C. C. 680, 686; Richmond-Eureka Mining Co. v. Eureka Nevada Ry. Co., 29 I. C. C. 62; Lumber Rates from Oregon and Washington, 29 I. C. C. 609, 618; Rates on Green Fruit from Idaho, etc., 29 I. C. C. 650, 651; The Five Per Cent Rate Case, 31 I. C. C. 351, 425; Coal Rates from Oak Hills, Colo., 30 I. C. C. 505, 508; Milwaukee Produce & Fruit Exchange v. Crosby Transportation Co., 30 I. C. C. 653, 655; In re Separation of Operating Expenses, 30 I. C. C. 676, 679; Gulf Lumber Co. v. M. D. & T. R. R. & S. S. Co., Unrep. Op. A-574; Five Per Cent Case, 32 I. C. C. 325, 329; Financial Investigation of the N. Y. N. H. & H. R. R., 31 I. C. C. 32, 70; W. & A. R. Co. v. White Provision Co. (Ga., 1914), 82 S. E. 644, 645; L. & N. R. R. Co. v. Ohio Valley Tie Co. (Ky., 1914), 170 S. W. 633, 642; Vulcan Coal & Mining Co. v. I. C. R. R. Co., 33 I. C. C. 52; Industrial Railways Case, 32 I. C. C. 129, 131, 132; New York Produce Exchange v. N. Y. C. & H. R. R. R. Co., 32 I. C. C. 212, 215; Board of Trade of Kansas City v. St. L. & S. F. R. R. Co., 32 I. C. C. 297, 311; New York Dock Ry. v. B. & O. R. R. Co., 32 I. C. C. 568, 573; Application S. P. Co. in re Operation S. S. Co., 32 I. C. C. 690, 698; Newport Mining Co. v. C. & N. W. Ry., 33 I. C. C. 645, 648; Streever Lumber Co. v. C. M. & St. P. Ry., 34 I. C. C. 1, 2; Pennsylvania Paraffine Works v. Penn. R. R., 34 I. C. C. 179, 190, 192; Alpha Portland Cement Co. v. B. & O. R. R., 34 34 I. C. C. 414, 420; Ludowici-Celadon Co. v. F. E. C. Ry., 35 I. C. C. 81, 82; Rates in Chicago Switching District, 34 I. C. C. 234, 241; Pennsylvania Paraffine Works v. P. R. R. Co., 34 I. C. C. 179, 189; Rates in Chicago Switching District, 34 I. C. C. 234, 241, 242; Alpha Portland Cement Co. v. B. & O. R. R. Co., 34 I. C. C. 414, 421; 1915 Western Rate Advance Case, 35 I. C. C. 497, 504; Reymer & Bros. v. C. & N. W. Ry. Co., Unrep. Op. 2056; Jewelers' Protective Union v. P. R. R. Co., 36 I. C. C. 71, 75; Excelsior from St. Paul, Minn., 36 I. C. C. 349, 365; Montgomery v. Chicago, B. & Q. R. Co., 228 Fed. 616, 619; Rates via Rail-and-Lake Routes, 37 I. C. C. 302, 316; Nashville Abattoirs, Etc., Assn. v. L. & N. R. R., 40 I. C. C. 134, 139; Charleston & Norfolk S. S. Co. v. C. & O. Ry. Co., 40 I. C. C. 382, 385, 386; Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co., 40 I. C. C. 738, 741; Interstate Packing Co. v. C., M. & St. PY. Ry. Co., 41 I. C. C. 396, 399; St. Louis Southwestern Ry. Co. v. United States, 234 Fed. 668, 672; Int. Com. Comm. v. Union Pacific R. R., 222 U. S. 541, 547, 32 Sup. Ct. 18, 56 L. Ed. 308; Proctor & Gamble v. United States, 225 U. S. 282, 297, 298, 32 Sup. Ct. 761, 56 L. Ed. 1091; Mitchell Coal Co. v. Pennsylvania R. Co., 230 U. S. 247, 257, 33 Sup. Ct. 916, 57 L. Ed. 1472; A., T. & S. F. Ry. Co. v. United

States, 232 U. S. 199, 221, 34 Sup. Ct. 291, 58 L. Ed. 568; United States v. L. & N. R. Co., 235 U. S. 314, 321, 35 Sup. Ct. 113, 59 L. Ed. 245; L. & N. R. Co. v. United States (D. C.), 225 Fed. 571, 579, 580; St. Louis Southwestern Ry. Co. v. United States, 234 Fed. 668, 675; Lake and Rail Cancellations (No. 2), 42 I. C. C. 513, 522; Southern Rice Growers' Assn. v. T. & N. O. R. R., 43 I. C. C. 90, 95; Tampa Fuel Co. v. A. C. L. R. R. Co., 43 I. C. C. 231, 233; South Mississippi Dairymen's Asso. v. I. C. R. R., 44 I. C. C. 297, 299; Iron Ore Rate Cases, 44 I. C. C. 368, 369; Brunswick-Balke-Collender Co. v. T., S. & M. Ry., 44 I. C. C. 598, 601; The Alaska Investigation, 44 I. C. C. 680, 702; Arlington Heights Fruit Exchange v. S. P. Co., 45 I. C. C. 248, 250; E. Tex. Ry. v. R. R. Com. of Tex., 242 Fed. 300; Atchison, T. & S. F. Ry. Co., v. Spiller, 246 Fed. 1; Hunter v. N. Y. N. H. & H. R. R., 166 N. Y. Supp. 237; Minnesota & O. Powder Co. v. B. F. & I. F. Ry., 47 I. C. C. 208, 209; Lafayette Chamber of Commerce v. A. & V. Ry., 47 I. C. C. 246, 248; Charleston & Norfolk S. S. Co., 47 I. C. C. 365, 367; National Live Stock Exchange v. C. B. & Q. R. R., 47 I. C. C. 380, 395; Switching Absorptions, 47 I. C. C. 583, 588; The New York Harbor Case, 47 I. C. C. 643, 722, 733; Reliance Elevator Co. v. Chicago, M. & St. P. Ry., (Minn. 1917), 165 N. W. 867; R. R. Comm. of La. v. A. H. T. Ry. Co., 48 I. C. C. 312, 362; Lunham & Moore v. C. R. R. of N. J., 48 I. C. C. 611, 612; Romann & Bush Iron & Coke Co. v. C. & O. Ry., 49 I. C. C. 338; Proposed Increases in New England, 49 I. C. C. 421, 434; Morgantown & Kingwood Divisions, 49 I. C. C. 540, 548; Mount Pleasant Fertilizer Co. v. L. & N. R. R., 50 I. C. C. 258; Chestnut Ridge Ry. Co. v. United States, 248 Fed. 791, 796; Midway Co-op. Elevator Co. v. Great Northern Ry., (N. Dak., 1918), 169 N. W. 494, 496; Manufacturers' Ry. Co. v. United States, 38 Sup. Ct. 383; Eastbound Transcontinental Canned Goods (No. 2), 50 I. C. C. 62, 66; Memphis Freight Bureau v. St. L. & S. F. R. R., 50 I. C. C. 345, 348; Hadmon & Co. v. N. Y. N. H. & H. R. R., 50 I. C. C. 455, 456; Colonial Nav. Co. v. N. Y. N. H. & H. R. R., 50 I. C. C. 625, 628, 630; Private Wire Contract, 50 I. C. C. 731, 761; Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R., 51 I. C. C. 635, 639, 653; United States v. S. V. Ry. Co., 53 I. C. C. 607, 615; Nashville Traffic Bureau v. L. & N., 53 I. C. C. 37; Swift & Co. v. Director General, 55 I. C. C. 324; Fitz v. N. C. O. Ry., 55 I. C. C. 398; Wright Tie Co. v. B. S. W. R. R. Co., 57 I. C. C. 286, 288; Arlington Heights Freight Exchange v. S. P. Co., 57 I. C. C. 580, 583; Anaconda Copper Mining Co. v. Director General, 57 I. C. C. 723, 724; Pittsburgh & West Virginia Ry. v. P. & L. E., 61 I. C. C. 272, 276; New England Divisions, 62 I. C. C. 513, 516, 560; Interstate Cotton Seed Crushers Asso. v. Director General, 61 I. C. C. 1, 2; Intermediate Rate Asso. v. Director General, 61 I. C. C. 226, 243; P. & W. V. Ry. Co., v. P. & L. E. R. R. Co., 61 I. C. C. 272, 276; Rates on Grain, Grain Products and Hay, 64 I. C. C. 85, 98; Swift & Co. v. Director General, as Agent, 63 I. C. C. 389, 390; International Nickel Co. v. Director General, as Agent, 66 I. C. C. 627, 629; Village of Hubbard, Ohio v. United States, 278 Fed. 754; Kansas Board of Trade v. A. T. & S. F. Ry. Company, 69 I. C. C. 185, 191; Trunk Line and Ex-Lake Iron Ore Rates, 69 I. C. C. 580, 589, 611; Rules for storing and sacking Cement, 78 I. C. C. 693, 698; Southeastern Express Co. v. Amer. Ry. Exp. Co., 81 I. C. C. 247, 249; Corrona Coal Co. v. Secretary of War, 69 I. C. C. 389, 391.

II. PRIMARY JURISDICTION.

§2. In General.

See Actions at Law; Courts §7.

IMPORTANT CASES SINCE 1908

(a) The reasonableness of a published rate is a question for the Commission and not for the courts. While that rate stands in the published tariffs of the carriers, it is the only legal rate, and binds shipper and carrier alike. The regulating statute on this point is explicit, and neither party can avoid its provisions. Hocking Valley Ry. Co. v. Lackawanna Coal & L. Co., 224 Fed. 930, 932.

(b) Transportation Act of 1920, § 206a, does not require that claims arising out of federal control, or which prior to such control, an action might have been brought against the carrier, without first resorting to the Interstate Commerce Commission under subdivision "c," before action may be brought thereon. Collins Co. v. Davis, 283 Fed. 837.

(c) A report or an opinion of the Interstate Commerce Commission, that existing rates are unreasonable, without an order to change them, neither authorizes

nor permits a departure therefrom. North American Co. v. St. Louis & S. F. R. Co., 288 Fed. 612.

ALL OTHER CITATIONS

L. & N. R. R. v. Crook Brewing Co., 223 U. S. 70, 83, 32 Sup. Ct. 189, 56 L. ed. 355; Langdon v. Penn. R. R. Co., 186 Fed. 237, 239; Morrisdale Coal Co. v. Penn. R. R. Co., 183 Fed. 929, 936; Mitchell Coal & Coke Co. v. Penn. R. R. Co., 183 Fed. 908, 909; Washer Grain Co. v. M. P. Ry. Co., 15 I. C. C. 147, 156; A. T. & S. F. Ry. Co. v. the Superior Refining Co., 83 Kan. 732, 734, 112 P. 604; M. K. & T. Ry. Co. v. New Ear Milling Co., 80 Kan. 141, 144, 101 P. 1011; Starks Co. v. Grand Rapids & I. Ry. Co., (Mich. 1911), 131 N. W. 143, 145; Erie R. R. Co. v. Wanaque Lumber Co. 75 N. J. L. 878, 881, 69 A. 168; Greenwaol v. Weir, 130 App. Div. 696, 701, 115 N. Y. Supp. 311; B. & O. R. R. Co. v. La Due, 128 App. Div. 594, 596, 112 N. Y. Supp. 964; A. T. & S. F. Ry. Co. v. Foster Lumber Co., (Okla. 1911), 122 P. 139; Oregon R. & Nav. Co. v. Coolidge (Ore. 1911), 116 P. 93, 95; Hardaway v. Southern Ry. Co. (S. C. 1912), 73 S. E. 1020, 1023; Great Northern Ry. Co. (S. D., 1910), 125 N. W. 644, 645; Robinson v. B. & O. R. R. Co., 64 W. Va. 406, 409, 410, 63 S. E. 323; Mitchell Coal & Coke Co. v. Penn. R. R. Co., 33 Sup. Ct. 916, 920; 230 U. S. 247; Morrisdale Coal Co. v. Pennsylvania R. Co., 33 Sup. Ct. 938, 941; 230 U. S. 304; National Pole Co. v. C. & N. W. Ry. Co., 200 Fed. 185, 188; Jacoby v. Pennsylvania R. R. Co., 200 Fed. 989, 996; American Sugar Refining Co. v. D. L. & W. Ry. Co., 200 Fed. 652, 654, 655; L. V. R. R. Co. v. U. S., 204 Fed. 986, 990, 995; Corporation Commission of Oklahoma v. A. T. & S. F. Ry. Co., 25 I. C. C. 120, 121; Homer v. O. S. L. R. R. Co., (Utah, 1912), 128 P. 522, 528; F. E. C. Ry. Co. v. United States, 34 Sup. Ct. 867, 873, 234 U. S. —, 58 L. ed. —, reversing 200 Fed. 797, refusing to enjoin the Commission's order in 17 I. C. C. 552; T. & P. Ry. Co. v. American Tie & T. Co., 34 Sup. Ct. 885, 889, 234 U. S. —, 58 L. ed. —; Keogh v. Chicago & N. W. R. Co., 43 Sup. Ct. 47; Geraty v. A. C. L. R. R. Co., 211 Fed. 227, 230; St. L. S. W. Ry. Co. v. S. Samuels & Co., 211 Fed. 588, 593; Coal Rates from Oak Hills, Colo., 30 I. C. C. 505, 508; Hocking Valley R. R. Co. v. New York Coal Co., 217 Fed. 727, 735; L. & N. R. R. Co. v. United States (Tenn., 1914), 216 Fed. 673, 680; L. & N. R. R, Co. v. Ohio Valley Tie Co. (Ky. 1914), 170 S. W. 633, 642; So. Pac. Co. v. Frye & Bruhn (Wash., 1914), 143 Pac. 163, 166; Min. Co., Sup. Ct. 896, 900; 238 U. S. 59 L. ed; Montgomery v. Chicago B. & Q. R. Co., 228 Fed. 616, 619; St. Louis Southwestern Ry. Co. v. United States, 234 Fed. 668, 682; Heid Bros. v. E. P. & N. E. R. R., 55 I. C. C. 416; Anderson v. Chicago, M. & St. P. Ry. Co., (Mich. 1919), 175 N. W. 246; G. B. Markle Co. v. Lehigh Valley R. Co., 271 Fed. 989, 993; Davis v. Age-Herald Pub. Co., 293 Fed. 591.

§3. Finality of Findings.

See Adjacent Foreign Country III; Allowances §3; Courts §2; Discrimination; Procedure Before Commission §11.

CASES 1887-1908

(a) The Interstate Commerce Commission is charged with the duty of investigating and reporting upon complaints; and the facts found or reported by it are only given the force and weight of prima facie evidence in such judicial proceedings as may thereafter be had for the enforcement of its recommendation or order. Kentucky & I. Bridge Co. v. Louisville & N. R. Co., (C. C. D. Ky.), 2 I. C. R. 351.

(b) The final judgment in a suit or proceeding before the Interstate Commerce Commission, unreversed and remaining of record, in full force and effect, is a bar to an action in the United States circuit court brought to recover damages alleged to be sustained by the plaintiffs from the same acts of infringement and violation of the provisions of the Act of Congress entitled an Act to Regulate Commerce, approved the second day of March, 1889, as they complained of in their statement and declaration in that case. (Section 9 of the Interstate Commerce Act cited.) Riddle Dean & Co. v. N. Y. L. E. & W. R. Co., 3 I. C. R. 230.

(c) The provision of the Interstate Commerce Act, that the findings of fact of the Commission shall be prima facie evidence of the matters therein stated, does not make them nonconclusive in proceedings before the court to enforce the order of the Commission; but the court must consider all evidence submitted, and base its judgment thereon. Interstate Commerce Commission v. Atchison, T. & S. F. R. Co., (C. C. D. Cal.), 4 I. C. R. 323.

(d) An order made by the Commission is essentially an administrative order, and is not final or conclusive in the sense of a court judgment or decree. And an order of the United States circuit court, enforcing an order of the Commission, does not change its character or make it a final judgment. Interstate Commerce Commission v. L. & N. R. Co., 5 I. C. R. 656.

IMPORTANT CASES SINCE 1908

(e) The courts have repeatedly held that in so far as rulings of the Commission are administrative they may be availed of by any person in a position to do so. Plymouth Coal Co. v. L. V. R. R., 36 I. C. C. 143, 144.

(f) It has been settled by repeated decisions of the Supreme Court that findings of fact by the Commission are always prima facie correct and in most instances conclusively so. Louisville & N. R. Co. v. United States, 225 Fed. 571.

(g) All presumptions are in favor of a finding of the Interstate Commerce Commission, made in the exercise of its especial functions and after full investigation, that a rate in force is not so low as to be unremunerative and that a proposed increase is not justified; but the Commission cannot condemn a rate without a finding based on substantial evidence that it is unjust, unreasonable or discriminatory. St. Louis Southwestern Ry. Co. v. United States, 234 Fed. 668.

(h) Under the express provisions of the Interstate Commerce Act, § 16, the findings and order of the Interstate Commerce Commission are prima facie evidence of the facts therein stated, in an action on a reparation order of the Commission. Pennsylvania R. Co. v. Weber, 42 Sup. Ct. 18.

(i) As to administrative orders operating in futuro, the Interstate Commerce Commission's findings of fact are conclusive, subject to certain qualifications, and a finding that discrimination is unjust is ordinarily a finding of fact. Central R. Co. of New Jersey v. United States, 42 Sup. Ct. 80.

(j) Proceedings before the Interstate Commerce Commission on complaint respecting rates filed by carriers, in which the Commission, after investigation and hearings, approved the rates, settled the questions of their reasonableness and nondiscriminatory character. Keogh v. Chicago & N. W. Ry. Co., 43 Sup. Ct. 47.

ALL OTHER CITATIONS

I. C. C. v. U. P. R. R. Co., 222 U. S. 541, 747, 32 Sup. Ct. 108, 56 L. ed. 308; S. P. Co. v. I. C. C. 219 U. S. 433, 450, 31 Sup. Ct. 288, 55 L. ed. 283; N. & W. Ry. Co. v. U. S. 195 Fed. 953, 959; City of Spokane v. N. P. Ry. Co., 21 I. C. C. 400, 412; In Re Advances of Rates, Western Case, 20 I. C. C. 307, 317; Gund & Co. v. C. B. & Q. R. R. Co., 18 I. C. C. 364, 366; I. C. C. v. L. & N. R. R. Co., 33 Sup. Ct. 185, 187; 227 U. S. 88; Mitchell Coal & Coke Co. v. Penn. R. R. Co., 33 Sup. Ct. 916, 921; 230 U. S. 247; L. V. R. R. Co. v. U. S., 204 Fed. 986, 991, 993; Lehigh Valley R. R. Co. v. Clark, 207 Fed. 717, 721; L. & P. Ry. Co. v. United States, 209 Fed. 244, 251, 252; N. Y. Cent. & H. Ry. Co. v. General Electric Co., 146 N. Y. Sup. 322, 335; Clark Bros. Coal Mining Co. v. Pennsylvania Ry. Co. (Pa. 1913), 88 Atl. 754, 761; Interstate Com. Com. v. A. T. & S. F. Ry. Co., 34 Sup. Ct. 814, 819; 234 U. S. —; 58 L. ed. —; L. & N. R. R. Co. v. United States, 218 Fed. 89, 90; Zoller Hop Co. v. So. Pac. Co., 143 Pac. 931, 935; U. S. v. L. & N. R. R. Co., Sup. Ct. Rep. 35, 113, 114;; 235 U. S. 314; 236 U. S. 318; 59 L. ed.; L. & N. R. R. Co. v. United States, 216 Fed. 673, 681, 682, 683; St. L. I. M. & S. Ry. Co. v. U. S., 217 Fed. 80, 82; P. & R. Ry. Co. v. U. S., 219 Fed. 989, 995, 996; Louisville & N. R. Co. v. United States, 225 Fed. 571, 582; (I. C. C. v. Illinois Central Ry. Co., 215 U. S. 452, 30 Sup. Ct. 155, 54 L. ed. 280; Baltimore & Ohio R. Co. v. United States ex rel. Pitcairn Coal Co., 215 U. S. 481, 30 Sup. Ct. 164, 54 L. ed. 292; Pennsylvania Co. v. United States, 236 U. S. 351, 361, 35 Sup. Ct. 370, 59 L. ed. 616). Pennsylvania R. Co. v. United States, 227 Fed. 911, 915, 916; McLean Lumber Co. v. United States, 237 Fed. 460; Mfrs. Ry. Co. v. United States, 38 Sup. Ct. 383; City of New York v. United States, et al, 272 Fed. 768.

III. OVER PROCEDURE

§3¼. In General.

See Procedure Before Commission.

CASES 1887-1908

(a) The Commission having entered upon inquiry and investigation as to the reasonableness of transportation rates on food products and given notice of the time and place of taking testimony and afforded opportunity for calling and cross-examination of witnesses: HELD, That such proceeding was a substantial

compliance with the Statute. Rates & Charges on Food Products, 3 I. C. R. 151.

(b) While the investigation and report of the Interstate Commerce Commission and its order do not constitute a judicial proceeding, it was the intention of Congress that the procedure should substantially conform to that before a court charged with the duty of finding the facts and giving judgment thereon, or to the investigation or report of a referee or a special master in chancery passing upon both facts and law. Interstate Commerce Commission v. Louisville & N. R. Co. (C. C. M. D. Tenn.), 5 I. C. R. 656.

§3½. Conference Rulings.

IMPORTANT CASES SINCE 1908

(a) The conference rulings of the Interstate Commerce Commission respecting the construction of statutes regulating commerce, though not conclusive, are entitled to great weight and should not be lightly overruled. Chicago, G. W. Ry. v. Postal Telegraph-Cable Co., 245 Fed. 592.

§4. Examiners.

ALL CITATIONS

Goodrich Transit Co. v. I. C. C., 190 Fed. 943, 965; United States v. N. C. & St. L. Ry. (Tenn., 1914), 217 Fed. 260, 264; U. S. V. L. & N. R. Co., 35 Sup. Ct. 363, 366, 368, 369; 235 U. S. 314; 236 U. S. 318; 59 L. ed.

§5. Orders.

See Advanced Rates §21½; Allowances §3; Courts; Long and Short Hauls §11; Procedure Before Commission IV.

CASES 1887-1908

(a) When applied to by petition the Commission must investigate matters complained of and must, to enforce the act, make investigations and prosecute inquiries instituted on its own motion. On making any investigation the Commission is required to make a report in writing of its recommendations, conclusions, and findings of fact on which its conclusions are based, which recommendations and conclusions, if not complied with, can only be enforced through the courts, after trial, in accordance with established procedure. In such trial the facts found by the Commission, in conformity with the statute, have legal effect and are prima facie evidence; but the recommendations, conclusions and orders of the Commission are of no binding force in the courts. In the matter of alleged excessive freight rates and charges on food products. 3 I. C. C. 151, 153.

(b) It is not sufficient for the Interstate Commerce Commission in a report of its findings of fact and conclusions, to make statements in such a general way as not to disclose its view upon particular phases of the evidence, or its conclusions of law upon facts found with reference to the particular issues in the case, and make up the report of mere conclusions. Interstate Commerce Commission v. Louisville & N. R. Co. (C. C. M. D. Tenn.), 5 I. C. R. 656.

(c) It is not sufficient for the report of the Commission to be made up of mere conclusions with respect either to law or fact. It should make suitable reference to the evidence where there is a conflict in the proof, and show how the Commission settles the disputed fact; or if the evidence in regard to any fact is undisputed, it should be so stated by the Commission. Interstate Commerce Commission v. L. & N. R. Co., 5 I. C. R. 656.

(d) The fact that the Commission is composed of men of ability and experience, selected with reference to their particular qualifications therefor, and whose entire time is devoted to questions arising under the act, gives to its findings and opinion great weight. But, in order that the finding and opinion of the Commission shall have the value intended, it should conform to the purpose of Congress in requiring such proceedings. Its opinion or report should show what the issues in the case are, and what facts it finds in regard to such issues. Interstate Commerce Commission v. L. & N. R. Co., 5 I. C. R. 656.

(e) A final order by the Interstate Commerce Commission promptly obeyed by the carrier will not be amended, several years after its rendition, as to reparation for damages resulting from unlawful practices, so as to subject the carrier to further requirements in favor of the complainants. Rice v. Western N. Y. & P. R. Co., 6 I. C. C. 455.

IMPORTANT CASES SINCE 1908

(f) Orders with respect to rates are not conclusive beyond a period of two years. National Hay Ass'n v. M. C. R. R. Co., 19 I. C. C. 34, 37.

(g) The Commission has complete power to suspend or modify its orders. Loftus v. Pullman Co., 19 I. C. C. 102, 104.

(h) The Interstate Commerce Commission is not required to make formal marked and numbered findings, but its findings may be contained in the colloquial statements of an opinion. Lehigh Valley R. Co. v. American Hay Co., 219 Fed. 539, 540.

(i) A provision in an order made by the Interstate Commerce Commission June 29, 1908, relating to payments by a railroad company to an elevator company for services in elevating grain, which forbade payment for elevation of grain not reshipped within 10 days, etc., HELD part of the Commission's administrative order, and cannot, in view of the decisions of the courts, be treated as a part of a previous definition of elevation made in an attempt by the Commission to prevent rebating under a contract between the parties; hence the 10-day limitation expired on the expiration of the order affecting payments. Omaha Elevator Co. v. Union Pac. R. Co., 249 Fed. 827.

(j) The Interstate Commerce Commission HELD to have power to amend an order previously made, to remove ambiguity, without notice to a party, where the subject-matter of the amendment was within the original inquiry on which evidence was introduced at the hearing. Pennsylvania R. Co. v. United States, (Pa. 1923.), 288 Fed. 88.

(k) Orders of the Interstate Commerce Commission on the subject of rates are quasi judicial in character and are void, if made without notice. Pennsylvania R. Co. United States, (Pa. 1923), 288 Fed. 88.

(l) A report of the Interstate Commerce Commission need only state the ultimate facts rather than the evidentiary facts, and where in a report awarding reparation for discrimination in furnishing coal cars the report of the Commission showed: (1) the relation of the parties as shipper and carrier in interstate commerce; (2) the character and amount of the traffic out of which the claims arose; (3) the rates paid by the shipper for the service rendered and whether they were according to the established tariff; (4) whether and in what way unjust discrimination was practiced against the shipper from November 1, 1900, to August 1, 1901; (5) whether, if there was unjust discrimination, the shipper was injured thereby, and, if so, the amount of his damages; (6) whether the rate collected from the shipper from August 1, 1901, to July 17, 1907, was excessive and unreasonable, and, if so, what would have been a reasonable rate for the service; and (7) whether, if the rate was excessive and unreasonable, the shipper was injured thereby, and, the amount of his damages, such report was a compliance with the requirements of the Interstate Commerce Act, since such findings were easily separated from other matter contained in the report. Meeker v. Lehigh Valley R. Co., 35 Sup. Ct. Rep. 328, 335; 236 U. S. 412, 434; 59 L. ed.

(m) Where the finding and order of the Interstate Commerce Commission in a reparation suit contains every fact essential to a recovery in a suit brought in a United States district court to enforce the order except the service of the order itself, and the refusal of the carrier to comply with it, such findings and order are admissible in evidence although they contain some irrelevant matter. Meeker v. Lehigh Valley R. R., 35 Sup. Ct., 337, 339; 236 U. S. 412, 434, 59 L. ed.

(n) If the order made by the Commission does not contravene any constitutional limitation, and is within the constitutional and statutory authority of that body, and not unsupported by testimony, it cannot be set aside by the courts, as it is only the exercise of an authority which the law vests in the Commission. Pennsylvania Co. v. United States, 35 Sup. Ct. Rep. 370, 373; 236 U. S. 351, 59 L. ed.

ALL OTHER CITATIONS

Rates from Walsenburg Coal Fields, 26 I. C. C. 85, 86; Meeker v. Lehigh Valley R. R., 35 Sup. Ct., 337, 339; 236 U. S. 412, 434, 59 L. ed.; Arlington Heights Fruit Exchange v. S. P. Co., 39 I. C. C. 83, 88, 93; Stonega Coke & Coal Co v. L. & N. R. R. Co., 39 I. C. C. 523, 535; Traffic Bureau, Sioux City Commercial Club v. Am. Exp. Co., 39 I. C. C. 703, 723; Nashville Traffic Bureau v. L. & N. R. R. Co., 53 I. C. C. 37, 38; R. R. Com'rs. of Iowa v. M. & St. L. R. R. Co., 53 I. C. C. 484, 489; City of Springfield, Tenn. v. L. & N., 53 I. C. C. 603, 605; Dodson & Co. (Inc.) v. C. R. R. C. of N. J., 57 I. C. C., 381, 383; Salt from

Louisiana Mines to Chicago, 69 I. C. C. 312, 313.

§6. Witnesses and Papers.

See Immunity of Witness.

CASES 1887-1908

(a) The act makes it the duty of the Commission to execute and enforce the provisions of the act which require rates and charges to be reasonable. In the performance of this duty the Commission has authority to inquire into the management of the business of common carriers and to require the attendance of witnesses, the production of books and papers, tariffs and contracts relating to any matter under investigation. To enforce this authority in this respect the Commission must invoke the aid of a court of the United States. In the matter of alleged excessive freight rates and charges on food products, 3 I. C. C. 151, 152.

IMPORTANT CASES SINCE 1908

(b) Where the Commission has no power to regulate a witness to an investigation it cannot extend its jurisdiction by making such witness a party to the proceedings and serving it with notice. Ellis v. I. C. C., 35 Sup. Ct. Rep. 646, 647; 237 U. S. 434, 59 L. ed. 1036.

(c) The Interstate Commerce Act confers upon the Commission powers of investigation in very broad language and this court has refused by construction to limit it so far as the business of the carriers is concerned and their relation to the public. And it would seem to be a necessary deduction from the cases that the investigating and supervising powers of the Commission extend to all of the activities of carriers and to all sums expended by them which could affect in any way their benefit or burden as agents of the public. If it be grasped thoroughly and kept in attention that they are public agents, we have at least the principle which should determine judgment in particular instances of regulation or investigation; and it is not far from true—it may be it is entirely true, as said by the Commission—that "there can be nothing private or confidential in the activities and expenditures of a carrier engaged in interstate commerce." Turning to the specialties of the Interstate Commerce Act we find there that all charges and treatment of all passengers and property shall be just and reasonable, and there is a specific prohibition of preferences and discriminations in all the ways that they can be executed, with corresponding regulatory power in the Commission. And authority and means are given to enable it to perform its duty. By section 12 it is authorized to inquire into the management of the business of carriers and keep itself informed as to the manner and method in which the same is conducted, and has the right to obtain from the carriers full and complete information. It may (section 13) institute an inquiry of its own motion, and may (section 20) require detailed accounts of all the expenditures and revenues of carriers and a complete exhibit of their financial operations and prescribe the forms of accounts, records and memoranda to be kept. And it is required to report to Congress all data collected by it. It would seem to be an idle work to point out the complete comprehensiveness of the language of these sections and we are not disposed to spend any time to argue that it necessarily includes the power to inquire into expenditures and their proper assignments in the accounts, and the questions under review, we have seen, go no further. They are incidental to an investigation as to the "manner and method" (section 12) in which the business of the carriers is conducted; they are in requisition of a detailed account of their expenditures and revenues and an exhibit of their financial operations (section 20), and the answers to them may be valuable as information in Congress (section 21). A limitation, however, is deduced from section 13. It is said to be confined to cases where an inquiry is instituted "as to any matter or thing concerning which a complaint is authorized to be made, or concerning which any question may arise under any provisions" of the act "or relating to the enforcement of any of the provisions" of the act. In other words, that the inquiry is determined by the manner of procedure. The objection overlooks the practical and vigilant function of the Commission. To sustain it appellant seems to urge that there must be put into words by some complainant or by the Commission, if it move of itself, some definite charge of evil or abuse, and put into expression some definite remedy, and that an inquiry must not transcend either charge or remedy. To so transcend, appellant urges, would be an exercise of autocratic power and is condemned in Harriman v. Interstate

Commerce Commission, 211 U. S. 407, 29 Sup. Ct. 115, 53 L. ed. 253. Appellant presses that case beyond its principle. And we may observe that section 13 has been amended and broadened since the decision of that case. The inquiry in the present case is more immediate to the function of the Commission than the inquiry in that and comes within Interstate Commerce Commission v. Chicago, R. I. & P. Ry., supra., where it was said, at page 103 of 218 U. S. at page 656 of 30 Sup. St. (54 L. ed. 946) "The outlook of the Commission and its powers must be greater than the interest of the railroads or of that which may effect those interests. It must be as comprehensive as the interest of the whole country. If the problems which are presented to it therefore are complex and difficult, the means of solving them are as great and adequate as can be provided." And they must necessarily be expressed in generalities. A precise specification of powers might work a limitation and all not enumerated be asserted to be withheld. Smith v. I. C. C., 38 Sup. Ct. 30, 32, 33, 245 U. S. 33, 62 L. Ed. 135.

ALL OTHER CITATIONS

Harriman v. I. C. C., 211 U. S. 407, 419, 29 Sup. Ct. 115, 53 L. Ed. 253; U. S. v. Skinner, 218 Fed. 870, 872, 873; Pere Marquette R. R., and C., H. & D. Ry., 44 I. C. C. 1, 223.

§6½. Investigations in General.

See Advanced Rates §21; Allowances §1.

IMPORTANT CASES SINCE 1908

(a) The Act gives the Commission the power "to investigate matters complained of in such manner and by such means as it shall deem proper." Interstate Packing Co. v. C., M. & St. P. Ry. Co., 41 I. C. 396, 399.

(b) Under the Interstate Commerce Act, the Interstate Commerce Commission has power to institute and pursue an investigation concerning practices represented to be unduly preferential or prejudicial, even though arising on a division of joint rates, and to stop such practices when found by an order that will prevent their continuance. Chestnut Ridge Ry. Co. v. United States, 248 Fed. 791.

(c) But the Act does not require that some definite charge of evil or abuse and some definite remedy be put into words by some complainant, or by the Interstate Commerce Commission to authorize it to make an investigation as to whether expenditures by a railroad company in political activities and to suppress competition have been charged to operating or legal expenses. Smith v. I. C. C., 38 Sup. Ct. 30, 245 U. S. 33, 62 L. Ed. 135.

(d) The purpose of an investigation is the penetration of disguises or to form a definite estimate of any conduct of the carriers that may in any way affect their relation to the public. It cannot be assumed that an investigation will be instituted or conducted for any other purpose or in mere wanton meddling. Smith v. I. C. C., 38 Sup. Ct. 30, 33, 34, 245 U. S. 33, 62 L. Ed. 135.

ALL OTHER CITATIONS

Holmes & Hallowell Co. v. G. N. Ry. Co., 69 I. C. C. 11, 17; Owensboro Wheel Co. v. Director General 69 I. C. C. 503; Rates on Grain, Grain Products, and Hay, 80 I. C. C. 362, 365; New Mexico Central Ry. v. A., T. & S. F. R. Co., 81 I. C. C. 718, 722; United States v. L. & N. R. R. Co., 212 Fed. 486, 492.

IV. OVER RAILROADS

§6½a. In General.

IMPORTANT CASES SINCE 1908

(a) Undoubtedly the Commission has the right and duty, as occasion may require, to investigate and determine whether or not a carrier or a group of carriers is operated and managed efficiently and economically, in order that poor and inefficient management may not result in higher rates than would otherwise be necessary. But while it may thus take the character of management and operation into consideration in fixing the level of rates, it is unable to find any provision of the act, which authorizes it by order to require a carrier to conduct its affairs along lines which may seem to the Commission more efficient and economical than those now followed. New Mexico Central Ry. v. A. T. & S. F. R. Co., 81 I. C. C. 718, 722.

§6¾. Documents, Correspondence and Reports.

See Correspondence.

CASES 1887-1908

(a) The Interstate Commerce Commission has authority to inquire into the management of the business of common carriers, and to require the attendance and testimony of witnesses, the produc-

tion of books and papers, tariffs and contracts, relating to any matter under investigation. To enforce its authority in this respect the Commission must invoke the aid of a court of the United States. Re Rates & Charges on Food Products (Com.), 3 I. C. R. 151.

(b) A railroad company whose line is entirely within the lines of a single state, and which never issues a bill of lading to any point beyond its own line, and receives no freight under through bills of lading, although it pays advance charges when necessary and collects its own charges from the company which takes interstate freight to its final destination, is not within the Interstate Commerce Act, and cannot be compelled to make the report required by the supplementary act of August 7, 1888, §6. The court says: I have no doubt that Congress would have the power to amend the act so as to require them and other companies occupying like relations to file reports, inasmuch as they all carry freight destined for points beyond the state in which the road is located. But the act is not so framed as to include the defendant company, and while it is a proper act of courtesy for the defendant company to furnish annual copies of its report to the state commissioner of roads and telegraphs it cannot be forced to make such reports. The provisions of the supplemental act is to be strictly construed for the reason that § 6 enacts that the failure or refusal to make report shall operate as a forfeiture in each case in a sum of not less than $1,000 nor more than $5,000. Interstate Commerce Commission v. Bellaire, Zanesville & Cincinnati Ry. Co., 7 I. C. C. App. XXXV.

IMPORTANT CASES SINCE 1908

(c) The Interstate Commerce Commission cannot conduct a fishing expedition into the affairs of a stranger to an investigation proceeding for the chance that something discreditable may be disclosed. Ellis v. Interstate Com. Com., 35 Sup. Ct. 645, 647; 237 U. S. 434, 59 L. ed. 1036.

ALL OTHER CITATIONS

United States v. N. C. & St. L. Ry., 217 Fed. 260, 263; U. S. v. L. & N. R. Co., 35 Sup. Ct., 363, 369; 235 U. S. 314; 236 U. S. 318; 59 L. ed.

§7. Capitalization.

See Evidence §7; Express Companies §24; Reasonableness of Rates §5.

ALL CITATIONS

Advances in Rates—Western Case, 20 I. C. C. 307, 334; Morgan Grain Co. v. A. C. L. R. R. Co., 19 I. C. C. 460, 471.

§8. Physical Valuation.

See Physical Valuation.

IMPORTANT CASES SINCE 1908

(a) Under an order of the Interstate Commerce Commission, providing that the data on which the Commission based its tentative finding of the valuation of a carrier's property would not be open for inspection, unless and until offered in evidence either in a valuation hearing under Interstate Commerce Act, §19a, as added by Act March 1, 1913 (Comp. St. §8591), or in a court of competent jurisdiction, the carrier is not denied an opportunity to offer the data in evidence at the hearing, if it desires to do so. United States v. Interstate Commerce Commission, 290 Fed. 264.

(b) Under Act March 1, 1913, adding section 19a to the Interstate Commerce Act (Comp. St. §8591), requiring the Commission to fix the value of the property used by common carriers, and providing that after a tentative valuation is fixed the Commission shall give notice to the carrier affected and to other persons, and if protest is made, afford a hearing before fixing the final valuation, the Commission acts only as an appraiser in fixing the tentative value, and can base its finding on ex parte hearings, or on information obtained by it with other methods. United States v. Interstate Commerce Commission 290 Fed. 264.

(c) The construction by the Interstate Commerce Commission of Interstate Commerce Act, §19a, as added by Act March 1, 1913 (Comp. St. §8591), Providing that, unless otherwise ordered by the Commission, with reasons therefor, the records and data of the Commission shall be open to the inspection and examination of the public, as permitting the Commission to forbid inspection of the data by the carrier interested, as well as by the public, unless it is offered in evidence, is a reasonable construction by the Commission, in the exercise of discretion committed to it, and therefore cannot be controlled by mandamus. United States v. Interstate Commerce Commission 290 Fed. 264.

ALL OTHER CITATIONS

Case, 20 I. C. C. 243, 256; Increased In Re Advances in Rates—Eastern Rates, 1920, 58 I. C. C. 220, 226.

§8¼. Earnings.

See Government Guaranty.

IMPORTANT CASES SINCE 1908

(a) The duty cast upon the Commission by section 15a is continuing and looks to the future. It does not constitute a guaranty to the carriers, nor is the obligation cumulative. The Commission is not restricted by past or present statistics of operations and earnings. These are serviceable only as they illuminate the future. What is contemplated by the law is that in this exercise of rate-making power the result shall reflect the Commission's best judgment as to the basis which may reasonably be expected for the future to yield the prescribed return. Rates on Grain, Grain Products, and Hay, 64 I. C. C. 85, 99.

(b) The determination of what will constitute a fair return under paragraph 3 of the act, in judgment of the Commission, is a function distinct from that of initiating and adjusting rates under paragraph 2 of that section. Reduced rates 1922, 68 I. C. C. 676, 680.

(c) In the recapture provisions of the act Congress recognized that uniform rates on competitive traffic which would adequately sustain all the carriers would produce substantially and unreasonably more than a fair return for some carriers. The Commission should not take the few, and the highest type of their securities, as the basis for determining what shall be a fair return for all. It can hardly be disputed that the carriers of this country should not continue to provide for all needed capital by successive bond issues. Reduced Rates 1922, 68 I. C. C. 676, 681.

V. OVER RATES.

ALL CITATIONS

Reduced rates, 1922, 68 I. C. C. 730.

§8½. In General.

CASES 1887-1908

(a) But the Commission has power to regulate fares and freights for transportation between different States. Phila. etc. Steamship Co. v. Pennsylvania (U. S. Sup. Ct.), 1 I. C. R. 308.

(ab) The Commission has not the power to make rates generally, but only to determine whether rates imposed by the railroads are in conflict with the statute. Thatcher v. Fitchburg R. R. Co. 1 I. C. C. 356, 357.

(b) The Commission has no power to make rates generally, but only to determine whether rates imposed by railroads are in conflict with statute. Thatcher v. Fitchburg R. R. Co., 1 I. C. R. 365.

(c) The Commission has no power to compel a railroad company to increase its rates which are supposed to be so low as to be ruinous to itself or to its rivals. Re Chicago, St. Paul & Kansas City R. Co., 2 I. C. R. 137.

(d) The Act to Regulate Commerce makes it the duty of the Interstate Commerce Commission to execute and enforce the provisions of the Act which require rates and charges to be reasonable. In the performance of this duty the Commission has authority to inquire into the management of the business of common carriers and to require the attendance and testimony of witnesses, the production of books and papers, tariffs and contracts relating to any matter under investigation. To enforce its authority in this respect the Commission must invoke the aid of a court of the United States. Rates & Charges on Food Products v. 3 I. C. R. 151.

(e) The Interstate Commerce Commission has the duty of determining what are reasonable and unreasonable rates. Coxe v. Lehigh Valley R. Co. (Com.), 3 I. C. R. 460.

(f) The Act to Regulate Commerce declares every unreasonable charge unlawful, requires the Commission to enforce its provisions and confers the power, and imposes on the Commission the duty, of determining what are reasonable rates, as well as what are unreasonable. Cox Bros. & Co. v. Lehigh Valley R. Co., 3 I. C. R. 460.

(g) If the duty of the Commission in respect to unjust and unlawful rates ends when it has been convinced that rates are unreasonable, and so decided them to be, and for any reason the Commission may not determine what are, as well as what are not, reasonable, the regulation provided by the statute begins with complaint and ends in confusion. Coxe Bros. & Co. v. L. V. R. R. Co., 3 I. C. C. 460, 478.

(h) The power and duty of the Commission to fix maximum rates in cases of complaints against rates as unjust, excessive and unreasonable, re-affirmed. Murphy, Wasey & Co. v. Wabash R. Co., 3 I. C. R. 725.

(i) The Interstate Commerce Com-

mission is not restricted to finding that an existing rate is unreasonable and forbidding its continuance, but has the further authority to ascertain, order, and enforce a rate that is reasonable. Perry v. Florida C. & P. R. Co. (Com.), 3 I. C. R. 740.

(j) The Northern Pacific Railroad Company is not exempt under its charter from the authority to regulate rates conferred on the Commission by the Act to Regulate Commerce. Raworth v. Northern P. R. Co. (Com.), 3 I. C. R. 857.

(k) The power of the Interstate Commerce Commission to pass upon the reasonableness of existing rates of carriers does not necessarily imply a right on the part of the Commision to prescribe rates for carriers, but the function of the Commission is to consider and give proper weight to the facts on which the reasonableness of a rate in a given case depends. Cincinnati, N. O. & T. P. R. Co. v. Interstate Commerce Commission (U. S. Sup.), 5 I. C. R. 391.

(l) The Commission is not authorized itself to fix rates. The power vested in the Commission to pass upon the reasonableness of existing rates does not imply authority to prescribe or prejudice reasonable rates in advance of an issue being made and its findings and consideration of facts in the particular case. C., N. O. & T. P. R. Co. v. Inters. Com. Commission, 5 I. C. R. 391.

(m) The Interstate Commerce Commission has no power to fix maximum rates for transportation under the provision of the act to regulate commerce empowering them to pass on the reasonableness of existing rates. Interstate Commerce Commission v. Lehigh Valley R. Co. (C. C. E. D. Pa.), 5 I. C. R., 643.

(n) The Commission is not clothed with the power to fix rates. Interstate Commerce Commission v. Lehigh V. R. Co., 5 I. C. R. 643.

(o) The Interstate Commerce Commission has no power under the act to regulate commerce to fix rates to be charged by carriers. Interstate Commerce Commission v. Alabama Midland R. Co. (C. C. App. 5th C.) 685; Interstate Commerce Commission v. Northwestern R. Co. (C. C. D. S. C.), 5 I. C. R. 650.

(p) The Commission is not warranted by the act of Congress to fix rates. Interstate Commerce Commission v. N. R. Co., 5 I. C. R. 650.

(q) The Commission has no power to make rates; and especially has the Commission no power to order that rates from a given point to one city shall bear a certain relation to the rates from the same point to another city. Interstate Commerce Commission v. L. & N. R. Co., 5 I. C. R. 656.

(r) If the Interstate Commerce Commission has power to make rates at all, a rate should not be made to a place dependent upon that to another, to be increased or diminished as the latter rate is changed. Interstate Commerce Commission v. Louisville & N. R. Co. (C. C. M. D. Tenn.), 5 I. C. R. 656.

(s) There is no provision in the act that expressly or by necessary implication confers upon the Commission power to fix rates. Interstate Commerce Commission v. Alabama M. R. Co., 5 I. C. R. 685.

(t) Where a complainant has invoked the aid of the law to secure what he, with the acquiescence of the carrier had previously obtained in apparent contravention of law, the carrier cannot plead violations of the law by complainant in bar of a decision on the merits, nor will the individual interests of the complainants be taken into consideration; but the Commission will examine the evidence and make such report thereon as, under the provisions of the law, the rights of other shippers and the public generally may require. Page v. Delaware, L. & W. R. Co., 6 I. C. C. 148.

(u) The Interstate Commerce Commission should, where the rates to a complaining town are asserted to be unjust on the ground that more favorable charges are allowed a competing locality, investigate the facts and circumstances affecting the transportation, and order such readjustment as seems to be required. Daniels v. Chicago, R. I. & P. R. Co., 6 I. C. C. 458.

(v) Under the act the Commission has continuing jurisdiction over the rates and practices of carriers subject to its provisions, and is not precluded from rehearing a particular case, and amending or modifying its original order therein, by the refusal of a Circuit Court of the United States to enforce such order against the carriers affecting thereby. Page v. D. L. & W. R. Co., 6 I. C. C. 548, 553.

(w) The Interstate Commerce Commission has no power to prescribe maximum rates to be charged by the carrier, but the Act to Regulate Commerce leaves common carriers free to fix their own charges, subject to the leading prohibitions that they shall not be unjust or unreasonable and shall not unjustly discriminate. Interstate Commerce Commission v. Cincinnati, New Orleans & Texas Pacific Ry. Co. et al, 7 I. C. C. L.

(x) Incorporating into the Interstate Commerce Act the common-law obligation resting upon a carrier to make all its charges reasonable and just, and directing the Commission to execute and enforce the provisions of the act, do not by implication carry to the Commission or invest it with power to exercise the legislative function of prescribing rates which shall control in the future. The Interstate Commerce Commission has no power to prescribe a tariff of rates which shall control in the future and therefore cannot invoke a judgment in mandamus from the courts to enforce any such tariff by it prescribed. Interstate Commerce Commission v. Cincinnati, New Orleans & Tex. Pacific Ry. Co., 7 I. C. C. App. LX.

(y) The important duties of the Interstate Commerce Commission in respect to railroad rates include the duty of inquiry as to the management of the business with the right to compel complete and full information concerning it and the duty of seeing that there is no violation of the long and short haul clause of the act or any prohibited discrimination, rebate, or other device to give undue preferences and also that the publicity required by § 6 is observed. The court says: The power of fixing rates under the Interstate Commerce Act is not to be determined by any mere considerations of omission or implication. The power to prescribe a tariff or rates for carriage by a common carrier is a legislative and not an administrative or judicial function. If Congress had intended to grant such a power to the Interstate Commerce Commission it cannot be doubted that it would have used language open to no misconstruction, but clear and direct. Interstate Commerce Commission v. Cincinnati, New Orleans & Tex. Pacific Ry. Co., 7 I. C. C. App. LV.

(z) Congress has not conferred upon the Interstate Commerce Commission the legislative power of prescribing rates either maximum or minimum or absolute, nor has it authorized the Commission to obtain from the courts a peremptory order that in the future the railroad companies should follow the rates which it has determined to have been in the past reasonable and just. Interstate Commerce Commission v. Alabama Midland Ry Co., 7 I. C. C., App. CIX.

(aa) Under the Act the Commission has no power to prescribe the tariff of rates which shall control in the future. Cary v. Eureka Springs R. Co., 7 I. C. C. 286, 319.

(bb) Under the law as construed by the court the Commission has power to say what in respect to the past was reasonable and just, but as to rates complained of as unreasonable, unjust and unlawful, and so found to be by the Commission, it can make no provision or order for their reduction which the courts are required to enforce or the carriers obliged to obey. Carey v. Eureka Springs R. Co., 7 I. C. C. 286, 321.

(cc) "Under the Interstate Commerce Act the Commission has no power to prescribe the tariff of rates which shall control in the future." Interstate Commerce Commission v. Cincinnati, N. O. & T. P. Co., 167 U. S. 479, 42 L. ed. — "The reasonableness of the rate in a given case depends on the facts, and the function of the Commission is to consider the facts and give them their proper weight." Cincinnati, N. O. & T. P. R. Co. v. Interstate Commerce Commission, 162 U. S. 184, 40 L. ed. 935, 5 Inters. Com. Rep. 391. Under the law as construed by the court the Commission has power to say what in respect to the past was reasonable and just, but as to rates complained of as unreasonable, unjust and unlawful, and so found to be by the Commission, it can make no provision or order for their reduction which the courts are required to enforce or the carriers obliged to obey. When rates are found to be unreasonable the Commission can declare them unlawful and recommend their reduction, and where, after investigation, rates of carriers complained of are found to have been in the past, and still to be, unjust, unreasonable and in violation of the statute, it is made the duty of the Commission, by section 15 of the Act to regulate commerce, to notify and require such carriers to cease and desist from such violations. Cary v. Eureka Springs R. Co., 7 I. C. C. 286.

(dd) Although the Act to Regulate Commerce requires that transportation charges shall be reasonable and just, and complainant prayed in his petition that defendants be ordered to establish and maintain such rate on coal in carloads from Cumberland, Md., to North Garden, Va., as should be deemed just, reasonable and lawful, the Act as recently interpreted by the courts makes no provision under which carriers can be ordered or required to establish or maintain any rate other than such rate of charges as any such carrier may fix and establish for itself. Montell v. Baltimore & Ohio R. Co., 7 I. C. C. 412, 430.

(ee) Wrongs caused by improperly adjusted rates over independent lines from competing cities to a common destination cannot be corrected without authority to prescribe both the maximum and the minimum rate, and the Commission is not empowered to do either. Savannah Bureau of Freight & Transportation v. C. & S. R. Co., 7 I. C. C. 458, 475.

(ff) Although carriers serving but one of two competing cities may, by reducing their rates to the city served by them prevent the correction of an unjust relation of rates to the two places from common points of supply, nevertheless it is the duty of the Commission to condemn such a relation of charges, and to indicate the basis upon which the rates should be readjusted. Chamber of Commerce of Milwaukee v. C. M. & St. P. R. Co., 7 I. C. C. 481, 510.

(gg) An order of the Interstate Commerce Commission forbidding carriers to charge any greater rates than fixed by such order is invalid, as the Commission has no power to fix rates. I. C. C. v. Northeastern R. R. Co. of S. Carolina, 8 I. C. C. App XXXV.

(hh) An order of the Interstate Commerce Commission fixing rates for the carriage of merchandise by railroads to a designated point is null and void. So an order of the Interstate Commerce Commission generally declaring the duty of railroad companies as defined by law, and prescribing the maximum rates which may be charged by the railroads for carriage to a certain point of freight not affected at coast and terminal points by competition of ocean carriers,—is void. Farmers' Loan & Trust Co. v. Northern Pacific R. R. Co., 8 I. C. C. App. XXXV.

(ii) The Supreme Court of the United States, while denying power in the Interstate Commerce Commission to enforce the provision of the Act to Regulate Commerce, § 1, that all rate charges "shall be reasonable and just," by orders prescribing reasonable maximum rates, expressly recognizes the authority and duty of the Commission to enforce §§ 2, 3 and 4 of the act. Phillips, Bailey & Co. v. Louisville & N. R. Co., 8 I. C. C. 93, 107.

(jj) The Commission has no power to fix rates for the future. Sprigg v. B. & O. R. Co., 8 I. C. C. 443, 452.

(kk) The Commission has no power to prescribe rates, maximum, minimum or absolute, but it may order the carriers to desist from the continuance of an unlawful practice. The Commission may therefore after investigation, find a particular rate to be unlawful and prohibit the exaction of that rate, or find the time allowed for loading or unloading unlawful or, in other words, unreasonably small, and forbid the charging of demurrage at the expiration of that time and before the expiration of a reasonable time. Pennsylvania State Millers' Asso. v. P. & R. R. Co., 8 I. C. C. 531, 558.

(ll) A decision of the Supreme Court sustaining the view of the Commission as to the illegality of certain terminal charges, but dismissing the proceeding on account of a subsequent reduction in the through rate, which had been made from certain territory, which reduction amounted to more than the terminal charges involved; and authorizing the Commission to commence proceedings to correct any unreasonableness in the rate resulting from the additional terminal charge as to any territory to which the reduction referred to did not apply,—does not estop the Commission from further proceeding and investigation as to the legality of a terminal charge for the future, without the institution of a new proceeding, as the Commission is not functus officio; and the mere use by the Supreme Court in its decree of the word "commencing," with reference to further proceedings, is not construed to require the formal institution of a new proceeding. The case will therefore stand reopened for further investigation and order, with leave to complainant to show to what territory the through rate reduction applied. Cattle Raisers' Asso. v. Chicago, B. & Q. R. Co., 10 I. C. C. 83.

(mm) The Commission can direct

only carriers to cease and desist from imposing rates now in effect; it has no power to prescribe the rate which shall be put in effect. Barrow v. Y. & M. V. R. Co., 10 I. C. C. 333, 336.

(nn) The Commission has no power to name a rate for the future, and its finding as to what rate would be reasonable is, therefore, only equivalent to a recommendation in that respect. Denison Light & Power Co. v. M. K. & T. R. Co., 10 I. C. C. 337, 341.

(oo) Under old law no power, under new law Commission may fix future rates. Cattle Raisers' Ass'n of Tex. v. M. K. & T. Ry. Co., 12 I. C. C. 1.

(pp) The Commission has no power to make rates generally, but only to determine whether rates imposed by railroads are in conflict with statute. Thatcher v. Fitchburg R. R. Co., 1 I. C. R. 356; Re Theatrical Rates,, 1 I. C. R. 18.

(qq) Where undue discrimination is not shown, the rates complained of can only be reduced by the Commission when in its opinion they are shown to be unreasonable in themselves. Commercial and Industrial Asso. of Union Springs, Ala. v. L. & N. R. R., 12 I. C. C. 372.

(rr) The Supreme Court has declared that the determination of a rate for the future, which is the function exercised by the Commission, is legislative rather than judicial. Cattle Raisers Asso. v. C. B. & Q. Ry., 12 I. C. C. 507, 514.

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(ss) Where a transportation service has been rendered for which no tariff authority exists and where the shipper has paid the sum demanded by the carrier for the service, the question as to what would have been a reasonable charge for the service is within jurisdiction of the Commission and that it can order the repayment of whatever the carrier has collected over and above such a reasonable charge. Sulzberger & Sons Co. v. M. St. P. & S. Ste. M. Ry., 40 I. C. C. 173, 174.

(tt) The Commission has not the power to require the railroads, in the face of varying trade conditions, to adjust their rate schedules in such manner as to insure to a market the continuance of a trade it has once enjoyed. Lake Cargo Coal Rates, 46 I. C. C. 159, 165.

(uu) In a general investigation the Commission has authority to establish just and reasonable rates and groupings throughout the territory involved. C. F. A. Territory Milk and Cream Rates, 46 I. C. C. 601, 615.

(vv) The Supreme Court has held that the Act of prescribing a rate for the future is legislative, while the Act of awarding a sum of money in reparation of damage sustained because of a violation of the law, is judicial in its nature. Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R., 51 I. C. C. 635, 638.

(ww) Whatever may be the limitation upon the exercise of a sound discretion or a reasonable flexibility of judgment in prescribing maximum rates for the future, the Commission holds, as has frequently been held, that "The Commission is not justified in awarding damages except on a basis as certain and definite in law and in fact as is essential to the support of a final judgment or decree requiring the payment of a definite sum of money by one party to another." Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R., 51 I. C. C. 635, 638, 639.

(xx) The plenary power of the Commission under Section 15 to correct unreasonable practices on the part of common carriers, was decided in 22 I. C. C. 39, 48-9; and under Section 13 any common carrier may complain of anything done or omitted to be done by another common carrier in contravention of the provisions of the act. Postal Telegraph-Cable Co. v. W. U. Telegraph Co., 59 I. C. C. 512, 516.

(yy) Under the transportation act of 1920 the Commission was given power to establish minimum rates. Under this law the Commission must of course bear in mind that the carriers should be allowed to earn from all their rates a specified return. Southern Hardwood Traffic Asso. v. Director General, 61 I. C. C. 132, 141.

(zz) There must exist range for "the flexible limit of judgment which belongs to the power to fix rates. Reparation as relating to increase of rates, 68 I. C. C. 5, 6.

(3a) There could be no flexible limit of judgment if all rates were to measured by their relation to cost or by a predetermined rule. Reparation as relating to increase of rates, 68 I. C. C. 5, 6.

(3b) The mandate laid upon the Commission by the statute to see to it that transportation charges shall be just

and reasonable as between the various parties to the transportation does not shift with the shifting interests of shippers or carriers. Kansas City Board of Trade v. A. T. & S. F. R. R. R., 69 I. C. C. 185, 191.

(3ba) Under section 15 (a) of the act authority of commission to prescribe just and reasonable rates and to initiate, modify, establish, or adjust rates is not a mere transitory authority to establish in first instance a general rate structure calculated to produce a fair return, but is a continuing authority to see to it that such rate structure shall not be undermined and its purpose thwarted by new rates, either increases or reductions, proposed by particular carriers for purpose of augmenting traffic of such carriers. Truck Line and Ex-Lake Iron Ore Rates, 68 I. C. C., 580. Rules for Storing and Sacking Cement, 78 I. C. C. 693, 698.

(3c) Where proceeding is one of investigation into reasonableness and propriety of rates the commission's determination might well result in fixation of rates related to each other, although relationship of rates as such may not have been contemplated within issue as originally presented. Rates on Grain, Grain Products, and Hay, 80 I. C. C. 362, 365.

(3ca) If usual tests of reasonableness of rates, approved by experience and valid in law, show basis as to any commodity to be too high, it would be duty of the commission under section 1 of the act to find such rates unreasonable. Kansas Public Utilities Com. v. A., T. & S. F. Ry. Co., 83 I. C. C., 105, 115.

(3cb) Carriers may for competitive or other reasons establish rates which the commission could not initiate for them. Eric Corp. v. I. & G. N. Ry. Co., 83 I. C. C. 325, 327.

(3cc) Though the Interstate Commerce Commission has broad powers, and may investigate and decide whether a rate has been, is, or would be discriminatory, it cannot pass on the question whether a hypothetical lower rate would under conceivable conditions have been discriminatory, in order to enable a shipper to sue for damages from conspiracy to fix a higher rate. Keogh v. Chicago & N. W. Ry. Co. (192), 43 Sup. Ct. 47.

(3d) The Interstate Commerce Commission has power to declare a rate unreasonable. Mobile & O. R. Co. v. Southern Sawmill Co., (Mo. 1923), 251 S. W. 434.

(3e) The Interstate Commerce Commission has exclusive original jurisdiction in all administrative matters affecting the reasonableness and uniformity of rates. St. Louis Southwestern Ry. Co. v. Goldstein, (Tex. 1922), 245 S. W. 226.

ALL OTHER CITATIONS

Boileau v. P. & L. E. R. R. Co., 24 I. C. C. 129, 133; The New England Investigation, 27 I. C. C. 560, 616; Port Arthur Board of Trade v. A. & S. Ry. Co., 27 I. C. C. 388, 392; Florida East Coast Ry. Co. v. U. S., 200 Fed. 797, 803; A. T. & S. F. Ry. Co. v. U. S., 203 Fed. 56, 58, 59; L. & N. R. R. Co. v. United States, 216 Fed. 673, 680; Memphis Bureau v. B. & O. R. R. Co., 28 I. C. C. 543, 547; Baer Bros. Merc. Co. v. D. & R. G. R. R. Co., 34 Sup. Ct. 641, 644; 233 U. S. 479; 58 L. ed. —; Wickwire Steel Co. v. N. Y. C. H. R. R. R. Co., 30 I. C. C. 415, 420; Seattle Chamber of Commerce v. G. N. Ry. Co., 30 I. C. C. 683, 690; National Baggage Co. v. A. T. & S. F. Ry. Co., 32 I. C. C. 152, 158; N. Y. Produce Exchange v. N. Y. C. & H. R. R. R. Co., 32 I. C. C. 212, 215; Eastern Fruit Growers Asso. v. B. & O. R. R., 33 I. C. C. 343, 353; Manufacturers Ry. Co. v. St. L. I. M. & S. Ry. Co., 32 I. C. C. 100, 104; A. C. Cheney P. A. Co. v. N. Y. C. & H. R. R. Co., 152 N. Y. Suppl., 285, 292; Rates in Chicago Switching District, 34 I. C. C. 234, 241; Western Passenger Fares, 37 I. C. C. 1, 41, 42, 43; National Dock & Storage Warehouse Co. v. B. & M. R. R., 38 I. C. C. 643, 656; Fresh Meat and Packing-House Product Rates, 38 I. C. C. 665, 666; Railroad Commission of Louisiana v. A. H. T. Ry. Co., 41 I. C. C. 83, 120; McLean Lumber Co. v. United States, 237 Fed. 460; Morgantown & Kingwood Divisions, 49 I. C. C. 540, 554; Private Wire Contracts, 50 I. C. C. 731, 761; Willamette Valley Lumbermen's Asso. v. S. P. Ry., 51 I. C. C. 250, 261; Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R., 51 I. C. C. 635, 641, 643; Ohio Valley Coal Operators Asso. v. I. C. 53 I. C. C. 148, 155; Cotton Mfrs. Asso of S. C. v. C. C. & O., 53 I. C. C., 741, 742; National Fireproofing Co. v. Director General, 55 I. C. C. 485, 487; Inland Steel Co. v. Director General, 57 I. C. C. 339, 341; Increased Rates, 1920, 58 I. C. C. 220, 226; Intrastate Rates within the State of Texas, 60 I. C. C. 421, 426; Na-

tional Live Stock Shippers League v. A. T. & S. F., 63 I. C. C. 107, 116; Salt from Louisiana Mines to Chicago, 69 I. C. C. 312, 313; Trunk Line and Ex-Lake Iron Ore Rates, 69 I. C. C. 589, 611; Mathieson Alkali Works v. C., C. & O. Ry., 77 I. C. C. 150, 153; Hawkins & Sons v. Director General, as Agent, 80 I. C. C. 225, 227; Sugar Cases of 1922, 81 I. C. C., 448, 472; Retail Coal Merchants' Asso. v. B. & O. R. R. Co., 83 I. C. C. 328, 330.

§9. Over Interstate Rates.

See Commerce Courts §4.

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(a) The statute contemplates that the Interstate Commerce Commission shall not only have power to determine as to whether any given rate is reasonable, but shall also have the power to determine whether any given rate is confiscatory, and that in a case like the one at bar, if the railroad, the complainant here, is dissatisfied as to the decision of the Interstate Commerce Commission, that it is its duty under the statute, (sec. 16a) to apply to the Commission for a rehearing, in order that it may offer any additional evidence bearing on the question of the unreasonableness of the rate and as to whether the rate is confiscatory. This is subject to the exception: That, if the Commission had refused to hear any testimony that was material on the question as to whether the rates were confiscatory or unreasonable, then a state court would be inclined to hear such testimony; but, it appear ing that no effort has been made on the part of the railroad to present to the Commission this additional testimony bearing on the question as to whether the rates were confiscatory, it would not be proper for such a court to consider evidence of that character; and we will exclude the evidence presented by the complainant as contrary to that act and void in that the parties contract with reference to the law. Southern Pac. Co. v. Frye & Bruhn, 143 Pac. 163, 165.

ALL OTHER CITATIONS

Leonard v. K. C. S. Ry. Co., 13 I. C. C. 573, 574, 578; Chandler Cotton Oil Co. v Ft. Smith & Western R. R. Co., 13 I. C. C. 473, 474; Hussey v. C. R. I. & P. Ry. Co., 13 I. C. C. 366, 368; Haines v. C. R. I. & P. Ry. Co., 13 I. C. C. 214;Marshel Oil Co. v. C. & N. W. Ry. Co., 14 I. C. C. 210, 213; Kindel v. N. Y. N. H. & H. R. R. Co., 15 I. C. C. 555, 557; Kent & Co. v. N. Y. C. & H. R. R. R. Co., 15 I. C. C. 439, 442; Morse Produce Co. v. C. M. & St. P. Ry. Co., 15 I. C. C. 334, 337; Porter v. St. L. & S. F. R. R. Co., 15 I. C. C. 1, 5; Pacific Coast Lumber Mfrs. Assn. v. N. P. Ry. Co., 16 I. C. C. 465, 468; Kansas City Transportation Bureau v. A. T. & S. F. Ry. Co., 15 I. C. C. 491, 497; Merchants' Cotton Press and Storage Co. v. I. C. R. R. Co., 17 I. C. C. 98, 102; Railroad Commission of Wisconsin v. C. & N. W. Ry. Co., 16 I. C. C. 85, 89; Williams v. Wells, Fargo & Co., 18 I. C. C. 17, 18; Receivers & Shippers' Assn. of Cincinnati v. C. N. O. & T. P. Ry. Co., 18 I. C. C. 440, 443; National Hay Assn. v. M. C. S. Ry. Co., 19 I. C. C. 34, 37; Memphis Freight Bureau v. K. C. S. Ry. Co., 17 I. C. C. 90; Maxwell v. W. F. & N. W. Ry. Co., 20 I. C. C. 197, 198; Goldenberg v. Clyde S. S. Co., 20 I. C. C. 527, 528; In re Advances in Rates, Western Case, 20 I. C. C. 307, 314, 315, 317; In re Advances in Rates, Eastern Case, 20 I. C. C. 243, 248; In re Advances of Coal to Lake Ports, 22 I. C. C. 604, 623; Sunderland Bros. Co. v. St. L. & S. F. R. R. Co., 23 I. C. C. 259, 261; In re Transportation of Wool, Hides and Pelts, 23 I. C. C. 151, 173; M. K. & T. R. Co. v. I. C. C. 164 Fed. 645, 648; Stickney v. I. C. C. 164 Fed. 638, 644; N. Y. C. & H. R. R. Co. v. I. C. C. 168 Fed. I. C. C. 168 Fed. 131, 136; Phila. & R. Ry. Co. v. I. C. C. 174 Fed. 687, 688; S. P. Co. v. I. C. C., 177 Fed. 963, 964; L. & N. R. R. Co. v. I. C. C., 184 Fed. 118, 124, 125; A. C. R. R. Co. v. I. C. C., 194 Fed. 449, 457; A. C. L. R. R. Co. v. I. C. C. 194 Fed. 449 457; L. & N. R. R. Co. v. I. C. C. 195 Fed. 541, 564; I. C. C. v. Chi. R. I. & P. Ry., 218 U. S. 88, 110, 30 Sup. Ct. 651, 54 L. ed. 946; S. P. v. I. C. C. 219 U. S. 433, 443, 31 Sup. Co. 288, 55 L. ed. 283 In re Advances on Barley from California Points to Minneapolis, 24 I. C. C. 340, 343; New Transit Case, 24 I. C. C. 340, 343; New Pittsburgh Coal Co. v. H. V. Ry. Co., 24 I. C. C. 244, 245; In re Advance on Barley from California Points to Minneapolis, 24 1. C. C. 664, 670; New England Investigation, 27 I. C. C. 560, 614; Central Commercial Co. v. L. & N. R. R. Co., 27 I. C. C. 114, 115; Richmond-Eureka Mining Co. v. E. N. Ry. Co., 29 I. C. C. 62; M. C. Kiser Co. v. Central of Georgia Ry. Co., 236 Fed. 573, 574; Langhill v. Pennsylvania R. Co., 98 Atl. (Pa. 1916) 873.

§9½. Government Guaranty.

See Government Guaranty.

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(a) In the exercise of its power to prescribe reasonable rates, the Commission is now required by section 15a to initiate, modify, establish. or adjust rates so that carriers as a whole or in designated rate groups will, under proper standards of operation, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation. Rates on Grain, Grain Products and Hay, 64 I. C. C. 85, 98.

(b) The purpose of section 15a of the act was undoubtedly to better stabilize the credit of railroads, reassure investors and attract capital to the railroad industry. It is plainly the duty of the commission to do everything in its power to carry out this purpose. Rates on Grain, Grain Products and Hay, 64 I. C. C. 85, 99.

(c) The duty cast upon the commission by section 15a is a continuing duty and looks to the future. It does not constitute a guaranty to the carriers nor is the obligation cumulative. The commission is not restricted by past or present statistics of operation and earnings. These are serviceable only as they illuminate the future. What is contemplated by the law is that in this exercise of our rate making power the result shall reflect the best judgment of the commission as to the basis which may reasonably expected for the future to yield the prescribed return. Rates on Grain, Grain Products and Hay, 64 I. C. C. 85, 99.

(d) The authority of the commission under section 15a to prescribe just and reasonable rates and to initiate, modify, establish and adjust rates is not a mere transitory authority to establish in the first instance a general rate structure calculated to produce a fair return, but is a continuing authority to see to it that such a rate structure shall not be undermined and its purpose thwarted by new rates, either increases or reductions, proposed by particular carriers for the purpose of augmenting the traffic of such carriers. Rules for Storing and Sacking of Cement in Transit at Davenport, 78 I. C. C. 693, 698.

(e) The Commission is required so to adjust transportation rates that they may yield the carriers, as nearly as may be, the fair return. Its determination is to be made in the exercise of its power to prescribe just and reasonable rates, and it is within the flexible limits of judgment that it must determine what basis or bases of rates will yield as nearly as may be that return. It manifestly is incumbent upon it to take into account all circumstances and conditions disclosed of record which, in its judgment, will influence the return under any given level of rates. If it is persuaded by the record that increases in rates beyond any certain point would divert traffic to other means of transport or depress its volume, and so defeat the very end the statute is meant to attain, it clearly becomes its duty to readjust or modify the rates in such manner as will, in its judgment, produce as nearly as may be the desired result. Express rates, 1922, 89 I. C. C., 297, 311.

ALL OTHER CITATIONS

Trunk Line and Ex-Lake Iron Ore Rates, 69 I. C. C. 589, 611; Reduced Rates 1922, 68 I. C. C. 676, 730; Slating cars for Watermelons, 78 I. C. C. 732, 735; Reduced Rates from New York Piers, 81 I. C. C. 312, 331.

§10. Intrastate Rates.

See State Rates and Regulations.

CASES 1887-1908

(a) The commission has no regulating authority beyond that conferred by the terms of the Act to Regulate Commerce, and its jurisdiction does not extend to enforcing provisions in a state constitution. Railroad Commission of Kentucky v. Louisville & N. R. Co., 10 I. C. C. 173.

(b) The commission has no control over traffic moving wholly within a single state, nor has it any power to award reparation for discrimination affecting such shipments. Gallogly & Firestone v. C. H. & D. R. Co., 11 I. C. C. 1, 12.

IMPORTANT CASES SINCE 1908

(c) The law requires the commission to fix rates, fares, and charges so that carriers shall earn a certain return upon the aggregate value of the railway property held for and used in the service of transportation, and to the extent that intrastate rates, fares, and charges do not contribute their proportionate share to such return they unjustly discriminate against interstate commerce. South Carolina Fares and Charges, 60 I. C. C. 290, 297.

(d) On intrastate traffic, the commission is without jurisdiction to pre-

scribe rates for the future or to award reparation on shipment moving prior to federal control. Chesebrough Mfg. Co. v. Director General, 68 I. C. C. 555.

(e) In the transportation act, 1920, congress set forth explicitly the power of the commission to deal with intrastate rates which unjustly discriminate against interstate commerce or unduly prejudice persons or localities engaged in such commerce, but made no mention of a similar or analagous power over local port to port rates of water carriers. Corona Coal Co. v. Secretary of War, 69 I. C. C. 389, 391.

(f) The commission is without jurisdiction to award reparation on intrastate shipments which moved during the guaranty period. M. E. Case Coal Co. v. C. B. & Q. R. R., 74 I. C. C. 391.

(g) Before the commission could condemn an intrastate regulation as resulting in unjust discrimination against interstate commerce the propriety of the charge on interstate traffic must be established. Slatting Cars for Watermelons, 78 I. C. C. 732, 735.

(h) The Interstate Commerce Commission has general power and jurisdiction to fix an intrastate rate, as to which it has found the existence of discrimination and prejudice against interstate commerce. State of Tennessee v. United States, 284 Fed. 371.

(i) A complaint that an intrastate rate by a state commission was a discrimination against interstate or foreign commerce must first be made to the Interstate Commerce Commission, which is given jurisdiction over such rates by the Transportation Act. Atlantic Coast Line R. Co. v. Trammell, 287 Fed. 741.

(j) Under section 3 of the act, the courts held that the commission was authorized to control intrastate rates maintained by a carrier under state authority where it finds that unjust discrimination against interstate trade arises from the relation of intrastate to interstate rates, the proviso in section 1, exempting transportation "wholly within one state" from the provision of the act, not applying in such case. H. E. & W. F. Ry. Co. v. United States, 34 Sup. Ct. 833, 839; 234 U. S. —; 58 L. ed. —.

(k) A general finding that the intrastate rates to border points worked an undue discrimination against interstate commerce does not justify an order by the Interstate Commerce Commission, requiring a change of all intrastate rates, but such change should be limited to the rates affecting the discrimination, and the change of other intrastate rates made necessary thereby left to the determination of the state. Railroad Commission of Wisconsin v. Chicago, B. & Q. R. Co., 42 Sup. Ct. 232.

(l) Whenever a rate, rule, or practice of carriers is attacked as unreasonable or as unjustly discriminatory, there must be a preliminary resort to the Interstate Commerce Commission, whether the function exercised is in its nature administrative, because directed to the determination of future practice, or judicial, because seeking to determine whether the shipper has been wronged, since in either case the inquiry is essentially one of fact and of discretion in technical matters, and uniformity can be secured only if its determination is left to the commission. Great Northern Ry. Co. v. Merchants' Elevator Co., 42 Sup. Ct. 477.

ALL OTHER CITATIONS

Reliance Textile & Dye Works v. Sou. Ry. Co., 13 I. C. C. 48, 54; Henly v. C. M. & St. P. Ry. Co., 18 I. C. C. 382, 384; Dobbs v. L. & N. R. R. Co., 78 I. C. C. 210, 211; Wells-Higman Co v. St. L. I. M. & S. Ry. Co., 18 I. C. C. 175, 176; Pierce Co. v. N. Y. C. & H. R. R. Co., 19 I. C. C. 579, 580; Wells-Higman Co. v. G. H. & S. A. Ry. Co., 19 I. C. C. 487, 490; Big Canon Ranch Co. v. G. H. & S. A. Ry. Co., 20 I. C. C. 523, 526; Roberts Cotton Oil Co. v. I. C. R. R. Co., 21 I. C. C. 248, 249; Grand Junction Chamber of Commerce v. D. & R. G. R. R. Co., 23 I. C. C. 115, 120 Southwestern Shippers' Traffic Asso. v. A. T. & S. F. Ry. Co., 24 I. C. C. 570, 584; New Pittsburgh Coal Co. v. H. V. Ry. Co., 24 I. C. C. 244, 245; Arkansas Fertilizer Co. v. St. L. I. M. & S. Ry. Co., 25 I. C. C. 645, 647; Rates on Clay Products from Brickland, New Mexico, 26 I C. C. 8, 10; Coke Producers Asso. of Connelsville v. B. & O. R. R. Co., 27 I. C. C. 125, 147; Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co., 27 I. C. C. 165, 166; Wickwire Steel Co. v. N. Y. C. & H. R. R. R. Co., 27 I. C. C. 168, 172; In re Mileage Books, 28 I. C. C. 318, 321; Trier v. C. St. P. M. & O. Ry. Co., 30 I. C. C. 707, 709; Ohio Iron & Metal Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 2079; The Missouri River-Nebraska Cases, 40 I. C. C.

201, 254; Railroad Commission of Louisiana v. A. H. T. Ry. Co., 41 I. C. C. 83, 121, 122; Abilene & S. Ry. v. State (Tex 1918), 199 S. W. 878; Calumet & Arizona Mining Co. v. Director General, 57 I. C. C. 332, 333; State v. Northern Pac. Ry. Co. (N. D. 1919), 172 N. W. 324, 325; Commission of Louisiana v. A. H. T. Ry. Co., 64 I. C. C. 248, 250; Wasatch Coal Co. v. Director General, 68 I. C. C. 118.

§10¼. Minimum Rates.

See Minimum Rates.

IMPORTANT CASES SINCE 1908

(a) Under the Transportation Act, 1920, the commission may prescribe the same rates for oranges and lemons, although the result may be an increase in the rates of one of them. California Citrus League v. Director General, 58 I. C. C. 373, 396.

§10½. Territorial Rates.

CASES 1887-1908

(a) The amendment of August 28, 1906, conferred jurisdiction of the commission over transportation wholly within a territory. Blackwell Milling & Elevator Co. v. M. K. & T. R. Co., 12 I. C. C. 24, 25.

(b) No jurisdiction over shipment between two points in a territory, prior to the amendment of August 28, 1906. Ponca Milling Co. v. M. K. & T. R. Co., 12 I. C. C. 26.

ALL OTHER CITATIONS

Ft. Smith & W. R. Co. v. Chandler Cotton Oil Co., 25 Okla. 82, 83, 106 p. 10.

§11. Suspension.

See Advanced Rates §1 (4); Suspended Rates.

CASES 1887-1908

(a) The mere probability that injury will result from the operation of the act will not authorize the commission to direct a suspension. Jurisdiction of the Commission, 1 I. C. R. 73.

IMPORTANT CASES SINCE 1908

(b) Section 15 of the act gives commission power to suspend operation of a schedule stating a new rate or practice pending an examination of the propriety of the same. Protection of the Potato Shipments in Winter, 26 I. C. C. 681, 683.

(c) Under section 15, paragraph 1, the commission, on its own initiative, whenever it is of the opinion that any rates demanded, charged, or collected are in any way unlawful, may enter upon an investigation, hold full hearings, and determine and prescribe just and reasonable rates. Where new rates are filed the commission, under section 15, paragraph 2, is authorized by similar means to determine the propriety of such new rates and, pending such determination, to suspend the operation of the schedules stating such new rates. In connection with the latter hearing the statute casts upon the carrier the burden of justifying any increased rates. Coal Rates from Oak Hills, Colo., 30 I. C. C. 505, 508.

(d) Because the act requires the commission to give preference to suspension proceedings over all other questions pending before it and to decide such proceedings as speedily as possible, the commission proceeded to a disposition of such a proceeding in advance of other cases with which it had been consolidated. Coal from Detroit, Toledo & Ironton R. R. Mines, 64 I. C. C. 564, 565.

(e) It was not the intention of congress to require the commission in every suspension proceeding to specify what rates would be lawful in lieu of the new rate proposed. Salt from Louisiana Mines to Chicago, 69 I. C. C. 312, 313.

(f) It is the duty of the commission under the law to give preference to questions involved in suspension proceedings and to decide the same as speedily as possible. Burlap Bags to Texas Destinations, 69 I. C. C. 458.

(g) Where, pending proceedings on complaint of a terminal railway and its controlling stockholder, which was also the largest shipper, asserting that the action of trunk lines in refusing to absorb charges of such terminal railway was discriminatory, one of the trunk lines filed a new tariff absorbing the charges of the terminal to a greater extent than had been previously done, the commission, in view of the fact that normal and precise findings are unnecessary under the Interstate Commerce Act, section 14, unless damages are awarded, was warranted in suspending the new tariff for more than 120 days authorized by section 15, as amended in 1910, though no formal hearings were had on the question of the suspended tariff, and in treating the

matter as ancillary to the original proceedings, for the question whether the controlling stockholder of the terminal railway would obtain an undue preference or rebate because of the absorptions was involved in both proceedings. Manufacturers' Ry. Co. v. United States, 38 Sup. Ct. 383.

ALL OTHER CITATIONS

In re Investigation of Proposed Rates on Lumber, 21 I. C. C. 16, 17; Commutation Rates Case, 21 I. C. C. 428, 429; Trunk Line and Ex-Lake Iron Ore Rates, 69 I. C. C. 589, 611.

§12. Undercharges.

See Undercharges §1.

IMPORTANT CASES SINCE 1908

(a) The commission is without authority to enter an order requiring a shipper to make good an undercharge. Falls & Co. v. C. R. I. & P. Ry. Co., 15 I. C. C. 269, 273.

§13. Unpublished Rate.

See Evidence §60; Unpublished Rates.

IMPORTANT CASES SINCE 1908

(a) Where a transportation service has been rendered for which no tariff authority existed and shipper has paid the sum demanded by the carrier for that service, the commission may determine what would have been a reasonable charge and order repayment of the excess, if any. Gateway Produce Co. v. American Ry. Exp. Co., 61 I. C. C. 347, 348, 349.

(b) There having been no applicable rate in effect concerning movement such as those for which charges assailed were collected, it is necessary for the commission to determine whether such charges were reasonable, and, if not, what charges would have been reasonable. Memphis Freight Bureau, 17 I. C. C., 90, Mitsui & Co. v. Director General, as Agent, 81 I. C. C. 489, 491.

ALL OTHER CITATIONS

Memphis Freight Bureau v. K. C. S. Ry. Co., 17 I. C. C. 90, 91, 92; Goldenberg v. Clyde S. S. Co., 20 I. C. C. 527, 528; Maxwell v. W. F. & N. W. Ry. Co., 20 I. C. C. 197, 198; Hampton Mfg. Co. v. Old Dominion S. S. Co., 27 I. C. C. 666, 668; Mercantile Lumber & Supply Co. v. St. L. S. W. Ry. Co., 28 I. C. C. 701, 702; Zelnicker Supply Co. v. St. L. S. W. Ry., 45 I. C. C. 185.

§13½. Government Control.

See Government Operation; War Legislation.

IMPORTANT CASES SINCE 1908

(a) The Federal Control Act of March 21, 1918, expressly provides that rates initiated by the president "shall be reasonable and just." Under section 4 of the Act to Regulate Commerce certain widely prevalent forms of unjust, unreasonable, and unduly prejudicial charges are condemned and the burden is placed upon the carriers of showing that the situations apparently within the scope of the prohibition are in reality "special cases," justifying the exercise by the commission of a sound, legal discretion in authorizing departures from the general rules laid down. It is difficult to see how the enforcement of this section can interfere with a unified, coordinated national control, or in any wise hinder the prosecution of the war. As the situations covered by the fourth section can be reached by orders under the first three sections of the Act to Regulate Commerce, the suggestion is equivalent to saying that the Commission can not do in form what is lawful to do in substance. Johnston v. A. T. & S. F. Ry., 51 I. C. C. 356, 361.

(b) The statute provides that in exercise of the commissions power to prescribe just and reasonable rates it shall establish rates such that carriers collectively shall earn a fair return under honest, efficient and economical management. Reduced Rates, 1922, 68 I. C. C. 676, 689.

(c) The duty cast upon the commission by section 15a is a continuing duty and looks to the future. It does not constitute a guaranty to the carriers, nor is the obligation cumulative. It is not restricted by past or present statistics of operation and earnings. They are serviceable only as they illuminate the future. What is contemplated by the law is that in this exercise of the rate making power the result shall reflect the best judgment of the commissnon as to the basis which may reasonably be expected for the future to yield the prescribed return. Reduced Rates, 1922, 68 I. C. C. 676, 730.

(d) The authority of the commission under section 15a in the exercise of its power to prescribe just and reasonable rates is not a mere transitory authority to establish in the first instance a gener-

al rate structure calculated to produce a fair return, but is a continuing authority to see that such a rate structure shall not be undermined and its purpose thwarted by new rates, either increases or reductions, proposed by particular carriers for the purpose of augmenting the traffic on certain carrier lines, or for the immediate and special benefit of particular companies, persons, firms, corporations, localities, or particular descriptions of traffic, in disregard of the more general and seemingly inevitable consequences of such rates newly proposed. Trunk Line and Ex-Lake Iron Ore Rates, 69 I. C. C. 589, 611.

ALL OTHER CITATIONS

Kaw River S. & M. Co. v. A. F. & S. F. Ry., 51 I. C. C. 350, 354.

VI. TO AWARD DAMAGES.

§14. In General.

See Reparation.

CASES 1887-1908

(a) The question whether rates paid ought to be refunded having been presented to a judicial tribunal, where it is pending, the commission will not take cognizance of it. Bishop v. Duval, 2 I. C. R. 514.

(b) The question whether rates paid ought to be refunded having been presented to a judicial tribunal, where it is pending, the Interstate Commerce Commission will not take cognizance of it. Harris v. Duval (Com.), 2 I. C. R. 514.

(c) A procedure for the enforcement of lawful orders of the Interstate Commerce Commission, founded upon controversies requiring trial by jury, having been provided by the amendment of March 2, 1889, of the Act to Regulate Commerce, §16, it is the duty of the commission to pass upon the question of reparation for past damages whenever a claim is made therefor. Macloon v. Chicago & N. W. R. Co. (Com.), 3 I. C. R. 711.

(d) In determining the question of reparation in a suit to declare a terminal charge excessive and unlawful, where the question of reparation was held open pending determination of another branch of the case, and during which time a reduction in the through rate was made from certain territory, which reduction amounted to more than the terminal charge, the following procedure was directed by the commission: Damages to be allowed on shipments from all territory down to the date in the reduction in the through rates, and, from territory to which that reduction did not apply, down to the date of the hearing; but it was directed that those damages accruing before and those accruing after the original order of the commission holding the terminal charge unlawful and unjust be shown separately, with leave to defendants to show any change in the conditions since the date of the order of the commission, which would render the entire through rate, including the terminal charge, a reasonable one. Cattle Raisers Asso. v. Chicago B. & Q. R. Co., 10 I. C. C. 83.

IMPORTANT CASES SINCE 1908

(e) The commission has power to award damages only when they are suffered in consequence of a violation of the Act to Regulate Commerce. Pittwood & N. P. Ry., 51 I. C. C. 535.

(f) If a carrier is shown to have been negligent in failing to place shipments in public storage, the commission has no jurisdiction to award damages resulting therefrom. Claims for such damages are cognizable by the courts. Huffman Bros. Motor Co. v. N. Y. C. R. R. Co., 74 I. C. C. 671, 672.

(g) The commission is an administrative body created to effect substantial justice in the matters under its control and is not bound or limited by the strict rules of pleading and the actual damage sustained is a matter for determination by the commission from the facts before it. N. & G. Taylor Company v. Director General, 81 I. C. C. 663, 665.

(h) When a complainant applies to the Interstate Commerce Commission for relief against an unreasonable rate he has the option of limiting the prayer of his petition to the one subject of rates or of adding a prayer for reparation. If he exercises his first choice, and only a rate finding is made, he must then bring his action in the courts, as he would bring any other action, using the finding of the commission as evidence (as indeed it is the only evidence) of the unreasonableness of the rates, and establishing by other evidence the money measure of his injury. Whatever judgment is recovered in such action is a judgment in all respects as any other judgment. If the complainant exercises his second choice, by asking for reparation, and it is

awarded, the defendant of course may pay the award. If payment is made, the award is to all intents and purposes a judgment, to which the doctrine of res adjudicata is applicable, and the complainant is concluded thereby. G. B Markle Co. v. Lehigh Valley R. Co., 271 Fed. 989, 991.

ALL OTHER CITATIONS

Rivers Bros. Co. v. Wells, Fargo & Co., Unrep. Op. 496; Fullerton Lumber Co. v. C. M. & St. P. Ry. Co., Unrep. Op. 150; Pittsburgh C. C. & St. L. Ry. Co. v. Knox (Ind. 1912), 98 N. E. 295, 299; Manning v. C. & A. R. R. Co., 13 I. C. C. 125, 127; Royal Brewing Co. v. Adams Express Co., 15 I. C. C. 255, 256; Blume & Co. v. Wells, Fargo & Co., 15 I. C. C. 53, 55; Laning-Harris Coal & Grain Co. v. St. L. & S. F. R. R. Co., 15 I. C. C. 37, 38; Werner Saw Mill Co. v. I. C. R. R. Co., 17 I. C. C. 388, 396; Joynes v. Penn. R. R. Co., 17 I. C. C. 361, 369; Hillsdale Coal & Coke Co. v. Penn. R. R. Co., 19 I. C. C. 356, 371, 368; Ponchatoula Farmers' Assn. v. I. C. R. R. Co. 19 I. C. C. 513, 515; Hanley Milling Co. v. P. Co., 19 I. C. C. 475, 476; Buffalo Hardwood Lbr. Co. v. B. & O. S. R. R. Co., 21 I. C. C. 536, 538; Kay Co. v. D. & R. G. R. R. Co., 21 I. C. C. 239, 240; Flooring & Lumber Co. v. L. & N. R. R. Co., 22 I. C. C. 458, 459; Ralston Townsite Co. v. M. P. Ry. Co., 22 I. C. C. 354, 355; Mattison v. P. Co., 23 I. C. C. 233, 235; Larkin Co. v. E. & W. T. Co., 24 I. C. C. 645, 646; Riverside Mills v. St. L. & S. F. R. R. Co., 24 I. C. C. 264; St. Louis Blast Furnace Co. v. V. Ry. Co., 24 I. C. C. 360, 370; New Pittsburgh Coal Co. v. H. V. Ry. Co., 26 I. C. C. 121, 126; Commercial Club of Omaha v. O. & S. R. Ry. Co., 27 I. C. C. 302, 314, 315; Franklin v. Philadelphia & R. Ry. Co., 203 Fed. 134, 138; Atlas Portland Cement Co. v. L. V. R. R. Co., 32 I. C. C. 487; Red Cedar Shingle Mfrs. Asso. v. M. & St. L. R. R. Co., Unrep. Op. A-880; Atchison Topeka & Santa Fe Ry. Co. v. Kansas City Stock Yards Co., 33 I. C. C. 92, 98; Reeves Coal Co. v. P. M. R. R. Co., Unrep. Op. 2081; Guyton & Harrington Mule Co. v. L. & N. R. R., 50 I. C. C. 546, 550; Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R., 51 I. C. C. 635, 638; Wright Tie Co. v. B. S. B. W. R. R. Co., 57 I. C. C. 286, 288; Pacific Grain Co. v. Director General, as Agent, 81 I. C. C. 679, 692.

VII. APPEALS TO COURT.

§15. In General.

See Courts §5.

CASES 1887-1908

(a) In a proceeding before a United States court to enforce an order of the Interstate Commerce Commission, that court must investigate the whole merits of the controversy and form an independent judgment upon them; and in such investigation the findings of fact made by the commission are only prima facie evidence. Interstate Commerce Commission v. Lehigh Valley R. Co. (C. C. E. D. Pa.), 3 I. C. R. 796.

(b) The principal office, within the meaning of the act of Congress authorizing a Circuit Court, where such office is situated, to enforce orders of the Interstate Commerce Commission, of a railroad corporation created by an Act of Congress which does not prescribe where such office shall be kept is the one where its principal officers have their business domicil, the meetings of stockholders, directors, and executive committee are held, the stock books kept and the dividends declared, rather than the place where the subordinate officers in charge of the operating, traffic and accounting departments of the business discharge their duties. The Interstate Commerce Commission v. The Texas & Pacific Ry. Co., 4 I. C. R. 62.

(c) If a railroad company is violating a proper order of the Interstate Commerce Commission, it should be restrained from doing so; and it cannot escape upon the objection that another wrongdoer is also violating it. Interstate Commerce Commission v. Texas & P. R. Co. (C. C. S. D. N. Y.), 4 I. C. R. 114.

(d) A suit brought by the Interstate Commerce Commission in the United States circuit court to enforce an order of the Commission is an original and independent proceeding to be heard de novo upon proper pleadings and proof. Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co. (C. C. N. D. Ga.), 332, Rev'd. on Other Grounds in 4 I. C. R. 582.

(e) In proceedings to enforce an order of the Interstate Commerce Commission fixing rates, the carrier will not be required to keep an account with every shipper and pay into registry of the court the excess over the rates fixed by the Commission as a condition of refusing a preliminary order, in the absence of a very strong showing of right in

favor of the complainant. Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co. (C. C. S. D. Ohio), 5 I. C. R. 131.

(f) It is not necessary to file with a petition for the enforcement of an order of the Interstate Commerce Commission the transcript of the evidence taken before it, under the statute making the findings of fact of the Commission prima facie evidence of the matter stated; but either party may introduce and use as evidence any competent and relevant testimony taken before the Commission. Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co. (C. C. S. D. Ohio), 5 I. C. R. 131.

(g) The court cannot, upon a certificate of the Interstate Commerce Commission that in making an order which the court is asked to enforce the Commission did not design to make it so broad as its terms import, enforce the order in such restricted sense, where it otherwise would not be enforceable. Interstate Commerce Commission v. Delaware, L. & W. R. Co. (C. C. N. D. N. Y.), 5 I. C. R. 146.

(h) It is not proper for railroad companies to withhold the larger part of their evidence from the Interstate Commerce Commission, and first adduce it in the circuit court in proceedings by the Commission to enforce its order; but the purposes of the act of Congress to regulate commerce call for a full inquiry by the Commission in the first instance. Cincinnati, N. O. & T. P. R. Co. v. Interstate Commerce Commission (U. S. Sup.) 5 I. C. R. 391.

(i) Said act approved March 2, 1887, authorizes a resort by the Commission to the United States circuit court only in case of the violation of, or neglect or refusal to obey or perform, a lawful order or requirement of the Commission. Interstate Commerce Commission v. N. R. Co., 5 I. C. R. 650.

(j) The sole authority of the Commission to institute proceedings in the United States circuit court to enforce its orders is derived from the act of Congress approved March 2, 1887 (25 Stat. at L. 855, §5); and in its exercise it is bound by, and must confine itself within, the terms of that statute. Interstate Commerce Commission v. N. R. Co., 5 I. C. R. 650.

(k) The finding and opinion of the Interstate Commerce Commission is entitled to great consideration both by the parties affected and by the courts when called upon to enforce obedience to its mandates. Interstate Commerce Commission v. Louisville & N. R. Co., (C. C. M. D. Tenn.), 5 I. C. R. 656.

(l) The opinion or report of the Interstate Commerce Commission should show what the issues in the case are, and what facts it finds in regard to such issues, and should make suitable reference to the evidence adduced in regard to any particular question, where there is a conflict in the proof, or, if the evidence is undisputed, state the facts. Interstate Commerce Commission v. Louisville & N. R. Co. (C. C. M. D. Tenn.), 5 I. C. R. 656.

(m) Proceedings before the Interstate Commerce Commission against common carriers for discriminations and preferences will be stayed until final determination by the courts in suits pending therein for the enforcement of an order of the commission, compliance with which by carriers operating in the territory will remove the discriminations and preferences complained of. Southern Paint & G. Co. v. Lake Erie & W. R. Co., 6 I. C. C. 284.

(n) The decision of the Interstate Commerce Commission on a charge that rates are unjust and unreasonable or make unjust discriminations and preferences in violation of §3 of the Act to Regulate Commerce is subject to review in the courts on a consideration of the allegations and evidence of the parties, giving effect, however, to the findings of fact by the Commission as prima facie evidence of the matters therein stated. Interstate Commerce Commission v. Alabama Mildland Ry Co., 7 I. C. C. App. CIX.

(o) No order of the Commission can be made binding upon the defendant until it has passed the scrutiny of the courts, while if the Commission errs in its construction of the Law against the complainant, he has no relief, since from the decision of the Commission he cannot appeal. Miner v. N. Y., N. H. & H. R. Co., 11 I. C. C. 422, 428.

IMPORTANT CASES SINCE 1908

(p) On appeal from a judgement for shippers for the excess of rates collected by the carrier, a general order of the Interstate Commerce Commission increasing the rates, which was not presented to the court below, cannot be

considered by the appellate court. Davis v. Parrington, 281 Fed. 10.

(q) A state may maintain a bill to enjoin enforcement of an order of the Interstate Commerce Commission forbidding preferences to the state or municipalities, in alleged violation of Interstate Commerce Act, §22 (Comp. St. § 8595), permitting such preferences, whether an order of the state Railroad and Public Utilities Commission prescribing a reduced rate for the state and municipalities was within its jurisdiction or not, as the order would prevent negotiation with the railroads for preferential treatment. State of Tennessee v. United States, 284 Fed. 371.

(r) An erroneous decision of the Interstate Commerce Commission, acting within its jurisdiction, can only be reviewed by proceedings in error, not by mandamus or certiorari. Donner Steel Co. v. Interstate Commerce Commission 285 Fed. 955.

(ra) A writ of mandamus, directing the Interstate Commerce Commission to permit a carrier to inspect the papers and data used by the Commission in fixing the tentative value of the carrier's property, and to permit the introduction of the same in evidence, was properly refused, where it did not appear that any demand had been made on the Commission to produce at the hearing any specific paper or record, or that the production of any such paper or record was refused by the Commission. United States v. Interstate Commerce Commission, 290 Fed. 264.

(s) Though in making an order for reparation on account of unjust discrimination by a railroad company in the distribution of coal cars to shippers, the Interstate Commerce Commission improperly used percentages which placed plaintiff on a basis of equality with the favored companies, where, in an action on the order, there was testimony tending to show that had the cars been distributed on a basis of general equality approved by the Commission and without resort to practices condemned by it, there would have been cars enough to have furnished plaintiffs with a sufficient number to meet their trade and requirements, and the case was fairly and fully submitted in a charge giving a correct basis on which there might be a recovery of damages, and there was testimony tending to show damages in at least the sum awarded by the Commission, there was no prejudicial error because of the erroneous calculation by the Commission. Pennsylvania R. Co. v. Weber, 42 Sup. Ct. 18.

(t) Where in a case for reparation for discrimination in the furnishing of coal cars, the Interstate Commerce Commission awards reparation, but such an award is based on an erroneous calculation; but when an action is brought on such award in the United States District Court, the judge in his charge to the jury gives the correct basis upon which there might be a recovery of damages, and there is a discrimination tending to show damages in at least the sum awarded by the Commission, there is no prejudicial award because of the erroneous calculation of the Commission, which was the basis of its award. Pennsylvania R. Co. v. Weber, 42 Sup. Ct. 18, 20.

(u) In a suit to enjoin the enforcement of, and annul, an order of the Interstate Commerce Commission, it cannot be claimed that the order was unsupported by evidence, where only a part of the evidence taken before the Commission was introduced. Louisiana & P. B. Ry. Co. v. United States, 42 Sup. Ct. 25.

(v) Plaintiffs cannot maintain a suit to set aside an alleged void order of the Interstate Commerce Commission, without showing that the order subjects them to legal injury, actual or threatened. Hines v. United States 44 Sup Ct. 72.

(w) That manufacturers and dealers in lumber were not parties to proceedings before the Interstate Commerce Commission, in which an order was entered requiring carriers to cease charging a penalty for holding lumber cars at reconsignment points, does not prevent them from suing to set aside the order as in excess of the Commission's power. Hines v. United States 44 Sup. Ct. 72.

(x) The right of shippers and dealers in lumber respecting an order of the Interstate Commerce Commission forbidding charging of penalty by carriers against their competitors is limited to protection against unjust discrimination, and redress must be sought by proceedings before the Commission. Hines v. United States (1923) 44 Sup. Ct. 72.

(y) Where the situation of none of the defendants was affected by a brief lapse of time, HELD, that a suit to set

aside an order of the Interstate Commerce Commission permitting a railroad to acquire control of certain terminal roads was not barred by laches. The Chicago Junction Case, 44 Sup. Ct. 317.

ALL OTHER CITATIONS

Geraty v. A. C. L. R. R. Co., 211 Fed. 227, 230; L. V. R. R. Co. v. Meeker, 211 Fed. 785, 792, 794, 795; Kindel v. C. & S. Ry. Co. (Colo., 1914), 139 Pac. 1105, 1107; St. L. I. M. & S. Ry. Co. v. U. S., 217 Fed. 80, 82; L. & N. R. R. Co. v. United States, 216 Fed. 672, 673, 679, 680, 681; Royal Brewing Co. v. M. K. & T. Ry. Co. (Kans.), 217 Fed. 146, 148; R. R. Commissioners of Florida v. F. E. C. Ry., 42 I. C. C. 616, 624; M. C. Kiser Co. v. Central of Georgia Ry. Co., 236 Fed. 573, 578; Richmond Chamber of Commerce v. S. A. L. Ry. 44 I. C. C. 455, 467; United States v. Pennsylvania R. R., 37 Sup. Ct. 95, 242 U. S. 208, 61 L. Ed. 251; United States v. Interstate Commerce Commission, 38 Sup. Ct. 408; Chicago Live Stock Exchange v. A. T. & S. F. Ry., et al., 52 I. C. C. 209, 217; Alaska S. S. Co. v. United States, 259 Fed. 713; Chicago, R. I. & P. Ry. Co., et al., v. Gist (Okla. 1920), 190 Pac. 878, 879.

§16. Concurrent jurisdiction.

IMPORTANT CASES SINCE 1908

(a) The Supreme Court has nowhere declared that there can be no concurrent jurisdiction of the Commission and the Courts. Vulcan Coal & Mining Co. v. I. C. R. R. Co., 33 I. C. C. 52, 63.

(b) The question of expediency in granting the Commission and courts concurrent jurisdiction in suits for damages was decided by Congress and is a matter reserved for the consideration of the legislative branch of the Government into which the Commission cannot inquire. Vulcan Coal & Mining Co. v. I. C. R. R. Co., 33 I. C. C. 52, 68.

ALL OTHER CITATIONS

Dowling v. Seabord Air Line Ry., (S. C. 1917), 93 S. W. 863.

§17. Validity of orders.

See Courts §5.

CASES 1887-1908

(a) The facts found by the Interstate Commerce Commission in conformity with the statutes have legal effect and are prima facie evidence; but the recomendations, conclusions, and orders of the Commission are of no binding force in the courts. Re Rates & Charges on Food Products (Com.), 3 I. C. R. 151.

IMPORTANT CASES SINCE 1908

(b) The power conferred on the Interstate Commerce Commission by the amended fourth section to authorize a carrier to deviate from the strict rule of that section clearly implies that the question should be determined upon testimony and after a hearing and necessarily involves the exercise of judgement and discretion and the finding of the Commission is to be given the weight due it as a body peculiarly experienced in such matters. Louisville & N. R. Co. v. United States, 225 Fed. 571, 581.

(ba) A carrier cannot complain of an order of the Interstate Commerce Commission, modifying a prior order to its benefit. Louisville & N. R. Co., v. Sloss-Sheffield Steel & Iron Co., 295 Fed. 53.

(bc) The validity of the action of the commission is not dependent on compliance with the procedural rules of pleading and practice which prevail in courts of law. Louisville & N. R. CO. v. Sloss-Sheffield Steel & Iron Co., 295 Fed. 53.

(c) An order of the Interstate Commerce Commission which does not contravene any constitutional limitation, and is within the constitutional and statutory authority of that body, and is not unsupported by testimony, cannot be set aside by the courts, as it is only the exercise of an authority which the law vests in the Commission. Pennsylvania Co. v. United States, 35 Sup. Ct. 370, 373; 236 U. S. 351, 59 L. ed. 616.

(d) A report of the Interstate Commerce Commission awarding reparation which shows the relation of the parties as shipper and carrier in interstate commerce; the general character of the traffic involved and the amount of the shipment with respect to which reparation was claimed; the determination that the rate exacted (which was specified) was unjust and unreasonable to the extent that it exceeded the established rate (also specified); and, further, the determination that the companies respectively should pay a stated amount "as reparation for the collection of unreasonable charges" on the quantities mentioned is valid. Mills v. Lehigh Valley R. Co., 35 Sup. Ct. 888, 891; 238 U. S. 473, 95L. ed.

(e) A report of the Interstate Commerce Commission, made after investigation of a shipper's complaint which showed the relation of the parties as shipper and carrier in interstate com-

merce, the general character of the traffic involved, and the amount of the shipment with respect to which reparation was claimed, the determination that the rate exacted, which was specified, was unjust and unreasonable to the extent that it exceeded the established rate, also specified, and the determination that the carriers respectively should pay a stated amount as reparation for the collection of unreasonable charges on the quantities mentioned,—satisfies the requirement of the Act that the Commission must make, upon investigating a complaint, a report which "shall state the conclusions of the Commission, together with its decision, order, or requirement in the premises," and if damages be awarded "shall include the findings of fact on which the award is made." Mills v. Lehigh Valley R. Co., 35 Sup. Ct. 888, 891; 238 U. S. 473, 59 L. ed. 1414.

(f) The ultimate facts rather than evidential facts are to be stated by the Interstate Commerce Commission in the report which that Commission, under the Act must make upon investigating a complaint, which report, under that statute, "shall state the conclusions of the Commission, together with its decision order or requirement in the premises," and if damages be awarded "shall include the findings of fact on which the award is made." Mills v. Lehigh Valley R. Co., 35 Sup. Ct. 888, 889, 890; 238 U. S. 473, 59 L. ed. 1414.

(g) Interstate Commerce Commission's determination that existing rates subjected shippers from a certain point to undue prejudice, supported by ample evidence, held conclusive in action to enjoin enforcement of order requiring railroads to cease discrimination. United States v. Illinois Cent. R. Co. 44 Sup. Ct. 189.

(h) That an order of the Interstate Commerce Commission is legislative in character, and is permissive, will not preclude judicial review. The Chicago Junction Case, 44 Sup. Ct., 317.

(i) Facts conceivably known to the Interstate Commerce Commission, but not put in evidence, will not support an order of the Commission. The Chicago Junction Case, 44 Sup. Ct. 317.

ALL OTHER CITATIONS

Louisville & N. R. Co. v. United States 225 Fed. 571, 578; Louisville & N. R Co. v. United States, 35 Sup. Ct. 696, 697, 698, 700, 238 U. S. 1, 59 L. ed. 1177; 238 U. S. 473, 59 L. ed. 1414; Pennsylvania R. Co. v. United States, 227 Fed. 911, 915; Missouri Pac. Ry. Co. v. C. E. Ferguson Sawmill Co., 235 Fed. 474; Pennsylvania R. R. v. Jacoby & Co., 37 Sup. Ct. 49, 242 U. S. 89, 61 L. Ed. 165; Mills v. Lehigh Valley R. Co., 238 U. S. 473, 35 Sup. Ct. 888, 59 L. ed. 1414; N. Y. Cent. & H. R. R. Co. v. Murphy, 224 Fed. 407, 140 C. C. A. 111; C. M. & St. P. Ry. v. George A. Hormel & Co. 240 Fed. 381, 384, 385; Louisville & N. R. R. v. United States, 38 Sup. Ct. 141, 245 U. S. 463, 62 L. Ed. 400; M. L. & T. R. S. S. Co. v. Isaac Joseph Iron Co., 243 Fed. 149; Atchison, T. & S. F. Ry. Co. v. Spiller, 246 Fed. 1. Chestnut Ridge Ry. Co. v. United States, 248 Fed. 791. Louisiana & P. B. Ry. Co. v. United States, 42 Sup. Ct. 25;

§18. Decisions as precedents.

See Previous Decisions of Commission.

CASES 1887-1908

(a) A decision by the United States circuit court of appeals will be followed by the Interstate Commerce Commission in a proceeding involving the same facts. Cattle Raisers' Asso. v. Fort Worth & D. C. R. Co. 7 I. C. C. 513.

ALL OTHER CITATIONS

Western Union Telegraph Co. v. McDavid, (Tex., 1920), 219. S. 853; Brenner Lumber Co. v. Director General, as Agent, 81 I. C. C. 241, 244.

INTERVENERS

See Claims §5¾; Procedure Before Commission §10 (3); Reparation §24.

INTOXICATING LIQUORS

See State Rates and Regulations.

CASES 1887-1908

(a) The provision of R. I. Pub. Stat. chap. 634, of May 4, 1887, §1, which prohibits any person from keeping any intoxicating liquors "for the purpose of sale," is not, for the reason that it may incidentally interfere with foreign or interstate commerce, obnoxious to the Federal Constitution, art. 1, §8, which confers upon Congress exclusive power "to regulate commerce with foreign nations and among the several states." State of R. I. v. Fitzpatrick, 1 I. C. R. 713.

(b) Such statute constitutes no de-

fense to an action brought against a railroad company for refusing to carry beer into the state of Iowa from another state. Bowman v. Chicago & Northwestern R. Co., 1 I. C. R. 823.

(c) Section 1553 of the Iowa Code, as amended by the Act of April 5, 1886, forbidding any common carrier to bring within the state any intoxicating liquors, from any other state or territory, without first having the certificate therein required, is a regulation of commerce among the states and is void, as repugnant to the constitution of the United States. Bowman v .Chicago & Northwestern R. Co., 1 I. C. R. 823.

(d) Iowa Code, §1553, forbidding carrier to bring into state intoxicating liquors without first having certificate therein required is regulation of commerce and void. Bowman v. Chicago & N. W. R. Co. (U. S. Sup. Ct.), 1 I. C. R. 823.

(e) Such statute is not an inspection law, nor a quarantine or sanitary law, and is not a legitimate exercise of police power by the state. Bowman v. Chicago & Northwestern R. Co., 1 I. C. R. 823.

(ea) The Iowa code forbidding carriers to transport intoxicating liquor into the state is not a legitimate exercise of police power. Bocoman v. Chicago & N. W. R. Co., (U. S. Sup. Ct.) 1 I. C. R. 823.

(f) Rhode Island, Public Statute, chap. 634, §1, prohibiting the keeping of intoxicating liquors for sale is not obnoxious to federal constitution conferring exclusive power to regulate commerce upon Congress. State v. Fitzpatrick (Sup. Ct. R. I.), 1 I. C. R. 713; S. P. cited in Bowman v. Chicago & N. W. R. Co. (U. S. Sup. Ct.), 1 I. C. R. 835.

(g) A state has the right to prohibit or restrict the manufacture of intoxicating liquors within its limits, to prohibit all sale and traffic in them in the state, to inflict penalties for their manufacture and sale, and to provide regulations for the abatement, as a common nuisance, of property used for such forbidden purposes. Kidd v. Pearson (U. S. Sup. Ct.), 2 I. C. R. 232.

(h) The law of Iowa authorizing the abating as a nuisance of a distillery used for the unlawful manufacture and sale of intoxicating liquors (chap. 6 tit. 11 of the Code of Iowa, amended by chapter 143 of the Laws of 1884) does not conflict with section 8, article 1 of the constitution of the United States, by undertaking to regulate commerce between the states. Kidd v. Pearson, 2 I. C. R. 232.

(i) Whether a state in the exercise of its undisputed power of local administration, can enact a statute prohibiting within its limits the manufacture of intoxicating liquors except for certain purposes, is no longer an open question before this court. Kidd v. Pearson, 2 I. C. R. 232.

(ia) A state law prohibiting the manufacture of liquors does not deprive the owners of a distillery of their property without due process of law. Kidd v. Pearson (U. S. Sup. Ct.), 2 I. C. R. 232.

(j) Up to such sale, the state has no power to interfere, by seizure, or any other action, to prevent the importation and sale by a foreign or nonresident importer. Leisy & Co. v. Hardin, 3 I. C. R. 36.

(k) A citizen of one state has the right to import beer into another state, and the right to sell it there in its original packages. Leisy & Co. v. Hardin, 3 I. C. R. 36.

(l) The right of transportation of ardent spirits, distilled liquors, ale, and beer from one state into another, includes a right of sale in the original package at the place where the transportation terminates. Leisy v. Hardin (U. S. Sup. Ct.), 3 I. C. R. 36; Lyng v. Michigan (U. S. Sup. Ct.), 3 I. C. R. 143.

(m) A representative of importers into a state of malt or brewed liquors cannot be convicted for selling, in original casks, at the place where the transportation terminated, the liquors imported, without having paid a tax imposed by the state on the business. Lyng v. Michigan (U. S. Sup. Ct.), 3 I. C. R. 143.

(ma) The right of importation of ardent spirits, distilled liquors, ale and beer from one State into another, includes the right of sale in the original packages at the place where the importation terminates. Lung v. People of the State of Michigan, 3 I. C. R. 143.

(n) The Arkansas statute of 1889 prohibiting the sale of wine at any place in that state except as authorized therein, so far as it permitted such sale of wine made from grapes grown on the premises, and prohibited the sale of that

made from grapes grown out of the state, is void under the constitution of the United States. State v. Deschamp (Ark.), 3 I. C. R. 576.

(o) Where it appears that one of the defendants, who resides at St. Paul, Minn., is, through the agency of the other defendant, engaged in carrying on the business of keeping for sale and selling intoxicating liquor at a place of business located at Fargo, in the state of North Dakota, in violation of the Prohibitory Liquor Law, HELD, that such place of business is a common nuisance, whether such liquor was or was not drunk by purchasers at such place of business, with the knowledge and consent of the agent in charge of such place of business. State of N. Dakota, ex, rel., Bartlett v. Fraser, 3 I. C. R. 577.

(p) HELD, further, since the passage by congress of the law commonly known as the Wilson Bill, that sales of intoxicating liquor in violation of the prohibitory legislation of North Dakota, which are made in this state by a nonresident, through an agent living in this state, are unlawful sales, whether the liquor sold is or is not imported liquor, or whether it is or is not contained in the original cask or package in which it was shipped out of another state or country. State of N. Dakota, ex, rel., Bartlett v. Fraser, 3 I. C. R. 577.

(pa) A nonresident of the State who through the agency of another carries on the business of selling liquor within the state is guilty of maintaining a common nuisance under N. D. Laws, chap. 110, §13, whether such liquor was or was not drank by the purchasers at such place of business, with the knowledge and consent of the agent. State, Bartlett, v. Fraser (N. D.) 3 I. C. R. 577.

(pb) Sales of intoxicating liquor in violation of the laws of a State, made by a nonresident by an agent living therein, are unlawful, whether the liquor sold is or is not imported or contained in the original package in which it was shipped into the State. State, Bartlett, v. Fraser (N. D.) 3 I. C. R. 577.

(q) A package of intoxicating liquors transported by a common carrier from one state into another in which its sale was forbidden by law, remaining unbroken and undelivered to the consignee, cannot be seized under state process for violation of the laws of the state, because of the interstate character of the goods; and the carrier has a special title which gives a legal right to its custody. State v. Intoxicating Liquors (Me.), 3 I, C. R. 581.

(r) Beer shipped from one state to another prior to the recent legislation of congress on the subject is not subject to seizure in the original packages, under the laws of the latter state. State v. Corrick (Iowa), 3 I. C. R. 669.

(s) Bottles of intoxicating liquors sealed and labeled, which are shipped from another state in open frame boxes with compartments, or packed in barrels, constitute original packages. State v. Coonan (Iowa), 3 I. C. R. 670.

(t) A sale of the contents merely of the packages in which liquor was imported into the state, the purchaser being required to open them and empty the liquor into glasses furnished by the seller, is not a sale by original packages, exempt as interstate commerce from the operations of state laws regulating the sale of intoxicating liquors. Hopkins v. Lewis (Iowa), 4 I. C. R. 63.

(u) The provision of S. C. act of Dec. 24, 1892, §25, subd. 2, that any servant, agent, or employe of a railroad or express company or other carrier, who shall remove any intoxicating liquors from any railroad car, vessel or other vehicle of transportation, at any place other than the usual and established stations or places of business of such carriers within an incorporated city or town where there is a dispensary, shall be punished,—is not a valid exercise of the police power of the state, since it singles out one class of persons from the whole community for prosecution and punishment in contravention of S. C. Const. art. 1, §12, providing that no person shall be liable to any other punishment or subjected in law to any other restrictions or disqualifications in regard to any personal rights, than such as are laid on others under like circumstances. Re Langford, 4 I. C. R. 437.

(v) Liquors imported into a state arrive therein so as to be subject to its police power under the Wilson Act, providing that all intoxicating liquors shall, upon arrival in a state or territory, be subjected to the operation and effect of its laws enacted in the exercise of its police powers, to the same extent as if produced in such state or territory, when they reach their destination in such state, although they are not then delivered by the carrier to the consignee.

Re Langford (C. C. D. S. C.), 4 I. C. R. 437.

(w) A state statute forbidding the inbringing of any intoxicating liquors into the state by a common carrier engaged in interstate and foreign commerce is void as an interference with interstate commerce; and no new power to prohibit such importation is given to the states by the Wilson Act of 1890. Ex parte Edgerton (C. C. D. S. C.), 4 I. C. R. 635.

(x) No authority to punish the agent of a carrier engaged in interstate commerce, under a state law, for receiving in the course of his employment liquors imported from another state, is given by the Wilson Law of 1890, which makes liquors subject to the operation of state laws upon their arrival in the state. Ex Parte Edgerton, 4 I. C. R. 635.

(y) A consignment of intoxicating liquors arrives in the state within the meaning of the Wilson bill, which makes liquors subject "upon arrival in such state" to the laws of the state, as soon as it crosses the state boundary and enters the state, although the contract of carriage is not then completed. State of Iowa v. Rhodes, 7 I. C. C. App. II.

(z) The sale of, as well as the conditions upon which intoxicating liquors shall be transported after entering the territorial limits of a state, is left to state legislation by the act of Congress of 1890 known as the Wilson Act. The court said, in discussing the question, that the liquors arrive in the state within the meaning of the act when they cross the borders and enter the territorial limits of the state. St. of S. Carolina, ex, rel. of v. George, et al v. City Council of Aiken, 7 I. C. C. App. XVII.

(aa) Sales of intoxicating liquors shipped to another state in the original packages before the passage of the Wilson bill are not subject to the laws of that state respecting the recovery of money paid on such sales. N. P. Wind, et al v. Iler & Co., 7 I. C. C. App. XVIII.

(bb) The drawing of a bung from a barrel in which intoxicating liquors were shipped from another state, in order to obtain a small quantity for testing the article to determine an option to reject the purchase, does not destroy the nature of the original package. The court says: "We do not think that the inspecting or testing of an imported article to determine whether it shall be returned has the effect to make it a part of the general mass of property in the state."(Wind, et al v. Iler & Co., 7 I. C. C. App. XVII.

(cc) Prior to the federal legislation upon the question, a state statute entitling a person who paid money for intoxicating liquor sold in contravention of law to recover back the amount paid for it did not apply to the case of a person who purchased the liquor from a citizen of the state who had imported it from another state and sold it in the original package. Edward Yearteau v. Joseph Bacon's Estate, 7 I. C. C. App. XXIII.

(dd) Liquors coming into a town in South Carolina in which by valid statute and ordinance no one can lawfully sell intoxicating liquors, from another state in original packages, are subject under the Wilson Act to the laws and ordinances prohibiting the sale, although in the state at large intoxicating liquors are an article of commerce under the dispensary act. Bailey Liquor Co. v. Austin, 7 I. C. C. App. XXXVII.

(ee) Where bottles of intoxicating liquor are wrapped separately in papers and sealed and the packages thus made packed for shipment in a box, the box and not the sealed packages is the original package, so that the opening of the box and sale of the packages would be a violation of the state liquor law. Harley v. State of Nebraska, 7 I. C. C. App. XLII.

(ff) A state statute which forbids a citizen to purchase in other states and import for his own use alcoholic liquors, the products of other states, discriminates against such products in a way which cannot be permitted under the guise of the police power. And if the act further permits the chief dispenser of liquor within a state to purchase in other states alcoholic liquors and to import them into the state for the purpose of selling them for use and consumption, at retail, within the state and forbids all other persons from so purchasing and importing for their individual use and consumption, it unlawfully discriminates against all other citizens. Donald v. Scott et al, 7 I. C. C. App. XLIX.

(gg) A state statute forbidding the importation of intoxicating liquor from another state and providing

for the arrest of persons who violate its provisions is in conflict with a power of congress to regulate commerce and is not within the exceptions of the Wilson Bill, since that act only permits state regulation of the liquor after it has arrived within the state. The court was pressed to stay its hand in deference to the state court and permit the matter to be delayed on the way. But it is said, the question involved affects the commerce of every port in the state. Delay would work irreparable mischief. Let the channels of trade become once diverted and it would take the life of a generation to restore them. If it be accepted that the master and crew of any vessel arriving at any port in South Carolina may be arrested and imprisoned simply for carrying goods in the course of foreign and interstate commerce, and while engaged in such transportation, and that they would have no protection, no vessel would venture to touch at any of them. It is for the interest of all citizens of the state that the question be settled and the constitutionality of all parts of the statute be ascertained and that speedily. But were this matter to be remanded to the trial justice who issued the warrant, and the cause take its slow course through that tribunal, then on appeal to the circuit court, then to the state court, then to the supreme court of the state, and by writ of error to the supreme court of the United States, years might intervene before a final decision could be reached. The cause can go up from this court direct to the supreme court of the United States and the prisoners be discharged from custody. Ex Parte E. V. Jersey, et al, 7 I. C. C. App. LII.

(hh) A statute providing that any conveyance transporting liquors at night, other than regular passenger or freight steamers and railroad cars, shall be liable to seizure and confiscation, cannot be enforced against a small schooner which entered a port during the night laden with liquor, since it is an interference with commerce as well as unlawful discrimination in favor of freight steamers. Jersey v. The Carolina et al, 7 I. C. C. App. LIII.

(ii) Where a state recognizes the manufacture, sale, and use of intoxicating liquors as unlawful it cannot discriminate against bringing such articles in and importing them from other states. Scott v. Donald, 7 I. C. C. App. LVI.

(jj) The South Carolina dispensary law of January 2, 1895, is unconstitutional and void as a hindrance to interstate commerce and an unjust preference of the products of that state as against prdoucts of other states, and is not within the scope of the act of August 8, 1890, subjecting liquors brought into any state or territory to its police laws. The court says: "It is sought to defend the act as an inspection act within the meaning of that provision of the constitution of the United States which permits the states to impose excise duties as far as they may be absolutely necessary for executing their inspection laws. The act does indeed contain provisions looking to the ascertainment of the purity of liquors and to that extent may be said to be in the nature of an inspection law. But those provisions such as they are do not redeem the act from the charge of being an obstruction and interference with foreign and interstate commerce. It is not an inspection law. The prohibition of the importation of the wines and liquors of other states by citizens of South Carolina for their own use is made absolute and does not depend on purity or impurity of the article. Only the state functionaries are permitted to import in the state, and thus those citizens who wish to use foreign wines and liquors are deprived of the exercise of their own judgment and taste in the selection of commodities. To empower a state chemist to pass upon what the law calls the alcoholic purity of such importations by chemical analysis can scarcely come within any definition of a reasonable inspection law. Scott v. Donald, 7 I. C. C. App. LVI.

(kk) The fact that intoxicating liquor, which is the subject of a sale made in violation of the terms of the Vermont statute, was brought into the state in original packages does not exempt the sale from the operation of the statute in view of the act of Congress of August 8, 1890, which provides that all intoxicating liquors transported into any state shall, on arrival therein, be subject to the operation and effect of the laws of such state enacted in the exercise of the police powers to the same extent and in the same manner as though it had been produced in such state and shall not be exempt therefrom by reason of being introduced therein in original

packages. Starace v. Rossi, 7 I. C. C. LX.

(ll) A city ordinance requiring every person selling vinous liquors in quantities of one gallon or more to obtain a license, as applied to one selling wines for houses or manufacturers in other states, is not an exercise of the police power of the state, but an attempted regulation of a product of interstate commerce, not in the interest of public health or morality, and is invalid. Re Lazarus E. Lebolt v. 7 I. C. C. App. LXXVIII.

(mm) A state cannot forbid the taking or solicitation of orders from inhabitants for intoxicating liquors to be supplied by dealers doing business in other states. The court says: There can be no doubt that the state under its police power can control and regulate the liquor traffic either by prohibiting it altogether or by permitting its sale only on certain prescribed limitations and conditions. Nor can this power be controlled by any law of the United States. The importation of liquor into this state, and its sale in this state, either to the importer or to anyone else, come within this provision. And, as the state has forbidden it, such sale is illegal and void. So even when one imports for his own use and consumption, if the packages come C. O. D., or to order, notify, or under a bill of lading attached to a draft, or in any other way by which the price is paid on or as a condition of the delivery of the goods in this state, this is unlawful, and the sale thus consummated is void. But the court further says that the solicitation or giving of orders upon a dealer outside of the state does not come within the prohibited conduct. The nonresident dealer has the right to receive the order and fill it, and to transport it to this state. If the order is filled abroad and the price paid there, so that the liquor becomes the property then and there of the party ordering, the transaction is perfectly legitimate; nor does it affect the legality of that transaction if the liquor is not to be paid for until it reaches its destination, provided the sale be consummated abroad. Ex parte Loeb, 7 I. C. C. App. LXXXI.

(nn) Liquor imported from another state into South Carolina for the personal use of the importer will be protected from seizure under the South Carolina dispensary act so long as such use continues, although it is kept at a bona fide club of which the importer is a member, in a locked receptacle of which he has the key. The law says: The right to import under the interstate commerce law would be idle indeed if the subject matter imported were not protected when it reached its destination. As it is protected in its importation solely because it is imported for personal use only, it will be protected so long as this personal use continues. If any attempt is made to dispose of or use it in violation of the police power of the state this protection ceases. Donald v. Scott, et al, 7 I. C. C. LXXXV.

(oo) A statute prohibiting the disposition of intoxicating liquors not tested by a chemist of a certain college and found by him to be chemically pure, and providing for their seizure, without any provisioon for an inspection by such chemist excepting of liquor purchased by the state board of control, cannot be sustained as an inspection law, but is an unlawful burden upon interstate commerce. Donald v. Scott, et al, 7 I. C. C. App. LXXXVII.

(pp) A state which conducts the business through her agents of the sale of intoxicating liquors, and takes the place of her citizens, though denying to them the right of sale cannot destroy the competition of citizens of other states by denying them the right to trade in the same commodity in every respect like that in which it is trading, save that it is not protected by a certificate which the state alone can give, and which it distinctly withholds. Donald v. Scott, et al, 7 I. C. C. App. LXXXVI.

(qq) A package of liquor imported into South Carolina from another state for the personal use of the importer is not protected by the interstate commerce law from seizure under the state statute, after the importer has given it to another person for the latter's use and consumption. Donald v. Scott, 7. I. C. C. App. LXXXVIII.

(rr) The South Carolina dispensary law of 1895 is unconstitutional and void as a hindrance to interstate commerce and an unjust preference of the products of that state as against similar products of other states, and is not within the scope of the act of August, 1890, subjecting intoxicating liquors brought into any state or territory to its police laws. Scott v. Donald, 7 I. C. C. App. XCV.

(ss) Where a state recognizes the manufacture, sale, and use of intoxicating liquors as unlawful it can not discriminate against bringing special articles in and importing them from other states. Scott v. Donald, 7 I. C. C. App. XCV.

(tt) A bond executed in Iowa and delivered and accepted in Wisconsin as security for the acts of the principal obligator in selling in the former state, in violation of the laws thereof, intoxicating liquors shipped into such state in original packages from the latter state, is void under the Iowa statutes, and the act of congress of August 8, 1890, providing that all intoxicating liquors transported into any state shall, upon arrival therein, be subject to the operation and effect of the laws of such state enacted in the exercise of its police powers to the same extent as if such liquors had been produced in the state. Fred Miller Brewing Co. v. Stevens, 7 I. C. C. App. XCVII.

(uu) The purchase price of intoxicating liquor sold to a resident of the state, by nonresidents of the state, prior to the passage of the act of Congress of August 8, 1890, may be recovered, notwithstanding the state law forbids such sales, since the statute, so far as its affects interstate sales, is void. Doherty v. Cotter, 8 I. C. C. App. III.

(vv) Under the Wilson Bill the restriction and regulations of state laws become operative on the original package of intoxicating liquors imported into a state before the sale thereof; and therefore such packages cannot be sold if the state law forbids the sale, and can be so sold only in the manner and form prescribed by the state regulations. Vance v. Vandercook Co., 8 I. C. C. App. XI.

(ww) Compelling a resident of the state who desires to order intoxicating liquor for his own use from another state, first to communicate his purpose to a state chemist; and depriving any nonresident of the right to ship into the state any intoxicating liquors unless previous authority is obtained from state officers. —are unlawful regulations of commerce. The right to carry on interstate commerce cannot be made to depend upon the permission of state officers. The court says: The right of the citizen of another state to avail himself of interstate commerce cannot be held to be subject to the issuing of a certificate by an officer of the state to which the shipment is going, without admitting the power of that officer to control the exercise of the right. But the right arises from the constitution of the United States; it exists wholly independent of the will of either the law-making or the executive power of the state. It takes its origin outside of the state, and finds its support in the constitution of the United States. Whether or not it may be exercised depends solely upon the will of the person making the shipment, and cannot be, in advance, controlled or limited by the action of the state in any department of its government. Vance v. Vandercook Co., 8 I. C. C. App. XI.

(xx) Moving intoxicating liquors from the station platform to the freight warehouse of a railroad company on their arrival at destination, upon their shipment from another state, is not a violation of a state statute making transportation of such liquors from one place to another an offense. The court says: "The language of the statute makes it impossible in reason to hold that the law intended that the word 'arrival' should mean at the state line, since it presupposes the coming of the goods into the state for 'use, consumption, sale, or storage.' The fair inference from the enumeration of these conditions, which are all embracing, is that the time when they could arise was made the test by which to determine the period when the operation of the state law should attach to goods brought into the state. If the word 'arrival' means crossing the line, then the act of crossing into the state would be a violation of the state law, and hence necessarily the operation of the law is to forbid crossing the line and to compel remaining beyond the same. Rhodes v. St. of Iowa, 8 I. C. C. App. XII.

(yy) The Wilson Bill does not cause intoxicating liquors to be subject to state laws upon their arrival at the state line in the course of interstate transportation, but only after their coming into the state and the consummation of their shipment. Rhodes v. St. of Iowa, 8 I. C. C. App. XII.

(zz) A dealer who is a citizen of a state other than South Carolina may import liquors, wines, and beers in original packages for sale in that state, so long as the state recognizes intoxicating liquor as an article of commerce; but

sales must be made under the restrictions of the state statute as to time, quantity, and persons. Moore v. Bahr, 8 I. C. C. App. XXV.

(3a) Closing of markets for alcholic liquors in South Carolina to producers in other states, by the dispensary law as amended, renders it unconstitutional although they are likewise closed to the producers of the state, as the use of liquors as a beverage and their importation for personal use are not forbidden, but they are treated as the subject of foreign and interstate commerce in behalf of the state. Vandercook Co. v. Vance, 8 I. C. C. App. XXIX.

(3b) Provision of the South Carolina dispensary law, for the inspection by an official chemist of samples of intoxicating liquors imported into the state for personal use, is unreasonable and futile in failing to protect the citizen from failure to send liquor according to sample, only subjecting him to the seizure and forfeiture of his goods if they should be inspected, and is void as a burden on interstate commerce. Vandercook Co. v. Vance, 8 I. C. C. App. XXIX.

(3c) Before a state can forbid importation and sale in original packages of alcoholic liquors under the Wilson Act, it must declare their manufacture, sale, and use as a beverage to be contraband and forbidden, and take them out of the category of legitimate articles of commerce. Vandercook Co. v. Vance, 8 I. C. C. App. XXIX.

(3d) A state cannot make it unlawful to solicit orders for spirituous liquors without a license by a person acting for a manufacturer without the state. St. of W. Virginia v. Reuben Lichtenstein, 8 I. C. C. App. XXXVI.

(3e) Congress has exclusive control over the territories, and may prohibit importation and sale of liquors therein. Endleman v. U. S., 8 I. C. C. App. XLVI.

(3f) A railroad company as a common carrier was enjoined pendente lite from refusing to receive and transport carloads of liquor in original packages where the business of the complainant in transporting liquors into the state and their destination under the lawful police regulations of the state was considered by the court to be illegitimate. Bluthenthal v. Southern R. R. Co., 8 I. C. C. App. XLVII.

(3g) Forbidding the sale of intoxicating liquors in connection with drugs does not violate the interstate commerce clause of the Federal constitution. The court says: "So far as it is contended that this ordinance interferes with interstate commerce, it is only necessary to repeat that there is not the slightest interference with complainant selling its liquors, the only restriction being not to sell them in connection with drugs. Under none of the authorities does this local regulation of the manner of keeping and selling liquors violate the interstate commerce clause of the constitution of the United States." Jacob's Pharmacy Co. v. City of Atlanta, 8 I. C. C. App. LXVI.

(3h) Intoxicating liquors purchased in another state at a distillery, for the use of the purchaser himself, and transported by him in his own private conveyance across the state line toward his home, have not arrived within the state, within the meaning of the Wilson Act, so as to become contraband under the South Carolina statutes while in course of transportation between the state boundary and the home of the purchaser. Sate of So. Carolina v Holleyman, 8 I. C. C. App. LXX.

(3i) Discrimination in favor of intoxicating liquors bought from a dispensary, as against liquors purchased beyond the limits of the state for the personal use of the purchaser, with respect to the necessity of having certificates as to the purity of the liquors or the fact that they are kept for personal use, would constitute a burden on interstate commerce. In this case a decision was at first arrived at holding that the liquors became subject to state laws the moment they crossed the state boundary, but the court being equally divided upon a constitutional question in the case, the full court was assembled to hear the appeal when the former decision was reversed and the propositions set out above held to be the law of the case. State of So. Carolina v. Holleyman, 8 I. C. C. App. LXX.

(3j) A statute making it unlawful for private persons to sell intoxicating liquors is not an unconstitutional regulation of interstate commerce because a person may have on hand some liquors imported from other states. The court places its ruling upon the ground that the state legislation is within the autho-

rity granted by the Wilson Bill. Plumb v. Christie, 8 I. C. C. App. LXXI.

(3k) A state statute may lawfully prohibit the soliciting of orders for intoxicating liquors from persons in the state, or contracting for the sale of intoxicating liquors with persons in the state other than a person authorized to sell the same, although applied to non-residents who solicit or contract for the sale of liquor within the state so that it incidentally affects interstate commerce. The court says: The purpose of the act under consideration was to restrict the sale of liquors, and this may be lawfully done, although interstate commerce may be thereby incidentally affected. Westheimer v. Weisman, 8 I. C. C. App. LXXII.

(3l) Where, under a contract for sale of intoxicating liquors to be made in one state and delivered in another, the manufacturer agrees to deliver at the residence of the purchaser, and in order to do so marks upon the package the name of the purchaser and the place of his residence, and ships to the manufacturer's agent at such place for delivery, the liquor will have arrived within the state when it is delivered to the agent so as to be subject to the state prohibitory laws under the Wilson Act, and subject the agent to the penalty prescribed by such laws, in case he delivers at the residence of the purchaser. Stevens v. St. of Ohio, 8 I. C. C. App. LXXVIII.

(3m) A non-resident may be deprived of the privilege of selling intoxicating liquors in original packages in South Carolina on account of the sale by his agent to minors in violation of the laws of the state, as the laws regulating interstate commerce will not protect one who violates valid police regulations of the state. Bluthenthal v. Long, 8 I. C. C. App. XCIII.

(3n) A division of a freight rate with another railroad company constitutes a mere subterfuge to give a concession in the rate, and is unlawful, where the railroad company receiving the division of the rate, while owning four or five thousand feet of railway siding adjoining one of several plants belonging to the shipper, does not own any equipment or rolling stock, and is not in any way engaged as a common carrier, but is in fact controlled by the officers of the shipping company, who control its earnings and receive the benefit of the division of the rate, thereby enabling it to sell its produce at prices which its competitors cannot meet. Re Transportation of Salt from Hutchison, 10 I. C. C. 1.

IMPORTANT CASES SINCE 1908

(3o) The rule providing that before intoxicating liquors may be delivered to consignee, he must present an affidavit from a physician stating its necessity for medicinal purposes, is addressed to carrier's agent and not to the shipping public; that the rule merely prescribes reasonable regulations, which, when complied with, will enable the agents to identify consignee as the lawful consignee of the interstate shipments; that it does not in any wise, change, affect, or determine any part of the aggregate of rates, fares, or charges, or the value of lawful service rendered to the shipper or consignee; and that it need not, therefore, be filed with the commission under the provisions of section 6 of the act. James J. Redmond v. Adams Express Co., 53 I. C. C. 39.

(3p) Following United States v. Hill, 248 U. S., 240, the commission accepts the view that the Reed amendment makes it unlawful for a carrier to transport intoxicating liquors in interstate commerce to points in Virginia, except for four specific uses. Redmond v. Adams Exp. Co., 53 I. C. C. 39, 41.

(3q) A proceeding under Laws Ex. Sess. 1917, p. 8, §1, for the confiscation and destruction of intoxicating liquors is neither criminal nor quasi criminal, but purely a proceeding in rem. W. A. Gaines & Co. v. Holmes (Ga. 1922), 114 S. E. 327.

(3r) There is no law of Georgia which makes contraband or unlawful the transportation of intoxicating liquors on a through bill of lading in interstate commerce on an interstate railway train from one state to another state, merely passing through this state, where there has been no delivery to any person within this state, nor any access or control exercised by any person within this state, except the common carrier in the act of transportation. Moreover, if the prohibition statutes were construed to apply to such interstate shipments, such state law would be invalid and void because in conflict with the interstate commerce clause of the constitution of the United States. W. A. Gaines & Co. v. Holmes (Ga. 1922), 114 S. E. 327.

(3s) On the interlocutory hearing of

an application for injunction to restrain the sheriff and solicitor general from confiscating and destroying a shipment of whisky seized in Dade county, Ga., while in transit as a through shipment from Glenn Creek, K., to Los Angeles, Cal., the rejection as evidence of permits, purporting to have been issued by the proper federal authorities, and authorizing the purchase and transportation of the whisky, was error, as these permits, standing alone, would constitute prima facie evidence of compliance with the law. W. A. Gaines & Co. v. Holmes (Ga. 1922), 114 S. E. 327.

ALL OTHER CITATIONS

Palmer v. Southern Express Co. (Tenn. 1914), 165 S. W. 236, 243; James Clark Distilling Co. v. American Exp. Co., 37 Sup. Ct. 180, 242 U. S. 311, 61 L. Ed. 326; Kansas City v. Jordan (Kans. 1917), 163 Pac. 188; State v. G. N. Ry. (Wash. 1917), 165 Pac. 1073; Seaboard Air Line Ry. v. State of North Carolina, 38 Sup. Ct. 96, 245 U. S. 298, 62 L. Ed. 299; City of Dayton v. Christian Moerlin Brewing Co. (Ky. 1917), 195 S. W. 133; State v. G. N. Ry. (Wash. 1917), 167 Pac. 103; West Jersey & S. R. R. v. City of Millville (N. J. 1918), 103 Atl. 247; Monumental Brewing Co. v. Whitlock (S. C. 1918), 97 S. E. 56; Ex Parte Pratt (W. Ca. 1918), 97 S. E. 301; Burton v. State (Ark. 1918), 206 S. W. 51; Missouri, K. & T. R. R. v. Danciger, 248 Fed. 36; Ex Parte Westbrook (Fla. 1918), 250 Fed. 636; United States v. Collins, 254 Fed. 869; Southern Express Co. v. State (Ga. 1919), 98 S. E. 272; Smith v. State (Okla. 1919), 181 Pac. 942; Williams v. Boswell, 255 Fed. 889; Great Northern Pac. S. S. Co. v. Ranier Brewing Co., 255 Fed. 762; United States v. Simpson, 257 Fed. 860; Gulf, C. & S. F. Ry. Co. v. State (Texas 1919), 212 S. W. 845; Wiley v. State (Ala. 1919), 81 So. 343; U. S. v. Gudger, 39 Sup. Ct. Rep. 323; Williams et al v. United States, 41 Sup. Ct. 364; Sickel v. Commonwealth (Va. 1919), 99 S. E. 678; People v. Keeley (Mich. 1921), 181 N. W. 990; Perry v. Southern Express Co. (Ala. 1919), 81 So. 619; Clemons v. Payne (Ga. 1921), 105 S. E. 623.

INTRASTATE COMMERCE

See Interstate Commerce §3; Interstate Commerce Commission §10; State Rates and Regulations.

INVESTMENT RELYING ON RATES

See Evidence §27.

JOINT RATES

See Through Routes and Joint Rates §3.

JUDICIAL NOTICE

See Evidence III; Procedure Before Commission §16.

JUNCTION POINT RATES

See Cars and Car Supply §14½; Routing and Misrouting §5½.

CASES 1887-1908

(a) Complainant attacked as unjust and unreasonable rates charged on flour from Ponca City, Okla., to Maud, Ind., via Santa Fe to Shawnee and M. K. & T. beyond. The latter company exacted an arbitrary of 5c per 100 pounds over its local rate from the junction on the theory that it endeavored to prevent millers located on other lines from selling on its line. HELD, rate attacked unreasonable to extent a charge of 5c per 100 pounds was exacted over and above the junction point combination basis, reparation awarded. Ponca Milling Company v. M. K. & T. Ry., 12 I. C. C. 26.

IMPORTANT CASES SINCE 1908

(b) Increased through rates on traffic to and from points on the Northampton & Bath R. R., resulting from the cancellation by trunk-line carriers of the joint rates, under which the switching charges of the N. & B. were absorbed, found to have been justified as to cement and not unreasonable, but as to other traffic found unjust and unreasonable to extent they exceeded rates to and from the junctions. Reparation awarded . Atlas Portland Cement Co. v. N. & B. R. R. Co., 73 I. C. C. 687.

(c) Extension of junction-point rates to points on branch lines is not unusual but generally has not been required unless it has appeared that carriers had adopted such practice with respect to other points similarly located and circumstanced, or that rates to junction points were made on group basis and applied over a considerable territory when conditions of operation and transportation on main and branch lines were substantially similar. Western Coal Rates, 80 I. C. C. 383, 450.

ALL OTHER CITATIONS

Dietz Lumber Co. v. Director General,

55 I. C. C. 21; Chop v. Director General, 55 I. C. C. 182; Empire Steel & Iron Co. v. Director General, 62 I. C. C. 157; Hollingshead Co. v. Director General, as Agent, 62 I. C. C. 147; Ridge Coal Mining Co. v. M. P. R. R. Co., 62 I. C. C. 259; Dering Mines Co. v. Director General, 62 I. C. C. 265; Aluminum Co. v. M. T. R. R. Co., 69 I. C. C. 119; Melcroft Coal Company v. Indian Creek Valley Ry., 81 I. C. C. 251.

JURISDICTION OF COMMISNOIS

See Accounting §1; Adjacent Foreign Country §1; Advanced Rates §1, §2; Allowances §1, §2; Bill of Lading §1; Bridge and Tolls §1; Canada; Classification §2; Control and Regulation; Courts; Demurrage §1; Discrimination §2; Divisions §1; Equalization of Rates §1; Export Rates and Facilities §1; Express Companies §1; Facilities and Privileges I; Foreign Commerce I; Government Control; Interstate Commerce; Interstate Commerce Commission I; Long and Short Hauls §2; Loss and Damage §4; Panama Canal Act; Passenger Fares and Facilities §1; Proportional Rates §1; Reconsignment §9; Reduced Rates §1; Refrigeration §1; Released §1, §4; Reparation I; Routing and Misrouting §1; Special Contracts §4 (1); State Rates and Regulations §2; Storage §1; Switch Tracks and Switching §1; Tap Lines §1, §2; Tariffs §1; Telephone and Telegraph Companies §3½; Terminal Facilities §1; Through Routes and Joint Rates §1; Time Zones; Transportation §1½; Undercharges §1; Unpublished Rates; War Taxes.

JURY TRIALS

See Crimes §30.

JUSTIFICATION

See Advanced Rates II; Blanket Rates §3; Discrimination III.

KNOCKED DOWN SHIPMENTS

See Classification §4½, §5.

LABELS

See Classification §14; Explosives.

LABOR BOARD

See Newland's Act; Wages.

IMPORTANT CASES SINCE 1908

(a) Paragraph (a) of section 5 of the standard contract sets forth a rule of measuring the compliance of the director general with the covenant of upkeep by reference to the accounts of the carriers, when kept in accordance with the commission's requirements; the basic measure is the expenditure for maintenance during an average six months of the test period, adjusted to differences in the cost of labor and materials and in the amount and use of the property, in accordance with the provisions of paragraph (c) ; and differences in the "cost of labor," as these words are used in paragraph (c), do not include changes in the quality or effectiveness of labor, but only changes in wages. Maintenance Expenses under Section 209, 70 I. C. C. 115, 123.

(b) Under Transportation Act, 1920, §307, the decisions of the labor board as to matters other than those submitted to it by the parties jointly under section 301 are advisory only. Pennsylvania Railroad Co. v. United States R. R. Labor Board, 282 Fed. 693.

(c) Transportation Act of 1920, tit 3, authorizing the labor board to ascertain just and reasonable wages and working conditions, is within the power of congress under its power to regulate interstate commerce, and does not violate the right of private contract, or take property without due process of law, in violation of Const. Amend. 5. Pennsylvania Railroad Co. v. United States R. R. Labor Board, 282 Fed. 693.

(d) Transportation Act of 1920 §308 (4), authorizing the labor board to make necessary regulations for the efficient execution of the functions vested in it, gives it no right to direct or control the method of selecting persons to represent employees in conferences with employer under section 301. Pennsylvania Railroad Co. v. United States R. R. Labor Board, 282 Fed. 693.

(e) Under Transportation Act, 1920, §301, providing for conferences for the adjustment of disputes between carriers and their employees, the labor board is without power to intervene in the proceedings preceding a reference of the dispute to it by the parties jointly, except that under section 307 it may suspend the operation of a decision making a readjustment of rates necessary. Pennsylvania Railroad Co. v. United

States R. R. Labor Board, 282 Fed. 693.

(f) Under Transportation Act, 1920, §301, it was intended that disputes between carriers and their employees should be considered, and if possible decided, by conference solely between the carrier and representatives of the employees, and the only power given the labor board under that section is to hear and decide a dispute which the conferees are unable to decide and then only in the event that the parties jointly refer the matter to the board. Pennsylvania Railroad Co. v. United States R. R. Labor Board, 282 Fed. 693.

(g) The labor board, created by Transportation Act 1920, tit. 3, is a body corporate, subject to the jurisdiction of federal courts, and may sue and be sued. Pennsylvania Railroad Co. v. United States R. R. Labor Board, 282 Fed. 693.

LACHES

See Classification §5.

LAND GRANT RAILROADS

IMPORTANT CASES SINCE 1908

(a) Congress, in granting rights of way to defendants in Indian Territory, provided that the rates in that territory should not be higher than those charged in Kansas, Arkansas and Texas. HELD, the commission had no jurisdiction to enforce such provision, and even if it had, the provision was too indefinite to be capable of enforcement. Haines v. C. R. I. & P. Ry. Co., 13 I. C. C. 214, 216.

(b) Complainant shipped 11 carloads of anthracite coal from Chicago, Ill., to Sturgis, S. D., for use of the United States government at Fort Meade, S. D., purchased by the United States at a price which included delivery of the coal at Sturgis. Defendant operated between Chicago and Sturgis 248 miles of land-grant aided railroad, over which the government was required to pay only 50 per cent of the commercial rate. The shipments, however, were assessed the published rate of $6.80 per ton. The carrier, through error, quoted to complainant a rate of $5.9915 per ton, the land-grant rate. This rate was established subsequent to the shipment to coal consigned to the government at Sturgis. The reasonableness of the $6.80 rate was not questioned, the propriety of the application of the land-grant rate to the shipment being involved. HELD, that it is improper to permit the benefit of special rates on government material to accrue to anyone other than the government itself. Reparation denied. Havens & Co. v. C. & N. W. Ry. Co., 20 I. C. C. 156, 158.

(c) Land-grant deductions on shipments for the government are made on settlements between the carrier and the auditing offices of the War Department, under the provisions of a section of the Revised Statutes not incorporated in the Interstate Commerce Act, and, therefore in awarding reparation on a shipment by the government the commission cannot consider land-grant deductions. U. S. v. S. P. Co., 25 I. C. C. 255, 257.

ALL OTHER CITATIONS

U. S. v. P. R. R. Co., 28 I. C. C. 51, 518, 524; S. P. Co. v. U. S., 35 Sup. Ct. 573, 574; 237 U S. 202, 59 L. ed.

LATERAL ALLOWANCES

See Allowances §8 (3¼).

LATERAL ROADS

CASES 1887-1908

(a) Upon application of a railroad, about 1 mile long, from a point near the Southern Railway in McRae, Ga., to a point near the Sea-board Air Line, for an order requiring physical connections therewith. HELD, upon the facts and circumstances of the case, that as such connections are practicable and can be made without hazard to the public, and the complainant's prospective business is sufficient to justify the connections, they should be made, but at complainant's expense. Definite order withheld pending action of defendants and taking of further testimony. McRae Terminal Railroad v. Southern Railway Co., 12 I. C. C.

LEAKAGE

See Allowances §8 (3½).

LEASE

See Cars and Car Supply §11½; Common Carrier §2; Finance Dockets §3; Special Contracts §2 (1); Warehousing.

CASES 1887-1908

(a) Where a railroad lease provides that the rent shall be paid monthly on the last day of each month, if it is not paid in fact until a portion of the month following, the one on which it becomes due has elapsed, interest is chargeable on the deferred payments. Vermont & C.

R. Co. v .Vermont C. R. Co. (Vt.) 3 I. C. R. 488.

(aa) The agreed rental cannot be accepted as the amount which leased property, part of a system, must earn and the lessee may retain before any reduction can be made in the rates over the leased lines. Newland v. Northern P. R. Co. (Conn.) 4 I. C. R. 474.

(b) Where a road or system of roads leased and made the road of another company a part of the system. HELD, that the agreed rental cannot be accepted as the amount which the leased property must earn and the lessee may retain before any reduction can be made in the rates over the leased lines. A. S. Newland v. Northern Pacific R. R. Co. et al., 6 I. C. C. 131.

(c) The agreed rental cannot be accepted as the amount which leased property, part of a system, must earn and the lessee may retain before any reduction can be made in the rates over the leased lines. Newland v. Northern P. R. Co., 6 I. C. C. 131.

(d) A carrier subject to the provisions of the Act to Regulate Commerce cannot by leasing its road free itself from liability for practices made illegal by such act; nor can it, after resuming operation of its property pending proceedings against it to enforce the provisions violated and to recover damages for such violations, claim exemption from liability during the existence of the lease. Independent Ref. Asso v. Western N. Y. & P. R. Co., 6. I. C. C. 378.

(e) A State statute does not unlawfully interfere with interstate commerce which requires every person operating a railroad in the State under a lease to record the same in the office of the Secretary of State and in the county clerk's office of every county in which the road or any part thereof lies, within thirty days after the execution of the contract. Commonwealth of Kentucky v. Chesapeake & Ohio Ry. Co., 7 I. C. C. App CVI.

(f) The requirement of the Kentucky statutes that every person operating a railroad in the State under a lease shall have the same recorded in the office of the Secretary of State in the county clerk's office of every county in which the road or any part thereof lies, within thirty days after the contract or lease is executed, is a legislative exercise of police power, and is not an unconstitutional interference with interstate commerce. The court says: "The manifest purpose of the statute is to ascertain and identify the company having legal possession and control of each particular line of railroad within the State in order: First, that taxes and public dues may be more readily and certainly collected and obedience to law more effectually enforced; second, that persons having business intercourse with common carriers may know with whom to deal, or, if wronged or injured, may know against whom to seek remedy. In what way enforcement of such statute can possibly interfere with power of Congress to regulate commerce between the States we are unable to conceive." Commonwealth of Kentucky v. Chesapeake & Ohio Ry., 8 I. C. C. App. LXXV.

IMPORTANT CASES SINCE 1908

(g) The use of trestles leased at inadequate rental reserved in lease has each year constituted a substantial concession to coal company and unlawful discrimination against competing shippers and an offset against rates. Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 251

(h) While there may be no inhibition of law against the leasing by a carrier of the tracks or property of a shipper and the payment of just rental therefor, nevertheless, if the consideration be so excessive as to effect a concession in the lawful freight rates, the articles of lease and concomitant evils are subject to appropriate legal review. Allowances on Anthracite Coal, 36 I. C. C. 164, 170.

(i) A warehouse owner, a landlord seeking to rent his property, as such, has no relation with a common carrier which could result in a discrimination against him in violation of the Act to regulate commerce. The discrimination there forbidden is in respect of transportation. Pittwood & N. P. Ry., 51 I. C. C. 535.

(j) The Commission is without jurisdiction to prescribe uniform liability clauses to be contained in leases or contracts for construction, maintenance, and use of industrial or private sidetracks, limiting liability for loss and damage caused by fire from locomotives operating over such tracks. National Industrial Traffic League v. A. & R. R. R. Co., 61 I. C. C. 120.

(k) The Commission instituted an in-

vestigation as to carriers leasing their facilities to shippers of freight, and the rentals received therefor by the carriers. LEASES BY THE NORTHERN PACIFIC. Part of the right of way of this carrier in Spokane is occupied by various industries. The leases are either for an indefinite term or for a long term. 50 per cent of the property suitable for warehouses in Spokane is adjacent to tracks of that company. In all cases the rental was ostensibly 6 per cent of the value of the land for business purposes, the lessee agreeing to pay all taxes or special assessments. Usually the leases contained provisions for a revaluation at the end of 5 or 10 years, such revaluation, however, to be determined by disinterested parties only in default of mutual agreement of the carrier and its lessee. The leases provide that where rates are as favorable the lessee would route its freight over the N. P., in preference to any other line. LEASES BY THE SPOKANE INTERNATIONAL. This is a line about 140 miles in length between Spokane and Kingsgate, Alberta, Canada. This carrier leased each of several sites for an annual rental of $10, irrespective of size or location, the lessee agreeing to pay taxes and special assessments. LEASES BY THE GREAT NORTHERN. Defendants stated its purpose was to secure as large a rental as possible; that the leases always provided that lessee would pay taxes and special assessments. IN GENERAL. Apparently the carriers concern as to the character and use of improvements upon the leased land was due to a desire that the lessees should be producers of traffic. It is quite evident not only from the terms of the contracts in evidence but also from the testimony that traffic considerations were uppermost and controlling in the minds of railroad employees and officers charged with the leasing of industry sites. The record does not satisfactorily show that the lessees pay the tax or special assessments. HELD, 1. No justification exists for the leasing of railway lands to industries at a nominal rental charge. In cases where nominal or wholly inadequate rentals are reserved in leases it is evident that traffic considerations are the moving cause so far as the carriers are concerned. Where it clearly appears that the traffic of the lessee is in part the consideration for the lease, the conclusion follows almost inevitably that the transaction amounts to a concession to the shipper-lessee, in violation of the Elkins Act and of section 2 and 6 of the act. 2. A provision in a lease of railway land whereby a shipper agrees to route over the lines of the lessor carrier or its connections all or any part of the traffic which the shipper is able to route amounts to an acknowledgement that the consideration for the making of the lease was in part the exchange of traffic by the shipper for the right to occupy the land. 3. The determination of the value of leased premises by mutual agreement of the shipper and carrier, and revaluation from time to time by similar agreement, is an arrangement inconclusive of actual values and open to serious abuse. 4. Every effort should be made by carriers to obtain, when leasing land to shippers, terms no less favorable than would be obtained under similar conditions and restrictions of use, were the land owned independently of the railroad. Proceeding discontinued. Leases and Grants by Carriers to Shippers, 73 I. C. C. 671.

(l) When a carrier permits a shipper to use valuable lands to which the carrier has title, without charge or without reasonably adequate charge, the practical effect is to reduce that shipper's transportation charges, so that there results what amounts to a refunding or remission of some portion of the published rates. Under such circumstances there may be a violation of sections 2, 3, and 6 of the interstate commerce act, or of the Elkins Act, as amended. Leases & Grants by Carriers to Shippers, 73 I. C. C., 671, 682.

(m) Violations of the act and other statutes which the commission administers may occur when the terms and conditions of leases of carrier lands to shippers are so favorable to the lessee that it is clear that the real consideration for the lease must in part be found elsewhere, namely, in the freight which he ships over the lines of the lessor carrier. Leases and Grants by Carriers to Shippers, 73 I. C. C. 671, 682.

(n) The act contains no provision authorizing the commission to prescribe or regulate the terms or conditions under which carriers may lease their lands to shippers. The authority which the commission has over such leases is wholly indirect, and comes into being only where the lease results in some violation of the act or other statute which the commission administers. Leases and Grants by

Carriers to Shippers, 73 I. C. C., 671, 682.

(na) The act contains no provision authorizing the Commission to prescribe or regulate the terms or conditions under which carriers may lease their lands to shippers. When a carrier permits a shipper to use valuable lands to which the carrier has title, without charge or without reasonably adequate charge, the practical effect is to reduce that shippers transportation charges, so that there results what amounts to a refunding or remission of some portion of the published rates. Under such circumstances, there may be a violation of section 2. Leases and Grants by Carriers to Shippers, 73 I. C. C. 671, 682.

(o) A provision in a lease of railway land whereby a shipper agrees to route over lines of the lessor carrier or its connections, all or any part of the traffic which the shipper is unable to route, amounts to an acknowledgment that the consideration for the making of the lease was in part the exchange of traffic by the shipper for the right to occupy the land. Leases and Grants by Carriers to Shippers, 73 I. C. C. 671, 683.

(p) The determination of the value of leased premises, by mutual agreement of the shipper and carrier, and revaluation from time to time by similar agreement, is an arrangement inconclusive of actual values and open to serious abuse. Leases and Grants by Carriers to Shippers, 73 I. C. C. 671, 683.

(q) Carriers, when leasing land to shippers, should make every effort to obtain terms no less favorable than would be obtained, under similar conditions and restrictions of use, were the land owned independently of the railroad. Leases and Grants by Carriers to Shippers, 73 I. C. C. 671, 683.

(r) Upon investigation, no justification found to exist for the leasing of railway lands to industries at nominal rental charges. In cases where nominal or wholly inadequate rentals are reserved in leases traffic considerations are the moving cause so far as the carriers are concerned, and where it clearly appears that the traffic of the lessee is in part the consideration of the lease, the transaction amounts to a concession to the shipper-lessee, in violation of the Elkins Act and of sections 2 and 6 of the interstate commerce act. Leases and Grants by Carriers to Shippers, 73 I. C. C. 671, 683.

(s) Where a corporation, owning a railroad and coal mines, leased the railroad for a term of 50 years at a stipulated yearly rental, and the lease provided that the lessee would transport coal from the lessor's coal mines at a sliding rate per ton, depending on the quantity transported, and that, if the quantity of coal transported in any year exceeded 100,000 gross tons, the lessee would pay back to lessor 5 cents for each ton transported, and that, if the lessor failed to ship a certain quantity of coal, the lessee could declare the agreement terminated, HELD, the 5 cents per ton paid by the lessee to the lessor was a rebate, and was not an additional rent. State Line & S. R. Co. v. Lehigh Valley R. Co. (Pa. 1923), 120 A-829.

(t) Where a lease of a railroad for a stipulated rent, provided that the lessee would transport coal mined by lessor for a sliding rate per ton, depending on the quantity transported, and that, if the quantity exceeded 100,000 tons in any year, the lessee would pay 5 cents per ton on all the coal transported, HELD, that it was clearly a rebate, and not an additional rent, and the parties by their interpretation could not alter this fact, nor make that legal which was illegal by calling it by another name, for it is only where the meaning of a contract is uncertain or ambiguous that the parties' interpretation is followed. State Line & S. R. Co. v. Lehigh Valley R. Co. (Pa. 1923), 120 A-829.

ALL OTHER CITATIONS

Rates for Transportation of Anthracite Coal, 35 I. C. C. 220, 251; Allowances on Anthracite Coal, 36 I. C. C. 164, 170; Chicago, West Pullman & Southern R. R. Co. Case, 37 I. C. C. 408, 417; Allowances to Kanawha, Glen & Eastern, 41 I. C. C. 53, 60; R. R. Com'rs. of Florida v. F. E. C. Ry. Co., 42 I. C. C. 616, 619; Central of Ga. Ry. v. Blount, 238 Fed. 292; Pittwood v. N. P. Ry., 51 I. C. C. 535; American Smelting & Refining Co. v. Union Pac. R. R., 256 Fed. 737; Owasco River Ry., 53 I. C. C. 104, 112; Fireproof Storage Co. v. Hines, 261 Fed. 215; National Industrial Traffic League v. A. & R. R. R. Co., 61 I. C. C. 120; Lease of Valley Terminal Ry., 65 I. C. C. 105; Equipment Trust of Long Island R. R. Co., 65 I. C. C. 144; Agreement of Chesapeake & Ohio Ry., 65 I. C. C. 469;

Agreement of Atlantic Coast Line R. R., 65 I. C. C. 571; Equipment Trust of Bangor & Aroostook R. R., 65 I. C. C. 628; Equipment Trust Agreement of Central of Ga. Ry., 65 I. C. C. 773; Leases and Grants by Carriers to Shippers, 73 I. C. C. 671, 682; Leases & Grants by Carriers to Shippers, 73 I. C. C. 671, 682.

LEASED CARS

See Cars and Car Supply §11½.

LEGAL RATES

See Advanced Rates §5 (7½), §19¼; Classification V, §20, §22; Commodity II, §3, §4; Demurrage §15½; Distance Rates §2; Evidence §13, (3); Facilities and Privileges §15, §18; Long and Short Hauls §5, §6¾; Overcharges; Proportional Rates I; Rail and Water Rates; Reconsignment §5; Tariffs IV, §7, 18, §22; Through §15, §22, §25.

LEGALITY

See Absorption §5½; Allowances IV, §10; Blanket II, §2; Divisions IV; Proportional Rates III; Reconsignment I; Reduced Rates II; Released Rates III; Restricted Rates I; Special Contracts II; Substitution of Tonnage II; Tap Lines §7; Tariffs §14; Track Storage II; Train Load Rates.

LIGHTERAGE

I. CONTROL AND REGULATION.
§1. Jurisdiction of commission.
II. CHARGES.
§2. In general.
§3. Reasonableness and discrimination.
III. ALLOWANCES.
§4. In general.
IV. THROUGH ROUTES AND JOINT RATES.
§5. In general.
V. OBLIGATION TO FURNISH.
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VI. TARIFFS AND CONSTRUCTION
§7. In general.

CROSS REFERENCES

See Allowances §8 (4); Car Ferry; Floatage; Tap Car Charges.

I. CONTROL AND REGULATIONS.
See Control and Regulations.
§1. Jurisdiction of Commission.
See Interstate Commerce Commission I.

IMPORTANT CASES SINCE 1908

(a) It must not be inferred that the Commission disclaims jurisdiction over lighterage service. On the contrary, that service must be conducted in accordance with requirements and prohibitions of the act. Federal Sugar Refining Co. v. B. & O. R. R. Co., 17 I. C. C. 40, 45.

(b) A lighterage company, which offers its services to the general public for hire as a common carrier, held to be a common carrier subject to the act. Murray Lighterage & Transportation Co. v. D. & H. Co., 25 I. C. C. 388.

(c) Where shipments originating in Louisiana destined to Newark, N. J., moved in privately-owned vessels to New York Harbor and thence under separate contract to Newark, the commission has jurisdiction over the movement from New York lighterage to Newark whether or not the entire physical operation was performed within the state of New Jersey. The movement is part of an interstate transportation, though the through transportation was not made under a common control management, or arrangement for a continuous carriage or shipment. Du Pont de Nemours & Co. v. Director General, as Agent, 74 I. C. C. 191.

ALL OTHER CITATIONS

Murray Lighterage & Transportation Co. v. National Railways of Mexico, 25 I. C. C. 5.

II. CHARGES.
§2. In general.

IMPORTANT CASES SINCE 1908

(a) Though the method of a lighterage company in serving the shipping public be more or less primitive, in the public interest such use of the public waters is to be encouraged. Murray Lighterage & Transportation Co. v. D. & H. Co., 25 I. C. C. 388, 391.

(b) New York is the only port in the world where a very large volume of freight is lightered or floated between trunk line terminals on one side of the harbor and ships and factories on the other side. For this service the lighterage companies may make reasonable non-discriminatory charges and establish reasonable rules and regulations. New York Harbor Case, 47 I. C. C. 643, 652.

ALL OTHER CITATIONS

Eld & Co. v. Ocean S. S. Co., 21 I. C. C. 581; Chicago Lighterage Charges, 28

I. C. C. 390, 394; Maldonado & Co. v. S. P. Co., Unrep. Op. A-18; Export Freight Free Time, 47 I. C. C. 162, 165. American Woodpulp Corporation v. Director General, 88 I. C. C. 277.

§3. Reasonableness and Discrimination. See Discrimination; Reasonableness of Rates.

CASES 1887-1908

(a) Complainant attacked the refusal of defendant to continue the delivery of hay in carload shipments at its freight station at Brooklyn, N. Y., after making such delivery for a period of years as unreasonable and discriminatory. Transportation between defendant's terminal in Brooklyn and its rail terminus in Jersey City is effected by water carriage across New York harbor. The action in discontinuing track delivery for hay in carloads at its station in Brooklyn, though it continued to make such delivery for other carload traffic, was taken to relieve a chronic congestion at that station resulting largely from consignments of hay thereto. It still continues delivering carload hay alongside wharves in Brooklyn as it does at other points within the lighterage district of New York. HELD, that the resulting discrimination against hay in carloads was not unjust within the meaning of the act, complaint dismissed. Palmer's Dock Hay & Produce Board of Trade v. Pennsylvania R. R., 9 I. C. C. 61.

IMPORTANT CASES SINCE 1908

(b) By extension of their lines to New York by lighterage regulations, from the exercise of business discretion and not from compliance with requirements of the act, defendants incur no liability, under the act, to extend their lines to Yonkers or other nearby communities. Federal Sugar Refining Co. v. B. & O. R. R. Co., 17 I. C. C. 40, 45.

(c) Even if the lighterage service supplied by railroads entering New York in carrying traffic across the river be regarded as a species of cartage, it would not necessarily follow that such service must be extended to Yonkers, because it is provided in Greater New York. The peculiarities of the New York situation might justify the carriers in affording to shippers in that city a facility of this kind which they would not be bound to furnish elsewhere. Federal Sugar Refining Co. v. B. & O. R. R. Co., 17 I. C. C. 40, 46.

(d) Terminals within the lighterage limits of New York Harbor are railroad terminals, none the less so because they are reached by ferries instead of bridges. To and from these places the defendants are common carriers "wholly by railroad," within the meaning of section 1. Federal Sugar Refining Co. v. B. & O. R. R. Co., 17 I. C. C. 40, 46.

(e) Unjust discrimination results from paying lighterage allowance to one shipper and refusing such allowance to another shipper performing a similar service. Federal Sugar Refining Co. v. B. & O. R. R. Co., 20 I. C. C. 200.

(f) There is little ground for denying a lighterage privilege and allowance to complainant where its sugar crosses the lighterage limits, while according such privilege and allowance to another shipper within the lighterage limits. Federal Sugar Refining Co. v. B. & O. R. R. Co., 20 I. C. C. 200, 215.

(g) A carrier must lighter sugar itself or allow each shipper to do it in his own way, and if an allowance is paid to one shipper it should be paid to another performing the same service. Federal Sugar Refining Co. v. B. & O. R. R. Co., 20 I. C. C. 200, 215.

(h) When a shipper tenders its sugar to the defendants on lighters at their regular receiving stations on the Jersey shore, it must be received and carried thence to destination on rates, terms and conditions that are no less favorable to the complainants in any particular than the rates, terms and conditions governing and surrounding the sugar traffic of a competitor, brought by them on floats and lighters to the same station for carriage to the same destination. Federal Sugar Refining Co. v. B. & O. R. R. Co., 20 I. C. C. 200, 217.

(i) Where charges for a particular terminal service, such as lighterage, have been absorbed and it is proposed to maintain the same rates to or from the terminal but to add thereto what the carriers consider to be a reasonable charge for the service, it should be affirmatively shown not only that the terminal charge, considered alone, is reasonable, but also that the through charge is reasonable. Manure from Jersey City, N. J., 40 I. C. C. 465, 469.

(j) Respondent proposed to eliminate from its free lighterage tariff applicable to points in New York Harbor baled hay or straw, carloads. The lighterage tariff

of the Erie, respondent, provides, among other things, that carload shipments of articles entitled to lighterage will be lightered free to or from any steamship, pier, or public landing within the free lighterage limits of New York Harbor. This has been provided by the trunk lines for many years. If respondent is permitted to withdraw from lighterage service on baled hay or straw except to the New York City stations specified, free lighterage to New York Harbor points will still be available to shippers located on the Erie in central territory to Pennsylvania, B. & O., Jersey Central, D. L. & W., and L. V., deliveries without additional charge to the shippers, provided the traffic is routed for delivery in New York via those lines. The Erie has joint through rates with those lines equal to the single line rates applicable via its own line. HELD, proposed schedules not justified. Lighterage rules on hay or straw, carloads in New York harbor, 78 I. C. C. 684.

ALL OTHER CITATIONS

Harlow Lumber Co. v. A. C. L. R. R. Co., 15 I. C. C. 501, 503; Mosson Co. v. Penn. R. R. Co., 19 I. C. C. 30; Chicago Lighterage Charges, 28 I. C. C. 390; Lighterage and Storage Regulations at New York, 35 I. C. C. 47, 60, 61, 63; Gilman & Co. v. M. C. R. R., 38 I. C. C. 213; Handling of Heavy Articles, 47 I. C. C. 323, 331; New York Harbor Case, 47 I. C. C. 643, 738; Carfloat Service, New York Harbor, 49 I. C. C. 259, 267; International Steel Corp. v. Director General, as Agent, 73 I. C. C. 635; Compagnie Auxiliare v. D. L. & W. R. R. Co., 77 I. C. C. 60; Boston Wool Trade Asso. v. Clyde S. S. Co., 78 I. C. C. 411.

III. ALLOWANCES.

§4. In general.

See Allowances §8 (4).

IMPORTANT CASES SINCE 1908

(a) The transportation conditions surrounding the transportation of heavy iron and steel articles on the one hand, and heavy stone on the other, are so similar that it would be inadvisable to distinguish between them with respect to lighterage charges. Handling of Heavy Articles, 47 I. C. C. 323, 331.

(b) When a rail carrier's lighter or barge with a shipment on board reports to the steamship company at the point designated in the permit, the shipment so far as the rail carrier is concerned, has reached its destination, and it is then incumbent upon the consignee to take delivery. He does not perform this duty personally but employs the steamship company to perform it for him. He thereby makes the steamship company his agent for the purpose of taking delivery, and becomes responsible for any delay on its part to the same extent that he would be responsible for his own delay if he took the delivery personally. The acts or omissions of the agent are in such case the acts and omissions of the principal. New York Board of Trade v. Director General, 59 I.C. C. 205, 208.

(c) Defendant railroad companies, whose eastern freight rail terminals were on the New Jersey shore of New York Harbor, held themselves out as ready to take freight at any public or accessible private dock within the free lighterage zone, embracing the commercial and manufacturing river front of Greater New York, and lighter it across the river, without any other charge than that published in their tariffs applicable to freight delivered to them at the New Jersey shore. Within this zone defendants established freight terminal stations, some owned or operated for them by third persons under contract as their agents. One of the latter class of stations was operated by Arbuckle Bros., under contracts whereby, in consideration of operating the station and lightering freight between it and the New Jersey terminals, Arbuckle Bros. were to receive 4 1-5c per 100 lbs. on freight originating at or destined to points west of Trunk-Line Territory, and 3c on freight originating at or destined to points east thereof, consignments to or by Arbuckle Bros. being treated in the same manner as the shipments of the general public. The docks of a competitor, the Federal Sugar Refining Co., were located at Yonkers, some 10 miles beyond the limits of the free lighterage zone, and in order to participate in the allowances accorded Arbuckle Bros., it shipped its freight by lighter to pier 24 within the zone, consigned to its city office, where the master of the lighter was handed bills of lading for execution by the carrier upon delivery at the New Jersey shore. The lighter then proceeded with the freight to the New Jersey terminal, where it was delivered. The Commission, in 20 I. C. C. 200, held that upon these facts, unless the Federal Sugar Refining Co. were accorded an allowance identical

with that made to Arbuckle Bros., a discrimination in contravention of the Act, would result. HELD, that the circumstances and conditions surrounding the two shippers were so dissimilar as not to make the same rule applicable. The carriers not having established any public station at pier 24, notice and tender were essential. No tender having been made, obviously because the freight when loaded on the lighter was destined for the rail terminals at the New Jersey shore and thence to the real consignee at western points on the carrier's lines, the stopping at pier 24 and the receipt of unsigned bills of lading was not a break in the continuity of transportation, but a subterfuge to give the transaction the appearance of a shipment from pier 24. The claim by the Federal Company was for a lighterage service which the carriers were under no obligation to perform. Judgment of the Commerce Court, reversing the action of the Commission, affirmed. United States v. B. & O. Ry. Co., 34 Sup. Ct., 75, 78, 231.; Co. v. U. S., 35 Sup. Ct., 573, 574, 237 U. S. 202, 59 L. Ed.

ALL OTHER CITATIONS

Federal Sugar Refining Co. v. B. & O. R. R. Co., 17 I. C. C. 40, 45, 47; Barrett Mfg. Co. v. Central R. R. of New Jersey, 17 I. C. C. 464, 466, 465; Richardson Co. v. Director General, 56 I. C. C. 731; United States v. Interstate Commerce Commission, 277 Fed. 538, 542; Standers Shipbuilding Corporation v. Director General, 77 I. C. C. 64.

IV. THROUGH ROUTES AND JOINT RATES.

§5. In general.

See Through Routes and Joint Rates.

IMPORTANT CASES SINCE 1908

(a) Lighterage company held to be a common carrier subject to the Act and entitled to joint through rates with rail line. Murray Lighterage & Transportation Co. v. National Railways of Mexico, 25 I. C. C. 5.

(b) Complainant transportation company asked that the D. & H. Co. be required to join with it in establishing through routes and joint through rates on interstate traffic between points in the harbor of New York City and points in New York and Vermont states, and alleged that, by allowing such joint through rates to its competitor, and not to it, defendant had unjustly discriminated against complainant. On sulphur moving to Ausable Forks, N. Y., and delivered to the D. & H. Co. at Green Island, N. Y., complainant earned but 6c per 100 lbs. for the movement from New York Harbor points to Green Island, while its competitors, who enjoyed a through rate, earned 7.6c. The northbound traffic of complainant is larger in volume and its northbound service equally if not more efficient than the northbound service of its chief competitor. Its chief southbound competitor has docks and office a few miles from the Green Island docks of the D. & H. Co., while complainant has not. HELD, the D. & H. Co. may not lawfully withhold through routes and joint rates from the complainant on northbound traffic so long as it maintains such relations with its competitors similarly situated and operating in substantially the same manner. Murray Lighterage & Transportation Co. v. D. & H. Co., 25 I. C. C. 388.

(c) Whether a complaining lighterage company is wise in seeking the establishment of published joint through rates with respondent is a question which it must decide for itself. Murray Lighterage & Transportation Co. v. D. & H. Co., 25 I. C. C. 388, 391.

(d) Complainant attacks as unjust and unreasonable tariff allowances of the defendants to private lighters for handling china clay, in bulk, in New York harbor. The evidence shows that all the china clay recently imported through New York harbor by the complainant has been handled by the carriers with their own lighters. No question of allowance arises as to such shipments. For the handling of china clay, the services of private lighter men would be preferred by complainant to those provided by the carriers, because the commodity can better be kept from contamination by other substances when transported in specially arranged private lighters. The allowances for outside equipment has been 60 cents per ton for some years, apportioned by allowing 35 cents for lighters and 25 cents for loading. The lighterage concerns joined as complainants have not handled china clay since this allowance was made. The present allowance of 60 cents per ton applies to many other commodities in addition to china clay, and the record is not sufficient to take up and decide the entire

question of lighterage allowances on all commodities. HELD, complaint dismissed. Richardson Co. v. Director General, 56 I. C. C. 731.

ALL OTHER CITATIONS

Murray Lighterage & Transportation Co. v. D. & H. Co., 25 I. C. C. 388, 389.

V. OBLIGATION TO FURNISH

§6. In general.

IMPORTANT CASES SINCE 1908

(a) Complainant attacked defendants failure to furnish free lighterage from Jersey City through New York Harbor to Long Island City on 500 sets of iron work for freight cars, shipped during the period from Nov. 30, 1918, to March 12, 1919, from Berwick, Pa., to New York, for export, compelling complainant to perform such service at its own expense, resulting in the payment of charges which were illegal, unreasonable, unjustly discriminatory and unduly prejudicial. Defendants tariffs contained a rule which provided for free lighterage from their rail terminals on the New Jersey shore to Long Island City. The rates applying from Berwick to Long Island City were the same as those applying to Jersey City. An embargo was in effect at the time of movement, and there can be no doubt as to the right of carriers to place embargoes in proper cases, and the right of the director general to place an embargo in this case is not questioned. The shipments were treated by the carriers, in so far as the embargo was concerned, as though they were domestic shipments. Complainant admitted, with respect to both the Pennsylvania and the Lackawanna shipments, that he agreed to take delivery on the New Jersey shore. HELD, defendants failure to furnish lighterage from Jersey City not shown to have resulted in the collection of charges which were unreasonable or otherwise unlawful, complaint dismissed. Compagnie Auxiliare De Chemins De Fer Au Bresil v. D. L. & W. R. R., 77 I. C. C., 60.

(b) Tariff provided for free lighterage at New York, N. Y., on staves for export when tied in bundles. Complainants shipments arrived at New York with bands on bundles loose, and carrier refused to lighter, claiming that shipments were not in bundles. Complainant had lighterage performed by an outside agency. HELD, Since tariff did not specify any particular method of tying staves in bundles to entitle them to free lighterage, reparation awarded to complainant in amount of cost of lighterage expended by him. Gledhill Co. v. Director General, as Agent, 80 I. C. C. 701.

ALL OTHER CITATIONS

Lighterage and Storage Regulations at New York, 35 I. C. C. 47, 60; International Steel Corporation v. Director General, 73 I. C. C. 635; Standard Shipbuilding Corp. v. Director General, as Agent, 77 I. C. C. 64; Campagnie Auxiliare v. D. L. & W. R. Co., 87 I. C. C. 443; Midland Linseed Products Co. v. Director General, 88 I. C. C. 247.

VI. TARIFFS AND CONSTRUCTION.

§7. In general.

See Demurrage.

IMPORTANT CASES SINCE 1908

(a) Embargo placed against domestic freight for New York Harbor delivery, except when moving under permits issued only upon condition that delivery be accepted at Brooklyn terminals. Such delivery accepted under protest necessitating hiring outside lighters or drayage to plants. Tariffs provided for free lighterage delivery but since bills of lading did not call for such delivery the contracts of carriage were fulfilled when Brooklyn delivery accepted. Permit system was lawfully established and embargo merely closed a delivery service theretofore accorded, neither of which resulted in unreasonable or unlawful rates or practices. American Mfg. Co. v. Director General, as Agent, 77 I. C. C. 52.

(b) Lighterage schedules are numerous and complicated, and once canceled can be restored only after considerable delay. American Mfg. Co. v. Director General, as Agent, 77 I. C. C. 57.

(c) Tariff provided for free lighterage at New York, N. Y., on staves for export when tied in bundles. Complainant's shipments arrived with bands on bundles loose, and carrier refused to lighter, claiming that shipments were not in bundles. Complainant had lighterage performed by outside agency. HELD: Since tariff did not specify any particular method of tying staves in bundles to entitle them to free lighterage, reparation awarded to complainant in amount of cost of lighterage. Gledhill Co. v. Director General, as Agent, 80 I. C. C. 701.

ALL OTHER CITATIONS

New York Board of Trade v. Director General, 59 I. C. C. 205, 208; Charles F.

Gledhill Co. v. Director General, 80 I. C. C. 701; Compagnie Auxiliare v. D., L. & W. R. R. Co., 77 I. C. C. 60.

LIMITATION AND LIABILITY

See Bill of Lading IV; Cars and Car Supply VII; Courts §15; Express Companies XII; Loss and Damages §11, §9, §10 (1); Released Rates V; Reparation IV; Routing and Misrouting III; Special Contracts III; Telephone and Telegraph Companies IV; Undercharges IV.

LINING AND PADDING

See Allowances §8 (4½).

LIVE STOCK SHIPMENTS

See Caretakers; Disinfecting Charges and Services; Facilities and Privileges §5½; Feeding in Transit; Limitation of Liability; Loss and Damages; Personal Injuries; Reparation §16 (11); Stock Yard Companies.

CASES 1887-1908

(a) Live stock from Covington, Ky.—Carriers cannot make the yards of a certain company their exclusive stock depot at a certain place, there being other stock yards near by charging lower rates. Keith v. Kentucky Central R. Co. et al, 1 I. C. R. 316, 601.

(b) The expense of hauling the Burton cars in one direction unloaded, since by their construction they are not suited to carry general freight, and the fact that a large percentage of ordinary cattle cars are back loaded upon long hauls of western roads, are considerations which justify difference in charge against shippers who prefer to hire improved stock cars. Burton Stock Car Co. v. Chicago, Burlington & Quincy R. R. Co., 1 I. C. R. 329.

(ba) Burton Stock Car Company, which furnishes stock cars to shippers over railroad, does not exchange with or use cars belonging to others, and is not a connecting line entitled to equal facilities for interchange of traffic under section 3, par. 2. of Act. Burton Stock Car Co. v. Chicago etc. R. R. Co., I. C. R. 329.

(c) As common carriers of livestock it is the legal duty of the defendants to provide reasonable and proper facilities for receiving on board, and for discharging from their cars, all livestock offered for shipment or brought over their respective roads free of charges other than the usual transportation charges. Keith v. Kentucky Central R. R., 1 I. C. C. 601, 603.

(ca) The legal duty of carriers is not fully discharged by receiving and discharging livestock at a depot, access to which must be purchased. Keith v. Kentucky Central R. R. 1 I. C. C. 601, 603.

(d) A railroad company engaged in the business of transporting livestock is bound to furnish suitable cars therefore upon reasonable notice, whenever it is within its power to do so without jeopardizing its other business. Scofield v. Lake Shore & M. S. R. Co. (Com.), 2 I. C. R. 67.

(e) A shipper is not entitled to have his cattle carried in cars of a special construction of his selection, belonging to a third party and superior to ordinary cattle cars, by reason of the fact that the carrier transports some cattle in other cars, available to all shippers equally, which have some of the improvements of the former, but are furnished by another party under a special contract, and which, unlike the cars desired by the shipper by reason of their peculiar construction, can be used in the chief business of the road,—that of carrying coal,—when not in use for cattle. The refusal to use the cars desired by the shipper does not constitute unjust discrimination. Re Morris's Petition (C. C. N. D. N. Y.), 2 I. C. R. 617.

(ea) Certain propositions of fact established by the evidence in this proceeding may be briefly stated as showing the character of the case and also on account of the light they throw upon the conclusions reached by the Commission. The City of Chicago is the largest pork-packing center in the country and is also the most extensive market for live hogs and all other live stock. Kansas City, Leavenworth, St. Joseph, Atchison, Omaha, Council Bluffs, Sioux City, Sioux Falls, Des Moines, Dubuque, Burlington, Cedar Rapids, Marshalltown, Fort Dodge, Keokuk, Grinnell, Ottumwa and many other points that might be named in the interior of Iowa, are extensive pork-packing centers, and the hog products packed at these cities are brought into direct competition with the hog products packed at Chicago, not only in the mar-

kets of the United States, but also in all other markets of the world where hog products are consumed. As articles of commerce the live hog and its product are in direct competition with each other at the points named and in the chief market of this country. From Sioux City to Mississippi River points and from Sioux City to eastern markets and seaboard cities via Mississippi River points, the rates are made considerably higher by the carriers on live hogs than on packing house product. With, however, the single exception of Sioux City, rates are made the same by rail carriers on live hogs and packing-house product carried from Missouri River points to Mississippi River points to Mississippi River points, or from Missouri River points to eastern markets and seaboard cities via Mississippi River points, or from intermediate points in the State of Iowa and Missouri to Mississippi River points, or from intermediate points in Iowa and Missouri to eastern markets and seaboard cities via Mississippi River points, or from Chicago to eastern markets and seaboard cities and intermediate points. But upon all shipments of live hogs and packing-house product from Missouri River points to the City of Chicago, or from intermediate points in the State of Iowa and Missouri to Chicago, the rate charged is much higher on live hogs than on packing-house products. The foregoing propositions of facts being true, the defendants and intervenors undertook to justify the discrimination made against Chicago upon various grounds, which, with the view of the Commission upon each, may be briefly stated. They claim that trains carrying live hogs had the right of way over other freight trains and were run at a higher rate of speed on account of reaching the market at Chicago. But the evidence adduced did not show that this was of a nature and character that warranted the discrimination made in rates against Chicago. They also claim that there was much greater risk to the carrier in hauling live hogs than in transporting packing-house products, but the evidence showed that there was no appreciable difference in the risk of carrying the one as compared with the other. They further claim that it is more expensive to the carrier to haul live hogs than packing-house products to Chicago. But the evidence did not sustain this ground of defense. They claim, and the evidence showed it to be true, that the lines of railway east of Mississippi and east of Chicago used double-deck cars for transporting live hogs, while the railway lines west of Chicago and between Missouri River points and Mississippi River points and Chicago, with the exception of the Chicago, Milwaukee & St. Paul Railway Company and the Atchison, Topeka & Santa Fe Railway Company, used single deck cars, and that the two exceptional roads last named had but few double-deck cars. But this was found to constitute no justification for this discrimination in rates against Chicago. They claim that, counting coal, cooperage, salt and ice used in packing-house work, live hogs brought in and packing-house products carried out, the slaughtering of hogs at the packing houses at Missouri River points and in the interior of Iowa and Missouri furnished the rail carriers more tonnage than if the live hogs were transported to Chicago and converted into packing-house product there. But this was not found to warrant the discrimination in rates made against Chicago. By some it was insisted that as the rate on the live hogs from Missouri River points and from points in the interior of the State of Iowa, for example, to the packing house at Sioux City, added to the rate on packing-house product from the packing house at Sioux City to Chicago, is but a trifle more than the rate on live hogs from the first point of shipment above named to Chicago, that this equalized the rates relatively on live hogs and hog product. But the Commission finds that there is no element of justice or fairness in making or computing rates upon any such basis as this, and that it constitutes no ground whatever for these discriminating rates against Chicago. The intervenors also defend these discriminating rates against Chicago on the ground of immense investments of capital that have been made in the establishment of packing houses at Missouri River points and in the interior of Iowa and Missouri on the faith of these rates, which give employment to a large number of persons; that the business in these States has adjusted itself to this condition of affairs, and that now to make the changes in these rates claimed by petitioner would break up and ruin these packing houses. But upon the evidence the Commission is unable to find that the preferential rates given to these large establishments in Iowa and Missouri and at Missouri River points as well as in other portions of the country are reason-

able and just when compared with the heavy discriminations laid upon the packers and buyers of Chicago. Board of Trade of Chicago v. Chicago & A. R. Co. 3 I. C. R. 233.

(eb) The act of Congress of May 29, 1894, forbidding the exportation of diseased cattle, was not intended to interfere with shipments of cattle from one point to another wholly within a state, but applies only to interstate shipments. Davis v. Tex. & Pacific Ry. Co., 7 I. C. C. App. XXXVII.

(f) Defendant's rate on beef cattle in carloads from Ft. Worth, Tex., to New Orleans, La., is 42½ cents per 100 lbs. and $15 per car additional when shipment is made in lots of less than ten carloads. Upon complaint against the imposition of the additional $15 per car, HELD: That the charge of $15 per car in addition to the rate of 42½ cents per 100 lbs. is unreasonable when applied to single carload shipments. New Orleans Live Stock Exch. v. T. & P. R. Co., 10 I. C. C. 327.

(g) Defendants' rate on horses and mules in less than carloads from Bayou Sara, La., to St. Louis, Mo., is the double first class rate of $1.80 per 100 lbs., upon an estimated weight of 2,000 lbs. for each additional animal. The distance covered is 667 miles. This rate when applied to the transportation of a single animal is not unreasonable, but it is unreasonable for the shipment of four animals, amounting in that case to $99, while the charge upon a carload of twenty-five animals is only $100. Defendants' less than carload tariff would be rendered more just by reducing the charge to 90 cents per 100 lbs., first class rate, increasing the estimated weight of the first animal to 4,000 lbs., and leaving the rates for the additional animals as they now are, at 1,500 lbs. for the second and 1,000 lbs. for all others included in the shipment. Barrow v. Yazoo & M. V. R. Co., 10 I. C. C. 333.

(h) The shippers of cattle and hogs are unduly discriminated against by the exaction of higher rates for transporting cattle and hogs than for transporting live stock products to Chicago from points west, northwest, and southwest thereof, including Missouri River points and South St. Paul, Minnesota; as such discrimination is not justified by differences in cost of transportation or otherwise. Chicago Live Stock Exchange v. Chicago G. W. R. Co., 10 I. C. C. 428.

(i) The traffic in cattle and hogs in Chicago and other points is discriminated against by the exaction of higher rates for transporting cattle and hogs than for transporting live stock products to Chicago from points west, northwest, and southwest thereof, including Missouri River points and South St. Paul, Minnesota. Chicago Live Stock Exchange v. Chicago G. W. R., 10 I. C. C. 428.

(j) The desire of a carrier to secure additional business does not justify a change in the relation of rates, resulting in a higher rate upon cattle and hogs, the raw material, than upon live stock product, the manufactured article, where, as in this case, the articles are in sharp competition with each other in markets of purchase and sale, where it appears that upon other lines and in other sections rates are generally no higher, and in many instances much lower, on the traffic prejudiced than on that favored by the change, and where numerous and important industries which have been built up and maintained under the former adjustment, and those interested in such industries, will be injuriously affected by the action taken. Chicago Live Stock Exchange v. Chicago G. W. R. Co., 10 I. C. C. 428.

(k) Where the live-stock rates to Chicago participated in by defendants constitute a reasonable compensation for the services performed, including delivery at the Union Stock Yards in Chicago, the imposition of a terminal charge of $2 per car is unreasonable. Cattle Raisers' Asso. of Texas v. Chicago, B. & Q. R. Co., 11 I. C. C. 277.

(l) A railroad company may maintain its live stock depot at a particular point, although it neither builds nor repairs nor insures the stock pens into which the stock is unloaded, and does not hire or control the men who do the unloading; and whether the Union Stock Yards at Chicago have been, in railroad phraseology or in legal definition, the depot of defendants, is immaterial, for they were, and still are, in fact, the point to which the stock is transported and unloaded under the shipping contract of defendants. Cattle Raisers' Asso. of Texas v. Chicago, B. & Q. R. Co., 11 I. C. C. 277.

(m) Excluding the territory covered by the reduction of 1896, live-stock rates to Chicago participated in by defendants

were, on May 31, 1894, reasonable compensation for the services performed including delivery at the Union Stock Yards in Chicago. At all times since that date such rates have been and now are sufficiently high to include a delivery at the stock yards as such delivery was made prior to June 1, 1894. Cattle Raisers' Asso. of Texas v. Chicago, B. & Q. R. Co., 11 I. C. C. 277.

(n) Outside the excluded territory a terminal charge for delivery to the Union Stock Yards in Chicago of $1 per car is reasonable. Cattle Raisers' Asso. of Texas v. Chicago, B. & Q. R. Co., 11 I. C. C. 277.

(o) Defendants' advances in live-stock rates during 1903, as shown in the appendix, were unjust and unreasonable, and the present rates are unjust and unreasonable to the extent of such advances. Cattle Raisers' Asso. of Texas v. Missouri, K. & T. R. Co., 11 I. C. C. 296.

(p) The present terminal charge for delivery of live stock at the Union Stock Yards in Chicago, amounting to about $2 per car is unjust and unreasonable; and a reasonable charge would be $1 per car for such terminal services. Cattle Raisers' Asso. of Texas v. Missouri, K. & T. ... Co., 11 I. C. C. 296.

(pa) This case relates to advances in rates on cattle from points north of the Texas quarantine line to northern ranges in Colorado, Western Nebraska, Wyoming, Montana, and North and South Dakota, and to advances in rates from points in Texas, Colorado, Wyoming, Nebraska, Kansas, Indian Territory and New Mexico to Chicago, St. Louis and Kansas City. After considering cost to the carriers at originating and delivering points, cost and maintenance of equipment, expense of unloading and reloading in transit incident to feeding, watering and resting the stock, character of the movement, number of cars in trains, average loading, volume and desirability of the traffic, return of empty cars, liability to damage, cost of carriage, increased cost of producing live stock, decreased selling price, method of making the advanced rates, disappearance of competition, cost of railroad labor and supplies, improved methods of operation and increased general traffic, Mileage revenue per ton per car and per train, and other pertinent circumstances and conditions, HELD, that defendant's advances in live stock rates during 1903, were unjust and unreasonable, and that the present rates are unjust and unreasonable to the extent of such advances, and that a reasonable terminal charge at the Union Stock Yards, Chicago would be $1.00 per car. Cattle Raisers Asso. v Missouri, K. & T. R. Co., 11 I. C. C. 298.

(q) Prior to April, 1904, the Texas & Pacific Railway Company had in effect with various lines of railway, including the other defendants, joint tariffs, I. C. C. No. 1015, I. C. C. No. 1038, and I. C. C. No. 1036, applying on live stock from points on its line in Texas and New Mexico to destinations therein specified, but during that month the Texas & Pacific Company canceled such joint tariffs, and since that time no through routes or joint rates applicable to live stock to and from points on its line have been in force. HELD, That the public interest requires the establishment of the through routes and joint rates provided for in such joint tariffs, with leave to any party to apply for a modification of the order which may be issued herein at any time, but that formal order herein be withheld for thirty days. The carriers are granted authority to establish such joint tariffs upon ten days' notice to the public and the Commission. American Nat. Live Stock Asso. v. T. & P. R. Co., 12 I. C. C. 32.

(r) Defendant's rate per car for the transportation of horses from New York to Columbus is $200; from Columbus to Kansas City, $350; from Columbus to St. Paul, $350. The rate per car from New York to St. Louis is $300; from St. Louis to Kansas City, $150; from New York to Chicago, $250; from Chicago to St. Paul, $200. Thus the total charge from New York to Kansas City when the shipment is stopped at St. Louis is $450; when stopped at Columbus, the total charge is $550. Similarly, the charge from New York to St. Paul is $450 when the shipment is stopped at Chicago, and $550 when the shipment is stopped at Columbus. HELD, defendant's rate of $350 per car from Columbus to Kansas City and Columbus to St. Paul is unjust and unreasonable, and should not exceed $250 per car. McLaughlin Brothers v. Adams Express Co., 12 I. C. C. 489.

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(s) The assessment of freight charges upon hoof selling weights less fill allowances, not found unlawful. Kansas City Live Stock Exchange v. A. T. & S. F. Ry. Co., 34 I. C. C. 423.

(t) Live stock traffic involves a special service more expensive than that required for ordinary commodities. 1915 Western Rate Advance Case, 35 I. C. C. 497, 589.

(u) Carriers of live stock unquestionably must provide suitable facilities for loading, unloading, and caring for live stock, including suitable pens, but not at every point on their lines where dealers in live stock choose to establish their plants. Felin & Co., Inc. v. P. & R. Ry., 37 I. C. C. 231, 233.

(v) The question of the standard value at and below which all live stock take the same rates for the same movement involves the fact that such value should be applied to all live stock whether the shipment be in carloads or in less than carloads. The benefits of uniformity, and in order that the average animal shall not be required to pay transportation rates based upon values in excess of the actual value of such animals, present reasons why the higher valued blooded animals should not fix the standard. Natl. Soc. of Record Assns. v. A. & R. R. R. Co., 40 I. C. C. 347, 353.

(w) There appears no reason why a lower valued animal in a less-carload shipment should take the rate applicable to one of higher value, merely because both are shipped in the same car at the same time. The shipper using two cars would get a rate based on the actual value of his cheaper animal while under this provision if he used only one car he would be compelled to pay on each the rate based on the higher valued animal. National Soc. of Record Assns. v. A. & R. R. R. Co., 40 I. C. C. 347, 354.

(x) It cannot be said that in determining relative rates on the more valuable of two animals of the same species the Interstate Commerce Commission is limited to a consideration of the one factor of insurance against the increased hazard resulting from the higher value. Natl. Soc. of Record Assns. v. A. & R. R. R. Co., 40 I. C. C. 347, 355.

(y) The Commission does not feel that it should, in prescribing rates on higher valued animals, by amount in excess of basic rates, consider only the greater insurance risk as determined by the amount of loss and damage claims which past experience indicates will result. National Society of Record Assos. v. A. & R. R. R. Co., 40 I. C. C. 347, 355.

(z) A crated animal moving at the same weight and with the same minimum value of an animal of the same species shipped uncrated should take no higher rate because of the fact that it is crated. Natl. Soc. of Records Assns. v. A. & R. R. R. Co., 40 I. C. C. 347, 357.

(aa) In order to reduce damage claims on live stock a service is given superior to that afforded or required for any other traffic. Railroad Commission of Louisiana v. A. H. T. Ry. Co., 41 I. C. C. 83, 97.

(bb) The cost of expedited service given to live stock and the proportion which the loss and damage claims bear to the total charges paid is much greater than the ordinary service given to freight in general. Dimmitt-Caudle-Smith Live Stock Comm. Co. v. C. B. & Q. R. R., 47 I. C. C. 287, 302.

(cc) The transportation of caretakers held subject to the Act and to regulations of Commission, and to provision of section 1 which required all regulations or practices to be just and reasonable. Dimmitt-Caudle-Smith Live Stock Comm. Co. v. C. B. & Q. R. R., 47 I. C. C. 287, 319.

(dd) The necessity for starting the animal to its destination without delay and the fact that not all commodities may be shipped in the same car with live stock tends to limit the opportunity of the carriers to avail themselves of their right to place other freight in the car. Live Stock Classification, 47 I. C. C. 335, 339.

(ee) The charge for a carload shipment should not be determinative of the charge for less-than-carload live-stock traffic even though the transportation conditions in each case may be substantially the same. The charge on such a less-than-carload shipment should be fully compensatory, but a carrier should not expect to receive the same amount of profit as on a carload shipment. Under the present basis of charge the revenue on one animal ranges probably from one-half to one-fourth of the charge made on a carload of live stock, but with each additional animal in the less-than-carload shipment the charge for the shipment rises rapidly until the carload charge is reached. Live Stock Classification, 47 I. C. C. 335, 340.

(ff) While as a general rule there is no reason why the minimum charge on a less-than-carload shipment of live stock should be less than on ordinary

freight, some consideration must be given to the opportunity to secure added revenue by loading other freight with the live stock, which is not afforded in the case of light and bulky articles that occupy the entire car, as well as the fact that special equipment is generally required in the latter case, while an ordinary box car serves the former. Live Stock Classification, 47 I. C. C. 335, 341.

(gg) In view of the amended Cummins amendment, the Commission cannot authorize or sanction rates on ordinary live stock which are dependent upon value. Live Stock Classification, 47 I. C. C. 335, 344.

(hh) In several cases the Commission has recognized the propriety of a lower carload minimum on calves than on the matured animals. Shreveport-Texas Cattle, Lignite, Wood and Tanbark, 48 I C. C. 283, 290.

(ii) As the services of unloading and loading are part of the transportation of livestock the collection of separate charges from the shippers for unloading or loading in addition to the rates on livestock from and to interstate points to and from the stockyards was an unlawful and unreasonable practice. Loading and Unloading Charges on Livestock, 58 I. C. C. 164, 167.

(jj) The transportation of livestock requires expedited service and the maintenance of loading and unloading facilities not required for the transportation of ordinary freight. Wilson & Co. v. Director General, 62 I. C. C. 171, 173.

(kk) It was proposed to change the rule governing the transportation of livestock in mixed carloads by the insertion of words which would mean the application of the highest rate and highest minimum weight in the car. Under the interpretation the rule provides, in effect, for charges at the highest rate, and at the highest minimum weight, thereby making the basis of charge definite and certain. So construed, the rule effectuates the Commissions tariff regulations concerning definiteness and certainty in the publication of rates. The disposition of this case is wholly without prejudice to, or bearing on, the intrinsic reasonableness of the rule as applied to mixed carload shipments of livestock. HELD, proposed change justified. Minimum weight on livestock in mixed carloads, 64 I. C. C. 546.

(ll) Proposal of carriers to make the tariff rule providing the basis of charges on shipments of live stock in mixed carloads read "the highest rate and highest minimum weight" instead of "the highest rate and minimum weight," HELD to be justified as such change effectuates the Commission's tariff regulations concerning definiteness and certainty in the publication of rates. Minimum Weight on Live Stock in Mixed Carloads, 64 I. C. C. 546.

(mm) Refusal of carriers to unload ordinary live stock from their cars into stock pens adjacent to packing plants of complainants, or to make an allowance for unloading such shipments, while, pursuant to section 15, paragraph (5) of the act, performing the service of loading at point of origin or unloading at destination such live stock shipped from or to public stockyards, without charge in addition to line-haul charges, not shown to violate the act. Omaha Packing Co. v. A., T. & S. F. Ry. Co., 66 I. C. C. 44.

(nn) Charges in addition to the line-haul charges, for unloading and reloading en route ordinary live stock destined to private stockyards adjacent to packing plants of complainants, while unloading and reloading such shipments destined to public stockyards, without charge in addition to line-haul charges, found to result in undue prejudice to complainant in favor of competitors whose packing plants are adjacent to public stockyards. Omaha Packing Co. v. A. T. & S. F. Ry. Co., 66 I. C. C. 44.

(oo) Section 15, paragraph (5) is definitely limited, both as to initial loading and as to final unloading, to public stockyards. It does not apply to initial loading at other than public stockyards even for shipment to such yards. Omaha Packing Co. v. A. T. & S. F. Ry. Co., 66 I. C. C. 44, 49.

(pp) The Commission must assume that Congress legislated on the subject of the duties of common carriers by railroad concerning the receipt and delivery of live stock with full knowledge of the law as declared by the Supreme Court in Covington Stock Yards Co. v. Keith, 139 U. S., 128, and therefore with the knowledge and purpose that public stockyards would be open to all shippers and consignees as the terminals of the carriers. Omaha Packing Co. v. A. T. & S. F. Ry. Co., 66 I. C. C. 44, 49, 51.

(qq) Rules and charges governing bedding of live-stock cars found not un-

reasonable except upon railroads which assess bedding charges in excess of tariff charges after having included such charges in transportation rate. National Live Stock Exchange v. A. T. & S. F. Ry. Co., 80 I. C. C. 747.

(rr) Climatic and transportation conditions may vary kind and quantity of bedding essential to safe transportation of live stock, but whatever is reasonably necessary the carrier is by law required to furnish, and injuries to stock resulting from failure properly to bed car floors will render carrier liable in damages for its negligence. East Tennessee, etc., R. Co. v. Johnston, 75 Ala., 596; Allen v. C., B. & Q. R. Co., 82 Nebr., 726; 10 Corpus Juris, pp. 88 and 89; Michie on Carriers, sections 1742 and 1743. National Live Stock Exchange v. A., T. & S. F. Ry. Co., 80 I. C. C. 747, 748.

(rra) Proposal to establish rule which would place upon shipper duty of bedding cars, except where stock is transferred from one car to another en route for convenience of carrier, rejected. Such rule would relieve carriers of their common-carrier obligation to furnish cars properly bedded or otherwise made safe for transportation which they hold themselves out to furnish and clearly can not be sanctioned as reasonable. National Live Stock Exchange v. A., T. & S. F. Ry. Co., 80 I. C. C. 747, 749.

(ss) Contention that uniform live-stock contract, approved in 64 I. C. C. 357, places upon shipper obligation to bed cars, not sustained. Section 4 (b) of contract was prescribed by the commission in lieu of one proposed by railroads which would have required shipper to bed cars, and was drafted in light of the law which places upon carrier duty to furnish ordinary bedding and upon shipper burden of supplying extraordinary bedding when special character of his traffic or his caprice demands such bedding. Natl. Live Stock Ex. v. A., T. & S. F. Ry. Co., 80 I. C. C. 747, 749, 750.

(ssa) Rates on hogs, in single-deck carloads from Nashville, Tennessee, Oklahoma City, Okla., found unreasonable. Rate assailed is considerably higher than rate for corresponding distance under scale applicable between points in Southwest and considerably higher than rate based upon scale proposed in Live Stock to, from, and between Points in Southeast, 74 I. C. C., 419, for application in Southeast for like distance. Reasonable rates for application to single-deck and double-deck cars prescribed, and reparation awarded. Wilson & Co. v. Director General, as Agent, 81 I. C. C. 39.

(tt) Where horses were transported without a caretaker under the 36-hour rule, it was the carrier's duty at the expiration of such period to unload them in a proper place for rest, water and feeding for a period of at least 5 consecutive hours, in which case the shipper was required to pay the reasonable expense thereof; the carrier having a lien therefor collectible at their destination. H Ginsberg & Sons v. Wabash R. Co., (Mich. 1922), N. W. 1018, 1020.

ALL OTHER CITATIONS

Streever Lumber Co. v. C. M. & St. P. Ry. Co., 34 I. C. C. 1, 2; Kansas City Live Stock Exchange v. A. T. & S. F Ry. Co., 34 I. C. C. 423, 425; Iowa Railroad Com'rs. v. A. T. & S. F. Ry., 36 I. C. C. 79; Norfolk & W. Ry. Co. v. A. J. Steele & Son (Virginia 1915) 86 S. E. 124, 125; Hovey v. Tankersley (Tex. 1915), 177 S. W. 153; St. Louis Southwestern Ry. Co. v. I. W. Haynie & Co., (Ark. 1915), 179 S. W., 170, 171; 1915 Western Rate Advance Case, 35 I. C. C. 497, 580; Live-Stock Rates, from Colorado Points to Omaha, 35 I. C. C. 682, 685; Switching Charges at South Omaha, Nebr., 36 I. C. C. 198, 200; Eastern Live Stock Case, 36 I. C. C. 675, 699; Criswell v. W. F. & N. W. Ry., 37 I. C. C. 97; Viley v. Grand Trunk Ry. of Canada, 227 Fed. 127, 129; Natl. Soc. of Record Assns. v. A. & R. R. R. Co., 40 I. C. C. 347, 349, 356; Sioux City Live Stock Exch. v. St. P. M. & O. Ry., 40 I. C. C. 418, 424; Nashville Abattoir, Hide & Melting Asso. v. L. & N. R. R. Co., 40 I. C. C. 134, 141; Wicker v. St. L. & S. F. R. R., 40 I. C. C. 695; Donovan v. Wells Fargo & Co. (Mo. 1915), 177 S. W. 839; Kriel v. B. & O. R. R. Co., 41 I. C. C. 434, 435; Moffat Co. v. S. P. Co., 41 I. C. C. 477; Miller & Lux v. S. P. Co., 41 I. C. C. 617; Howell v. C. B. & Q. R. R., 41 I. C. C. 740; Denver Live Stock Com. Co. v. St. L., R. M. & P. Ry. Co., 42 I. C. C. 127; Miller Bros. v. St. L. & S. F. R. R. Co., 42 I. C. C. 261, 268; Interstate Packing Co. v. C. & N. W. Ry. Co., 42 I. C. C. 189, 195; Bowles v. Quincy, O. & K. C. R. Co., (Mo., 1916), 187 S. W. 131; Swift & Co. v. C. B. & Q. R. R., 43 I. C. C. 56; Healy and Towle v. C. & N. W. Ry., 43 I. C. C. 83; American Nat'l. Livestock Ass'n. v. O. S. L. R. R., 43 I. C. C. 247; Brittain Bros. v. St. L. & S. F. R. R., 45 I. C. C. 87; Tripp v.

Michigan Cent. R. Co., 238 Fed. 449, 453, 455, 457, 458; Pacific Coast Beef & Provision Co. v. O. S. L. R. R., 46 I. C. C. 401, 402; Adams v. C. R. I. & P. Ry., (Ia. 1917), 161 N. W. 295; N. S. R. Co. v. Chatham, 37 Sup. 499, 244 U. S. 276, 61 L. Ed.; Sioux City Live Stock Exchange v. C. St. P. M. & O. Ry., 47 I. C. C. 279, 281; Dimmitt-Caudle-Smith L. S. C. Co. v. C. B. & Q. R. R. 47 I. C. C. 287, 293, 295, 298, 299, 315, 318, 321; Live Stock Classification, 47 I. C. C. 335, 336, 342, 343, 380, 382, 387, 389, 397, 398, 399; Alabama Packing Co. v. L. & N. R. R., 47 I. C. C. 524; Commercial Club of Mitchell, S. Dak. v. A. & W. Ry. Co., 48 I. C. C. 40, 41; Shreveport-Texas Cattle, Lignite, Wood and Tanbark, 48 I. C. C. 283, 291, 292; Roth-Blum Packing Co. v. S. P. Co., 48 I. C. C. 470; Alabama Packing Co. v. A. G. S. R. R., 48 I. C. C. 596; Laird v. T. & N. Ry., 48 I. C. C. 733; Parsons v. C. B. & Q. R. R., 49 I. C. C. 96; Fies & Sons v. L. & N. R. R., 49 I. C. C. 393; Pevey & Dexter v. C. R. I. & P. Ry., 49 I. C. C. 717; Cleveland Provision Co. v. A. A. R. R., 50 I. C. C. 293; Wilke v. C. & A. R. R., 50 I. C. C. 73; Wilson & Co. v. C. M. & St. P. Ry., 50 I. C. C. 126; Dimmitt-Caudle-Smith Live Stock Commission Co. v. C. B. & Q. R. R., 51 I. C. C. 71, 77; Albrecht v. N. P. Ry., 51 I. C. C. 601, 604; Chicago Live Stock Exchange v. A. T. & S. F. Ry. Co., et al, 52 I. C. C. 209, 217; Guyton & Harrington Mule Co. v. L. & N. R. R., 50 I. C. C. 546; Natl. Live Stock Exch. v. A. & S. Ry., 50 I. C. C. 578; Jonas and Sim Weil v. C. M. & St. P. Ry., 51 I. C. C. 95; Carroll & Co. v. A. T. & S. F. Ry., 51 I. C. C. 395; Gruhl v. Northern Pac. Ry. Co., (Minn. 1918), 168 N. W. 127; United States v. Chicago, M. & St. P. Ry. Co., 250 Fed. 442; Chicago & N. W. Ry. Co. v. United States, 38 Sup. Ct. 351; Sioux City Live Stock Exchange v. C. & N. W. Ry. Co., 53 I. C. C. 166; South St. Joseph Live Stock Exchange v. C. B. & Q. R. R. Co., 53 I. C. C. 114, 123, 120, 124; Swift & Co. v. S. A. & A. P. Ry. Co., 53 I. C. C. 515; St. Joseph Live Stock Exchange v. C., B. & Q. R. R. Co., 53 I. C. C. 114, 120, 124; Gooch v. Oregon Short Line R. Co., 26 Fed. 664; N. Y. C. R. R. Co. v. Sturtevant & Haley Beef & Supply Co. (Mass. 1920), 127 N. E. 509; Caron & Campbell v. Director General, 57 I. C. C. 474; Interstate Packing Co. v. C. & N. W., 58 I. C. C. 510; Indianapolis Chamber of Commerce v. C. C. C. & St. L., 58 I. C. C. 515; Parsons v. C. B. & Q. R. R. Co., 59 I. C. C. 130; Swift & Co. v. S. A. & A. P. Ry. Co., 59 I. C. C. 440; Indianapolis Chamber of Commerce v. Big Four, 60 I. C. C. 67, 73; Birmingham Packing Co. v. N. O. & N. E., 62 I. C. C. 627; Binder v. Union Pac. R. Co., (Kan. 1920), 194 Pac. 314; Jepsen v. Gallatin Valley Ry. Co. (Mont. 1921), 195 Pac. 550; Wichita Board of Commerce v. Director General, as Agent, 60 I. C. C. 536; East Tennessee Packing Co. v. Director General, 63 I. C. C. 322; Swift & Co. v. Director General, 63 I. C. C. 389; Grayson Owen Co. v. Director General, 64 I. C. C. 157; Jones v. Director General, as Agent, 64 I. C. C. 221; Substitution of Single-Deck for Double-Deck Cars, 64 I. C. C. 251; Miller Bros. v. St. L. & S. F. R. R., 64 I. C. C. 593; Slater v. S. P. Co., 64 I. C. C. 647, 657, 659; Jerpe Commission Co., Inc. v. Director General, 66 I. C. C. 131; Healy & Co. v. Director General, 68 I. C. C. 45; Carstens Packing Co. v. Director General, 68 I. C. C. 125; F. A. Cocke Live Stock Co. v. B. S. L. & W. Ry., 68 I. C. C. 130; Horses and Mules from Kansas City, Mo., and Wichita, Kans., to New Orleans, La., Memphis, Tenn., and other points, 69 I. C. C. 97; National Livestock Exchange v. Ann Arbor R. R. Co., 69 I. C. C. 125; 131, 134, 137; North Packing & Provision Co. v. C. M. & St. P. Ry. Co., 69 I. C. C. 235, 241; Nat'l. Livestock Shippers League v. A. T. & S. F. Ry., 69 I. C. C. 407; Oklahoma Nat'l Livestock Exch. v. Director General, 69 I. C. C. 660, 661; Omaha Live Stock Exchange v. C. M. & St. P. Ry. Co., 69 I. C. C. 688, 692; St. Louis Independent Packing Co. v. C. & R. R. Co., 73 I. C. C. 459; J. D. Sugg and B. F. Johnson v. C. R. I. & P. Ry., 73 I. C. C. 721; Arizona Packing Co. v. A. E. R. R. Company, 74 I. C. C. 223; South Dakota Railroad Commissioners v. C. & N. W. Ry., 77 I. C. C. 451; 223; Derby v. K. C. S. Ry. Co., 80 I. C. C. 374; National Live Stock Exchange v. A. T. & S. F. Ry. Co., 80 I. C. C. 747, 748, 749, 750; North Packing & Provision Co. v. C., M. & St. P. Ry. Co., 80 I. C. C. 737; Arizona Packing Co. v. A. E. R. R. Co., 81 I. C. C. 115, 123; National Live Stock Exchange v. A., T. & S. F Ry. Co., 81 I. C. C. 305; Kansas City Livestock Exchange v. A. & S. R. Co., 81 I. C. C. 482; Fies & Sons v. M. P. R. R. Co., 83 I. C. C. 422; Chicago Live Stock Exchange v. Director General, 88 I. C. C. 202; Starr et al. v. Chicago, B. & Q. R. Co. (Nebr. 1919), 173 N. W. 682; Bradford v. Hines, Director General, (Mo. 1921), 227 S. W. 889.

LOADING AND UNLOADING

See Allowances §8 (4⅞); Classification §4, §13; Demurrage; Facilities and Privileges §10; Minimums; Reasonableness of Rates §15½; Transportation §10.

LOCAL RATES AND COMBINATIONS

See Class Rates; Commodity Rates; Double Advances; Evidence §13 (5), §28, §47; Passenger Fares and Facilities §5¾; Through §13½, §15, §22.

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(a) An intermediate local rate should never exceed the through rate to the terminus of the line plus the local rate back to the intermediate point. Martin v. Southern P. Co. (Com.), 2 I. C. R. 1.

(b) A railroad company is under special obligation to give reasonable rates for its local business; but there are many influences which may affect through rates while not bearing upon local rates at all, or if at all, in less degree. L. Lippman & Co. v. I. C. R. Co., 2 I. C. C. 414, 415.

(c) Complainant attacked as unreasonable rates charged of $1.85 per bale on cotton from Yazoo City, Miss., to New Orleans, La. The complaint was brought because of the fact that the I. C., on cotton coming from north of Yazoo City pays steamboats 50c per bale and 10c per bale transfer from the boat to the railroad at Yazoo City, thus accepting less than its local rate from Yazoo City. No complaint is made as to the unreasonableness of the local rate from Yazoo City. It is quite consistent with the complaint that the rate from Yazoo City is a fair one, and that the rates from points above are unreasonably low, made so under the stress of competition or for other reasons. Cases of this kind are sometimes met with, especially where water competition exists. HELD, nothing in the complaint warrants an investigation of the Commission, complaint dismissed. L. Lippman & Co. v. I. C. R. R. Co., 2 I. C. C. 414.

(d) It is well known by all who are familiar with the influences which necessarily affect the making of rates that local rates can not be the measure of what the railroad company shall accept as its division of through rates. In the first place the through rate is almost universally less in proportion to distance than the local rate; the carriers can afford to make it lower; if they were compelled to measure the one by the other, there would be no inducement to form through lines and shippers would be annoyed by having to deal with a succession of local roads instead of with one road acting for all. L. Lippman & Co. v. I. C. R. ., 2 I. C. C. 414, 415.

(da) Section 2 and 3 of the Act are not violated by charging a local rate from a more distant point on cotton to Vicksburg, when, after pressing there, it is forwarded to its point of destination at less than Vicksburg rate to such point, the total of such two rates being made to equal the regular rate from such initial point to such destination. Cowan v. Bond, 2 I. C. R. 542.

(e) A separate local haul of freight, complete in itself, could not be added to another different and subsequent haul of the same freight as an element in the adjustment of relative rates between the last haul and a haul of similar freight from still another and different point on the same line to the same common destination. Board of Trade of Chicago v. C. & A. R. R., 3 I. C. C. 233, 245.

(ea) Where two or more roads forming a continuous connecting line between points in different States bill and carry interstate traffic through to certain stations on the last road forming such line, neither the roads together, nor any one of them, can evade the obligations of the Act to Regulate Commerce, §4, by declaring that as to such traffic destined to such stations on such terminal road it is a local carrier. James & M. Buggy Co. v. Cincinnati, N. O. & T. P. R. Co. (Com.) 3 I. C. R. 682.

(eb) When a local rate from a given point is alleged unreasonable, but it appears from the record that such local rate is also a proportion of through rates from that point, and as such is the real subject of controversy, the complaint should be directed against the aggregate through rate, not the share received by any initial carrier, and all the carriers composing the through line are necessary parties. Chamber of Commerce of Minneapolis v. Great Northern R. Co., 4 I. C. R. 230.

(ec) A local rate which presumably is adopted as covering both the initial and final expense of a local haul is prima facie excessive as part of a through rate over a through line composed of two or

more carriers. Troy Bd. of Trade v. Alabama Midland R. Co., (Com.) 4 I. C. R. 348.

(f) Limiting local rates of freight does not necessarily interfere with interstate commerce because the carriers for their own convenience rearrange the interstate rates to make them conform to Ames v. Union P. R. Co. (C. C. D. Neb.) the local rates prescribed by the statute. 4 I. C. R. 835.

(g) A charge of a local rate by a railroad company in excess of its proportion of a joint through rate to the seaboard for hauling grain a longer distance is not an illegal discrimination. Parsons v. Chicago & N. W. R. Co. (C. C. App. 8th C.), 5 I. C. R. 95.

(ga) A local rate, which presumably is adopted as covering both the initial and final expense of a local haul, is prima facie excessive as part of a through rate over a through line composed of two or more carriers. Board of Trade of Troy, Ala. v. Ala. Mid. Ry. Co. et al., 6 I. C. C. 1, 2.

(gb) The Louisville & Nashville Railroad Company and the Savannah, Americus & Montgomery Railway Company, the defendants, unite in a joint tariff over their lines from Birmingham, Ala., to Cordele, Ga., and connecting at Cordele with the Georgia Southern & Florida Railway Company, the three companies form a line and join in a tariff through to Macon: HELD, that the two companies first named may lawfully accept less for their haul to Cordele as a part of the through rate to Macon than they might lawfully charge for the haul to Cordele for local delivery; but when the defendants carry a ton of pig iron to Cordele destined to Macon, and receive for their share of the through tariff $1.45, and when they carry it to Cordele for complainant they charge $3.69, this charge is exorbitant and unduly prejudicial to complainant. Cordele Machine Shop. v. Louisville & N. R. Co. et al. 6 I. C. C. 361.

(h) Local rates on through freight not justified.—The exaction of local rates for freight not local is not justified where the services belonging to local rates are not offered, and such exaction is made for the purpose of diverting traffic or stifling a competitor. Augusta Southern Ry. Co. v. Wrightsville Tennille Ry. Co., 7 I. C. C. app. XXXVIII.

(i) The full local rate permitted by the state law is not necessarily, in the absence of a contract between railroads for through shipment, a just or reasonable rate on freight plainly not local or through freight. Augusta Southern Ry. Co. v. Wrightsville & Tennille Ry. Co., 7 I. C. R. app. XXXVIII.

(ia) Local rates when applied to interstate business must be published at stations. Re Export Rates from Points East and West of Miss. River, 8 I. C. C. 185.

(ib) Combination rates always afford an advantage to the basing point, and entail some disadvantage upon the town to which the combined rates are applied, and when traffic is brought to the two places to be distributed, in common territory the preferences and prejudices resulting from such rates must generally be held unreasonable and undue. Gustin v. A. T. & S. F. R. Co. 8 I. C. C. 277, 289.

(ic) Local hauls, as is well known, are much more expensive to the carrier per mile than long through hauls, or any proportion of such through hauls. Therefore local rates are properly made much higher for the same distance than through rates, and hence the charge of a local rate for a part of a through haul, when the extra expense of a local haul has not been incurred, is prima facie excessive. Board of Trade of Hampton, Fla. v. N. C. & St. L. R. Co., 8 I. C. C. 503, 521.

(id) The reasonableness or unreasonableness of rates prescribed by the State for the transportation of persons and property wholly within its limits must be determined without reference to the interstate business done by the carrier, or to the profits derived from it. The court says: The State cannot justify unreasonably low rates for domestic transportation, considered alone, upon the ground that the carrier is earning large profits on his interstate business over which, so far as rates are concerned, the State has no control. Nor can the carrier justify unreasonably high rates on domestic business upon the ground that it will be able only in that way to meet losses on its interstate business. So far as rates of transportation are concerned, domestic business should not be made to bear the losses on interstate business, nor the latter the losses on domestic business. It is only rate for the transportation of persons and property between points within the State that the State can prescribe; and when it undertakes to prescribe rates not to be ex-

ceeded by the carrier, it must do so with reference exclusively to what is just and reasonable as between the carrier and the public in respect to domestic business. The argument that a railroad line is an entirety; that its incomes goes into and its expenses are provided for out of a common fund; and that its capitalization is on its entire line, within and without the State,—can have no application where the State is without authority over rates on its entire line, and can only deal with local rates and make such regulations as are necessary to give just compensation on local business. Smyth v. Ames, 8 I. C. C., App. V.

(j) The rates from Cannon Falls, a point in Minnesota 48 miles from Minneapolis, to Chicago, East St. Louis, and Louisville, are competitive rates, as are also the rates from Minneapolis. And Cannon Falls, with its competition with Minneapolis, is entitled to as low a rate to common points as the difference in conditions will permit. In view, however, of the desirability of keeping open the Minneapolis market to Cannon Falls grain, the short distance between those points, and the low rates from Minneapolis forced by competition, it is apparently not unjust that the grain rates from Cannon Falls should be as high as the local rate to Minneapolis plus a 7½ cent rate therefrom to Chicago, provided the Cannon Falls dealer is not thereby subjected to the disadvantage as compared with the Minneapolis grain dealer. Cannon Falls Farmer's Elevator Co. v. Chicago G. W. R. Co., 10 I. C. C. 650.

(k) The combination of rates on rye and other coarse grain from Cannon Falls to Minneapolis and thence to Chicago is ½ cent less than the straight rate from Cannon Falls to Chicago, which is without justification. Cannon Falls Farmers' Elevator Co. v. Chicago G. W. R. Co., 10 I. C. C. 650.

(l) The Evansville & Terre Haute Railroad Company, having, instead of making a through rate from points in Indiana to destinations south of the Ohio River, established a local rate on hay of 8 cents per hundred pounds to Evansville, and a proportional of 6½ cents to Evansville when the shipment is billed through to a specified destination, acts unreasonably and unjustly in insisting upon the billing of these shipments to a specified destination in order to secure application of the lower proportional rate, while it declines to assume responsibility for such billing, and does not post in its stations the tariffs from which the shipper can himself ascertain the rate at which the shipment should be billed. While the proportional rate is kept in force it is reasonable and just that these shipments shall be billed to Evansville in care of the road leading southerly therefrom. T. M. Kehoe & Co. v. Evansville & T. H. R. Co., 11 I. C. C. 172.

(m) The application of combined local charges to a long-distance shipment places a wrongful burden upon the shipper. Kindel v. Boston & A. R. Co., 11 I. C. C. 495.

(ma) Under the construction of the law as announced by the courts, no undue prejudice against Griffin, or violation of the long and short haul clause, is shown in this case; and while the practice of making rates to Griffin by combining rates to Atlanta with local rates therefrom to Griffin may result in unreasonable charges, the evidence in this case is insufficient upon which to base a conclusion in that respect. Griffin Grocery Co. v. Southern R. Co., 11 I. C. C. 522.

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(n) Local rates can not be limited according to point of origin of shipment or rates which were paid inbound. Merchants Exchange of St. Louis v. B. & O. R. Co., 34 I. C. C. 341, 351, 359.

(o) In the absence of a joint rate, a combination will be legally applicable where the tariffs are on file with the commission, notwithstanding a tariff provision that a factor is not to be used in combination in preference to a specific class or commodity rate. Herrick Refrigerator Co. v. C. G. W. R. R., 46 I. C. C. 421, 422.

(p) It is not unlawful for a carrier to maintain from a local point on its line a rate lower than another rate, from a point not on its line, in which it participates. Vulcanite Portland Cement Co. v. C. R. R. of N. J., 46 I. C. C. 483, 487.

(q) Where rates are based on combinations and tariff governing one factor contained provision for the application of a flat increase to the through rate, carriers parties to the tariff governing the other factor which contained no similar provision and who concurred in the tariff containing such provision are bound by the rule which prescribed a specific method for constructing combination rates on through shipments.

Indian Refining Co. v. Director General, as Agent, 60 I. C. C. 438, 439.

(r) The commission has generally recognized that through rates should be less than the combinations, but prompted chiefly by considerations of paramount public interest, growing out of the revenue conditions of certain carriers, it has remained from and even declined absolute condemnation of combinations. Intermediate Rate Asso. v. Director General, 61 I. C. C. 226, 246.

(s) When distances are relatively great and when transfer at rate breaking points is not attended by unusual costs, the combination basis, using local rates, ordinarily is abnormal and unscientific and often discriminatory. Intermediate Rate Asso. v. Director General, 61 I. C. C. 226, 246.

(t) One factor of a combination rate yielding somewhat high earnings found not exorbitant when consideration given to the fact that the distance was short and the country traversed mountainous. Burns & Knapp v. B. S. & K. R. Ry. Co., 62 I. C. C. 345, 347.

(u) Each factor of a combination rate increased under general order No. 28 of the Director General, but since that order provided for the application of but a specific single increase to the through rate and tariff of one of the participating carriers contained a rule to that effect, in which the remaining carriers concurred, shipment found overcharged and reparation awarded. Sligo Iron Store Co. v. W. M. Ry. Co., 62 I. C. C. 643.

(v) Where one of the tariffs used in making combination rates on through shipments contains a rule that such rates will be subject to the increase authorized under general order No. 28 but once, and tariffs of the other carriers participating in the movement do not publish the clause or refer to any other tariff which publishes such a rule, there is a holding out to the shipper of the rate so constructed which carriers should protect. Sligo Iron Store Co. v. W. M. Ry. Co., 62 I. C. C. 643, 644.

(w) Where, in the absence of through rates or a specific manner of constructing through rates, combination rates charged exceeded lower combinations legally applicable interstate rates over route of movement, shipments found overcharged to extent that rates charged exceeded the lower combinations. Reparation awarded. Southern Veneer Asso. v. A. C. L. R. R. Co., 62 I. C. C. 669, 674.

(x) After placement on public team track at originally billed destination, shipment was refused by consignee and reconsigned. Joint rate in effect from point of origin to final destination but as tariff provision approved in several cases provided that if car is placed at original billed destination, and is reforwarded therefrom without being unloaded, it will be subject to the published rates to and from point of reconsignment, combination rates charged found not unreasonable or unlawful. Silica Sand Producers Asso. v. C., B. & Q. R. R. Co., 63 I. C. C. 217.

(y) Local and proportional rates on grain and products from Missouri River cities and points west thereof to Des Moines, Iowa, and from Des Moines to Mississippi River crossings and points east, found not unreasonable or unduly prejudicial as Des Moines, under individual and joint rates with transit service, is not laboring under such a disadvantage as a grain market, in comparison with the Missouri and Mississippi River cities, Chicago and Peoria, Ill., and other grain markets, to entitle it to be made a rate-breaking point on grain traffic. Iowa Railroad Commissioners v. Director General, 63 I. C. C. 405.

(z) The charging of a local rate for a shorter distance higher than a proportional rate for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, is not a violation of the fourth section. Iowa Railroad Commissioners v. Director General, 63 I. C. C. 405, 406.

(aa) Fact that combination of rates from certain points of origin to a certain destination is higher for shorter distances than the combination of rates from the same points to farther distant destinations does not of itself warrant a finding that the rates for the shorter distances are either unreasonable or unduly prejudicial. Comparisons based upon distance alone have but little value. Nebraska Seed Co. v. Director General, as Agent, 64 I. C. C. 75, 77.

(bb) The commission is not disposed to approve retention of the combination rule, which provides that where no through rates are published and there

are in effect separately established rates to and from junctions, the through rate will be computed by deducting specific amounts from each factor and adding a specific amount to the resulting sum of the factors, because there is an indefinite possibility that future shipments may be afftected by its cancellation. Cancellation of Combination Rule to Southwest, 74 I. C. C. 505, 509.

(cc) While the law does not permit the commission to require rail carriers to establish through routes which result in the short-hauling of one carrier which has a reasonably direct route of its own, it is not a necessary conclusion, when such routes and joint rates are established, that local rates are fair divisions for the carrier which is short-hauled. U. S. War Dept. v. A. & S. Ry., 77 I. C. C. 317, 355.

(dd) The exaction by rail lines of their local rates as divisions of through routes and joint rates with water carriers has for its purpose the protection of the long haul. It is a means of accomplishing indirectly what congress, in the law respecting the establishment of through routes and joint rates, has sought to prevent. U. S. War Dept. v. A. & S. Ry., 77 I. C. C. 356.

(ee) Strictly local rates are not properly comparable with concentration rates which are not represented in final adjustment of charges. Memphis Freight Bureau v. M. P. R. R. Co., 80 I. C. C. 88, 90.

(ff) Shipments moved from points in Canada, destined to Brooklyn, N. Y., at through rates. Due to harbor strike at New York City, complainant accepted shipments short of destination and forwarded via another route on new bills of lading. Allegation that rates from hold points to destination were unreasonable to extent they exceeded factor of through rates over normal route, not sustained. Complainant accepted delivery short of destination account of urgent necessity for raw material, and showing that combination rates for separated movements were higher than applicable rates over normal route, and that carriers were participants in joint rates on same commodity from other points to same destination, does not prove that combination rates were unreasonable. North Packing & Provision Co., 73 I. C. C., 749. Tidewater Paper Mills Co., v. B. T. R. R. Co., 80 I. C. C. 493.

(gg) Where one tariff used in making combination rates on through shipments contains a rule that such rates will be subject to increase but once, there is a holding out to shipper of rates so constructed, or, in other words, an undertaking by carrier publishing that rule to protect resulting aggregate rate. Sligo Iron Store Co., 62 I. C. C., 643; 73 I. C. C., 551, Standard Oil Co. v. M. V. R. R. Co., 81 I. C. C. 193, 195.

(hh) Combination rates composed of commodity rate and class rate held not to be affected by combination rule in tariff of one of participating carriers providing for application of but single increase under General Order No. 28 of director general to sum of factors. Acme Cement Plaster Co. v. Director General, as Agent, 81 I. C. C., 298, 302.

(ii) Rates published, subject to rule 77 are in substantial compliance with the long and short haul provisions of the fourth section. Fairbanks Co. v. B. & A. R. R., 87 I. C. C. 725, 727.

ALL OTHER CITATIONS

National Wholesale Lumber Dealers' Asso. v. N. S. R. R. Co., Unrep. Op. 1952; Kennedy & Co., Ltd. v. K. & W. Va. R. R. Co., Unrep. Op. 1953; Powell-Myers Lumber Co. v. L. & N. R. R. Co., Unrep. Op. 2076; Fertilizer and Fertilizer Materials from New Orleans, 36 I. C. C. 247; Swift & Co. v. S. Ry. Co., 36 I. C. C. 386; Hunt & Co. v. A. H. Bull S. S. Co., 38 I. C. C. 226; Vandenboom-Stimson Lum. Co. v. St. L. I. M. & S. Ry. 38 I. C. C. 432; Updike Grain Co. v. C. St. P. M. & O. Ry., 38 I. C. C. 616; McCaull-Dinsmore Co. v. C. St. P. M. & O. Ry., 38 I. C. C. 624; Gablowsky v. G. B. & W. R. R., 38 I. C. C. 699; Clark-Danforth Handle Co. v. M. & O. R. R. Co., Unrep. Op. 2153; Roach & Musser Sash & Door Co. v. Adams Exp. Co., Unrep. Op. 2241; Lindsay-Walker Co. v. N. P. Ry. Co., Unrep. Op. 2160; United Lumber Co. v. L. & N. R. R. Co., Unrep. Op. 2223; Fort Worth Elevators Co. v. A. T. & S. F. Ry. Co., Unrep. Op. 2235; Alamo Iron Works v. N. Y., O. & W. Ry. Co., Unrep. Op. 2237; Duffney Brick Co. v. B. & M. R. R., 39 I. C. C. 118; Zelnicker Supply Co. v. C. R. I. & P. Ry., 39 I. C. C. 475; Chattanooga Sewer Pipe & Fire Brick Co. v. C. of G. Ry., 39 I. C. C. 615; Young v. L. & N. R. R., 40 I. C. C. 308; Minnesota & Ontario Power Co. v. C., St. P. M. & O. Ry. Co., 39 I. C. C. 481, 482; Reynolds Tobacco Co. v. L. & N. R. R. Co., 39 I. C. C. 600, 607; Illi-

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LOG SCALE RATES

IMPORTANT CASES SINCE 1908

(a) Applicable class rates on logs from and to certain points in state of Washington during federal control found unreasonable to extent they exceeded rates computed on log distance scale basis subsequently established. Reparation awarded. Forbes Timber Co. v. Director General, as Agent, 80 I. C. C. 36.

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